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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

GIANA BENSON, an individual; and
MONICA FOWLER, an individual, on
behalf of themselves and all others
similarly situated,

Plaintiffs,

v.

F21 OPCO, LLC dba FOREVER 21, a
Delaware Corporation; and DOES 1-10,
inclusive,

Defendants.

GIANA BENSON, and on behalf of the
general public as private attorneys
general,

Plaintiffs,

v.

F21 OPCO, LLC dba FOREVER 21, a
Delaware Corporation; and DOES 1-10,
inclusive,

Defendants.

Lead Case No.:
37-2021-00024619-CU-OE-CTL

Consolidated with:
Benson v. F21 OPCO, LLC, San Diego County,
37-2021-00037256-CU-OE-CTL

Assigned for All Purposes To:
Judge: Eddie C. Sturgeon
Dept.: C-67

**DECLARATION OF JAMES R. HAWKINS
IN SUPPORT OF PLAINTIFFS' MOTION
FOR FINAL APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT, AND
MOTION FOR FEES AND COSTS**

Date: October 6, 2023
Time: 9:00 a.m.

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Attorneys for Plaintiffs, the Putative Class, and the Aggrieved Employees

1 I, James R. Hawkins, declare as follows:

2 1. I am an individual over the age of 18. I am a partner at the Law Firm of James
3 Hawkins, APLC. I am one of the attorneys of record for Plaintiffs Giana Benson and Monica
4 Fowler (“Plaintiffs” or “Class Representatives”), who filed this Class and PAGA Representative
5 Action on behalf of herself and all other similarly situated individuals formerly or currently
6 employed by Defendant F21 Opco, LLC dba Forever 21 (“Defendant”)(collectively, the
7 “Parties”) as salaried, local managers, however titled, in the State of California during the
8 relevant time. I have personal knowledge of the facts set forth below, and if called to testify
9 regarding them, I could and would do so competently.

10 2. I submit this Declaration in support of Plaintiffs’ Motion for Final Approval of the
11 Class Action and PAGA Settlement, and Motion for Fees and Costs, which are filed concurrently
12 herewith, along with supporting Memoranda of Points and Authorities.

13 3. Attached hereto as **Exhibit 1** is a true and correct copy of the executed and
14 preliminarily-approved Class Action and PAGA Settlement Agreement entered by the parties,
15 including exhibits thereto, for which the parties ask the Court to grant final approval (the
16 “Settlement”).

17 4. For the Court’s ease in review, attached hereto as **Exhibit 2** is a true and correct
18 copy of the Declaration that I submitted in connection with the Motion for Preliminary Approval
19 of the Settlement in this case (the exhibits have been omitted).

20 5. Defendant does not oppose the Motion for Final Approval.

21 **THE COURT GRANTED PRELIMINARY APPROVAL OF**
22 **THE CLASS ACTION SETTLEMENT**

23 6. On March 10, 2023 Plaintiffs filed a Motion for Preliminary Approval of Class
24 Action and PAGA Settlement, attached herein as **Exhibit 3**. The Court issued an Order on April
25 21, 2023 granting preliminary approval of the Class Action and PAGA Settlement Agreement,
26 approval of the class notice, and conditional certification of the Class via Minute Order.

27 7. For the Court’s ease in review, attached hereto as **Exhibit 4** is a true and correct
28 copy of the Court’s Order granting the Motion for Preliminary Approval of the Settlement.

1 8. The Court preliminarily approved the Settlement Agreement, and the Notice of
2 Class Action and Private Attorney General Act Settlement. Additionally, the Court further
3 preliminarily approved the formulas provided in the Settlement Agreement for calculating
4 individual settlement payments to the Class Members using a workweek based calculation.

5 9. The Court also appointed CPT Group, Inc. as the settlement administrator. Since
6 then, CPT has worked diligently with Class Counsel and counsel for Defendant to efficiently
7 administer the Settlement.

8
9 **THE SETTLEMENT ADMINISTRATOR HAS CARRIED OUT**
10 **THE NOTICE PROCEDURES**

11 10. The Parties and the Settlement Administrator successfully delivered notice of the
12 Settlement and the Court's Preliminary Approval Order to the Class. As detailed in the
13 Declaration of Jennifer Forst on behalf of CPT Group, Inc., Notice Packets were mailed to the
14 9,652 individuals included on the Class List. Ultimately, 231 notices remained undeliverable
15 (i.e., Class Notices that were returned undeliverable with no updated address from the skip trace
16 and/or were returned undeliverable a second time).

17 11. Class Members were mailed notice of the Settlement and were not required to
18 submit a claims form for their share of the Net Settlement Amount. The Notice included (a)
19 information regarding the nature of the Action; (b) a summary of the Settlement's principal terms;
20 (c) the Settlement Class definition; (d) the formula for calculating Individual Settlement
21 Payments for Class Members; (e) the date which comprise the Class Period; (f) instructions on
22 how to dispute the amount owed under the distribution formula, opt out of the settlement or
23 submit an objection; (g) the deadlines by which the Class Member must postmark his or her opt-
24 out or objection; (h) the claims to be released; and (i) an estimate of each Class Member's
25 Individual Settlement Payment. (Forst Decl., Ex. A).

26 12. As per the settlement terms and preliminary order, the Notice was sent to the
27 mailing address for the Class Members in Defendant's records on June 12, 2023 (Forst Decl. ¶ 7-
28 8). The Administrator conducted a skip trace to obtain a new address for Notice packets that were

1 returned undeliverable with no forwarding address provided, in accordance with the terms of the
2 Settlement. (Id. ¶ 8).

3 13. Class Members were given 45 days after the date the Settlement Administrator
4 initially mailed the Class Notice to object to the Settlement in writing. Any objecting Class
5 Members had to notify the Settlement Administrator of his or her intent to object by following the
6 procedure set forth in the Notice of Settlement within 45 calendar days of mailing. For Class
7 Members whose notice was remailed, the final date for objecting shall be either 45 days after the
8 initial mailing, or within 10 calendar days from the date on which the Class Notice was re-mailed,
9 whichever is later. (Settlement ¶ 2.43). Failure to strictly comply with this deadline forever bars a
10 Class Member from objecting to the Settlement. A Class Member who objects to the Settlement
11 will still be considered a Participating Class Member who is subject to the Settlement. (Id.).

12 14. Class Members had 45 days after the date the Settlement Administrator initially
13 mailed the Class Notice to dispute the number of workweeks that they are credited. (Id.). If a
14 Class Member disagreed with the number of Workweeks as stated in his or her Class Notice, he
15 or she could dispute that figure by informing the Settlement Administrator of the number of
16 Workweeks in dispute and submitting supporting documentation (such as, without limitation,
17 payroll or timekeeping records, and paycheck stubs) within 45 days of the initial mailing, or
18 within 10 calendar days from the date on which the Class Notice was re-mailed, whichever is
19 later. In the event of any dispute, the Settlement Administrator shall review the Workweeks
20 disputed and supporting documentation and decide based upon the submitted documentation as to
21 the validity of the Class Member's claim. The Settlement Administrator shall also notify
22 Defendant and Class Counsel and request further information as needed. The decision of the
23 Settlement Administrator on any disputes shall be final. (Id. ¶ 5.5)

24 15. Class Members had 45 days after the date the Settlement Administrator initially
25 mailed the Notice to request exclusion from the Class. Any Class Member who wished to be
26 excluded from the Settlement had to submit a timely and valid Request for Exclusion to the
27 Settlement Administrator that clearly expressed such desire and is signed by such Class Member.
28 (Settlement ¶ 5.6) Any such statement was required to contain the case name, as well as the Class

1 Member's full name, address, telephone number, last four (4) digits of his or her Social Security
2 number, and signature, and a clear statement indicating that he or she sought to exclude him or
3 herself from the Settlement. (Id.) Class Members who did not opt out by submitting valid and
4 timely Requests for Exclusion were deemed to be Participating Class Members and are bound by
5 the Settlement and the Judgment entered based thereon. Class Members who Opted Out by
6 submitting valid and timely Requests for Exclusion are not bound by the Settlement, and are not
7 entitled to any benefits thereunder, or to make any objection to the Settlement. (Id.) If a Class
8 Member submitted both a Request for Exclusion and an objection to the Settlement, the Request
9 for Exclusion was accepted, and the objection was disregarded. (Id. ¶ 5.7)

10 16. As of the date of this declaration, two Class Members have requested to be
11 excluded from the settlement, and no Class Members have objected to the settlement. (Forst Decl.
12 ¶¶ 10-11).

13 17. If a Class Member's check is not cashed within 180 days, the check will be void
14 and a stop payment order may be placed on the check. In such event, the Settlement nevertheless
15 will be binding upon the Settlement Class Member. Uncashed checks will be sent to the
16 California Controller's Office Unclaimed Property Department to be securely held in the Class
17 Member's name. (Settlement ¶ 5.10).

18 18. The Parties selected CPT Group, Inc. as the Settlement Administrator. The
19 Settlement Administrator's duties include: preparing and distributing the Notice of Settlement,
20 calculating and directing the disbursement of payments to Settlement Class Member, Class
21 Counsel, the Class Representatives and the LWDA; calculating and timely paying any and all
22 payroll taxes from the wages portion of the Net Settlement Amount to the appropriate tax
23 authorities, as required under this Agreement and applicable law; handling inquiries about the
24 calculation of individual settlement payments; preparing and filing any tax returns and
25 information returns and any other filings required by any governmental taxing authority or other
26 governmental agency; providing weekly status reports to the Parties' counsel; advising Defendant
27 and Class Counsel of any Class Members who submit objections and/or requests for exclusions
28 from the Settlement; providing a due diligence declaration for submission to the Court prior to the

1 final approval hearing; printing and providing Settlement Class Members and Plaintiffs with W-2
2 and 1099 forms as required under this Agreement and applicable law; arranging for and remitting
3 funds from any uncashed settlement payment to the California Controller's Office Unclaimed
4 Property Department; sending reminder postcards to Class Members, and for such other tasks as
5 the Parties mutually agree or the Court orders the Settlement Administrator to perform. The
6 Settlement Administrator shall establish a settlement payment center address, telephone number,
7 facsimile number, and email address to receive Class Members' inquiries about the Notice of
8 Settlement, requests to be excluded from the Settlement and settlement payments.

9 19. Class Counsel and Plaintiffs do not have any financial interest in the Settlement
10 Administrator or otherwise have a relationship with the Settlement Administrator that could
11 create a conflict of interest, and believe that the amount of \$55,000.00 requested for CPT Group
12 for their settlement administration services is appropriate.

13 20. After Final Approval of the Settlement, Defendant shall deposit the Maximum
14 Settlement Amount and Employer Taxes to the Escrow Account in the following manner: no later
15 than thirty (15) business days after the Effective Date, Defendant will deposit one-half (1/2) of
16 the Gross Settlement Amount \$2,350,000.00 (Settlement ¶ 3.3). Defendant will deposit the
17 remainder of the Gross Settlement Amount in the sum of 2,350,000.00 within ninety (90) days of
18 the Initial Funding Date. Concurrently with its delivery of the remainder of the Gross Settlement
19 Amount on the Second Funding Date, Defendant shall deliver its share of Withholdings and
20 Taxes separately, as calculated by the Settlement Administrator based on the wage portion of the
21 Individual Class Payments. "Effective Date" means the 61st calendar day after the date of entry of
22 a final judgment which grants final approval of this settlement, if no objections to the Settlement
23 are filed and Plaintiffs and Class Counsel waive their rights to appeal the final judgment. If a
24 timely objection to the settlement is filed, "Effective Date" shall be the later of (a) the date on
25 which the time for all appeals relating to objections to the settlement and final approval order has
26 expired; or (b) if an appeal, review, or writ is sought, the date on which the highest reviewing
27 court renders its decision denying any petition (where the immediately lower court affirmed the
28 final judgment) or affirming the final judgment. (Id. ¶¶ 2.15, 3.3).

21. No later than ten (10) calendar days after the deposit of the entire Gross Settlement Amount with the Settlement Administrator, the Settlement Administrator, according to the terms and procedures of the Agreement, shall pay issue payments to (i) Participating Class Members and PAGA Employees; (ii) the LWDA; (iii) Plaintiffs; and (iv) Class Counsel. (Settlement ¶ 5.9).

THE SETTLEMENT IS FAIR, REASONABLE AND ADEQUATE

22. The Parties entered into the Settlement Agreement only after conducting extensive investigation of the relevant facts and applicable law throughout the Action, and the potential defenses, and damages claims by Plaintiffs on behalf of herself and the Class.

23. Plaintiffs' counsel's investigation included research and interviews, the exchange of information and documents (including pertinent financial information), conferences with defense counsel, and informal discovery. It also included preparing for and attending mediation with wage-and-hour class action mediator, Michael Dickstein, and assessing the evidence with an eye towards class certification. The Parties engaged in a significant amount of research, investigation, and information exchange prior to mediation. Informal discovery and information exchange included the production of class size information, Plaintiffs' employment file (including time records and wage statements), Defendant's handbooks and policies, Plaintiffs' employment application, applicable job description, other policy and procedure documentation, timekeeping information, pertinent financial information, Class Members' pay records, and other relevant documentation. Defendant produced substantial class information, and pay records for the class. The Parties conducted their own evaluations of the potential recoveries based on the claims alleged in the Action. The Parties then shared damages information with the mediator and each other for purposes of reaching a settlement. The Parties also engaged in numerous discussions regarding the data exchanged, the Parties' respective claims and defenses, and the Plaintiffs' claimed damages.

24. We also conducted a thorough investigation into the factual and legal issues implicated by Plaintiffs' claims and were able to objectively assess the settlement's reasonableness. By engaging in such a thorough investigation and evaluation of Plaintiffs' claims, I can opine that the Settlement, for the consideration and on the terms set forth in the

1 Settlement Agreement, is fair, reasonable, an adequate, and is in the best interests of Class
2 Members in light of all known facts and circumstances, including the risk of significant delay and
3 uncertainty associated with litigation, and various defenses asserted by Defendant.

4 25. Indeed, based on my experience, I believe that the proposed Settlement is fair,
5 reasonable and adequate and represents a great result for the Class Members. As detailed in my
6 Declaration in Support of Preliminary Approval (**Ex. 2**), although Plaintiffs and Class Counsel
7 compromised to achieve the Settlement, the compromise is extremely fair, reasonable and
8 adequate when compared to the realistic value of the class claims and considering the substantial
9 risks involved in pursuing further litigation including financial considerations and the possibility
10 of appeals by either party that would serve to increase the amount of time in which Class
11 Members could possibly see some benefits.

12 26. Class Counsel and Plaintiffs understand the uncertain and risky nature of the class
13 certification process as well as the potential merits of both legal and factual defenses expected to
14 be raised by Defendant. They also understand the Court's discretion in any litigation under the
15 PAGA to reduce penalties. Based upon the uncertainty associated with Defendant's asserted
16 defenses, Defendant's financial condition, the risk in certifying a class, the possibility of
17 Defendant prevailing on potentially dispositive motions, and a potential trial, Class Counsel and
18 the Plaintiffs believe the \$4,700,000.00 Maximum Settlement Amount to settle all Claims
19 pending in the Action is fair, reasonable, and adequate under the circumstances and will provide
20 Settlement Class Members meaningful compensatory relief without any reversion to Defendant.
21 The Settlement affords the Class Members prompt and substantial relief, while avoiding
22 significant legal and factual obstacles that otherwise may have prevented the Class Members from
23 obtaining any recovery at all. Indeed, the outcome of class certification, trial, and any attendant
24 appeals, as well as ultimate collectability in the current economic climate, is inherently uncertain.
25 Throughout this litigation and the settlement process, Defendant has denied and continues to deny
26 any liability or wrongdoing of any kind associated with Plaintiffs' claims alleged in the Action.
27 Defendant has also produced substantial evidence to support its defenses, such that recovery is
28 uncertain.

1 27. While Plaintiffs believe in the strength of their allegations, there is no certainty she
2 could prove sufficient systematic violations at Defendant's hands to certify the Class. Defendant
3 steadfastly contends that it complied at all times with the California Labor Code and the
4 applicable IWC Wage Orders. A summary of Plaintiffs' claims were provided in Section III.A-I
5 and Defendant's denials and defenses in III.J of Plaintiffs' Motion for Preliminary Approval,
6 attached hereto as **Exhibit 3**, see also Declaration of Craig Ackermann In Support of Preliminary
7 Approval attached hereto as **Exhibit 8**.

8 28. Indeed, there is a significant chance that continued litigation could result in the
9 Class obtaining no recovery at all. Defendant has strong defenses to Plaintiffs' claims including
10 that many Class Members signed arbitration agreements which would preclude them from being
11 able to bring their claims in Court. Further, Defendant had strong arguments on Plaintiffs'
12 position regarding class certification, including that Defendant has many stores, subject to
13 different policies and practices, and that Defendant promulgated lawful policies. Additionally,
14 Plaintiffs' primary claim alleging Defendant promulgated an unlawful, on-premises rest period
15 policy is completely undermined by the dicta in *Estrada*. Further, Defendant contended that
16 Plaintiffs' penalty claims are not meritorious because Defendant had a good faith belief that their
17 conduct was lawful, and that Plaintiffs would fail on their underlying claims. In addition to the
18 substantial risks and uncertainty inherent in continued litigation, Plaintiffs and Defendant face the
19 *certainty* that further litigation—potentially through trial and appeals—would be expensive and
20 time consuming. Therefore, the proposed Settlement is both fair and reasonable in light of
21 Defendant's asserted legal and factual grounds for defending against the putative class claims and
22 the risks of not obtaining and/or maintaining class certification through the trial of the action and
23 after any appeals.

24 29. Ultimately, we determined an appropriate range of recovery for settlement
25 purposes by offsetting Defendants' maximum theoretical liability by: (i) the strength of the
26 defenses to the merits of Plaintiffs' claims; (ii) the risk of class certification being denied; (iii) the
27 risk of losing on any of a number of dispositive motions that could have been brought between
28 certification and trial (e.g., motions to decertify the class, motions for summary judgment, and/or

1 motions in limine) that might have eliminated all or some of Plaintiffs' claims, or barred
2 evidence/testimony in support of the claims; (iv) the risk of losing at trial; (v) the chances of a
3 favorable verdict being reversed on appeal; and (vi) the difficulties attendant to collecting on a
4 judgment. A breakdown of this evaluation was provided in Section III.K of Plaintiffs' Motion for
5 Preliminary Approval.

6 30. We respectfully submit that a settlement amounting to \$4,700,000.00, or
7 approximately 97.8% of the realistic, risk-adjusted liability of \$4,805,987.41 for the thrust of
8 Plaintiffs' class claims, is fair and reasonable in view of the odds of: (i) overcoming Defendant's
9 arguments and evidence that it properly classified employees as exempt, and properly reimbursed
10 business expenses; (ii) the obstacles inherent in satisfying the requirements to certify a class and
11 satisfy manageability requirements; (iii) the challenges of proving the elements of each cause of
12 action; (iv) the derivative nature of many of the claims; (v) the expenses of further litigation; and
13 (vi) the recovery rate, even if Plaintiffs were to prevail, after years of continued and costly
14 litigation.

15 31. The Class Representative Enhancement Awards in the amount of \$10,000 each to
16 Plaintiffs Giana Benson and Plaintiffs Monica Fowler, the attorneys' fees of \$1,566,666.67 and
17 costs of \$22,319.37 given the amount of work and effort by the Class Representative and Class
18 Counsel to achieve a great result are also fair, reasonable and adequate. The specific amounts
19 associated with each of these payments were disclosed clearly in the Class Notice provided to the
20 Class Members, and none of the Class Members objected to these terms.

21 **THE CLASS REPRESENTATIVE SERVICE AND RELEASE AWARD**
22 **IS JUSTIFIED**

23 32. Under the terms of the Settlement Agreement, the Class Representatives seek
24 enhancement awards in the amount of \$10,000 each for their service in filing and prosecuting this
25 class and PAGA action on behalf of the Class and Aggrieved Employees.

26 33. I strongly support the service awards to the Class Representatives and Defendant
27 does not oppose the amount requested. Such an amount was reached as the product of arm's length
28 negotiations. Thus, I believe that the requested enhancement awards to Plaintiffs are justified, fair

1 and warranted. Plaintiffs' assistance to Class Counsel and services to the Class have been
2 invaluable. (See generally, Declarations of Giana Benson and Monica Fowler).

3 34. By coming forward and pursuing this class action lawsuit that in this information
4 age can easily be discovered by prospective employers, the Plaintiffs have placed the interest of the
5 Class above their own. Additionally, Plaintiffs made the decision from the very beginning of the
6 litigation to protect the interest of the Class by not wavering from their decisions to prosecute and
7 settle the claims on behalf of putative class members for a settlement that was in the best interests
8 of the Class. I do not believe that Plaintiffs have any interests that are adverse or antagonistic to the
9 Class Members' interests.

10 35. The Class Representatives were a crucial participant in the prosecution of this
11 litigation. Plaintiffs worked closely with me and my firm in all aspects of the litigation in this case.
12 They provided an extraordinary amount of factual information necessary for the prosecution and
13 settlement of the class claims. This information proved invaluable in our settlement discussions.
14 Plaintiffs also spent a significant amount of time searching for and producing documents in the case
15 and reviewing and interpreting the voluminous documents produced by Defendant. Plaintiffs
16 actively participated in this litigation during all stages, being available during mediation for
17 negotiation of the Settlement, the settlement approval process.

18 36. Plaintiffs also agreed to enter into broader releases of claims against Defendant as
19 opposed to the narrowly drafted release for the other Class Members. There is additional value
20 associated with their general release of claims.

21 37. Plaintiffs took on significant risks, including the potential that the lawsuit may affect
22 their ability to obtain future employment as well as the risk of paying an award of costs to Defendant
23 if they were not successful in litigating their claims.

24 38. I understand that the average estimated payment to Class Members is \$283.34 and
25 the highest estimated payment is \$1,355.07..

26 39. I also understand that Plaintiffs Giana Plaintiff Monica Fowler will receive
27 payments according to the same formula as the other Class Members and Aggrieved Employees.
28 Therefore, Plaintiffs' individual payments alone will not compensate them for the significant risk

1 and efforts in obtaining a settlement that will yield thousands of payments of hundreds of dollars
2 each to the Class Members and Aggrieved Employees.

3 40. Plaintiffs have been exceptional Class Representatives and the Class and Aggrieved
4 Employees have benefited immensely from their services. The enhancement payments are
5 reasonable in light of the time and effort Plaintiffs have spent on this litigation over the past three
6 plus years and the excellent result they obtained on behalf of the Class. Thus, I submit the
7 enhancement awards to Plaintiffs are appropriate and justified as part of the overall Settlement and
8 warrant final approval.

9
10 **THE ATTORNEYS' FEES AND LITIGATION COSTS CLASS COUNSEL SEEK**
11 **ARE REASONABLE, FAIR AND ADEQUATE**

12 41. In accordance with the terms of the Settlement Agreement, Class Counsel seeks an
13 award of attorneys' fees in the amount of \$1,566,666.67 (one-third of the Gross Settlement
14 Amount) and reimbursement for actual and necessary costs of \$22,319.37. Defendant does not
15 oppose these amounts.

16 42. The attorney's fees and costs requests are respectfully believed to be reasonable. My firm
17 and the other firms that have represented Plaintiffs in this matter have borne the entire risk and
18 cost of this litigation on a pure contingency basis. The legal issues raised in this case were
19 complex and drew significantly upon the experience of Class Counsel. The proposed attorneys'
20 fees accurately reflect the legal marketplace and are within the range of customarily approved
21 fees by California courts.

22 43. Despite the complexity of the case, Class Counsel has, through our investment of
23 substantial effort and resources, secured an outstanding settlement on behalf of the Class
24 Members. The issues and arguments Class Counsel has encountered and overcome in arriving at
25 the parties' negotiated settlement terms were also many and complex and required skillful
26 advocacy that can arise only out of experience, professional perspective, and success. Plaintiffs
27 would have faced substantial legal and factual obstacles in demonstrating that Class certification
28 was appropriate and that she would prevail on the merits in light of Defendant's asserted

1 defenses. Still, Class Counsel has negotiated a substantial settlement on behalf of the Class for
2 such claims. Plaintiffs would have also been required to establish a significant amount of witness
3 testimony, and other evidence in order to evaluate and present arguments at both class
4 certification and trial. Defendant has vigorously challenged the claims pled in the operative
5 complaint, contest liability, the amount of claimed damages, the propriety of the Class
6 Certification, and would have continued to do so through trial. Accordingly, Class Counsel
7 believe the Settlement to be fair, reasonable, and adequate and that it is in the best interest of the
8 Class Members. The fairness and adequacy of the Settlement is confirmed by all known facts and
9 circumstances, including the risk of significant delay and uncertainty associated with litigation,
10 the various defenses asserted by Defendant, and numerous potential appellate issues. Defendant
11 and Defendant's Counsel also agree that the settlement is fair, reasonable, and adequate.

12 44. Plaintiffs and Class Counsel respectfully submit the fees and costs provision of the
13 Settlement is fair and reasonable both when cross-checked under the lodestar and common fund
14 method. The total billable hours that I and my firm have invested and will invest in prosecuting
15 this action, should the settlement be approved by this honorable Court, is substantial. Our fees
16 and costs request is fair and reasonable because we have expended substantial time and effort in
17 achieving the proposed Settlement.

18 45. I am the founding partner at James Hawkins, APLC and have devoted approximately 167
19 hours in prosecuting this case on behalf of Plaintiffs and the Class. In 1993, I graduated from the
20 University of California, Los Angeles with a Bachelor of Arts Degree. Following graduation, I
21 attended Whittier Law School. In 1996, while a full-time law student, I was also a full-time
22 Judicial Extern for the Honorable Consuelo B. Marshall, United States District Court, Central
23 District. After approximately five months of service for Judge Marshall, I became a full-time
24 extern for the United States Attorney's Office, Central District of California. My externship
25 lasted for approximately five months. Thereafter, in 1997, I graduated from Whittier Law
26 School. The same year, I was admitted to practice law in the State of California. Since its
27 inception, this law firm has been exclusively involved in class action and complex litigation. In
28 2009, I opened an additional office in Miami, Florida, prosecuting wage and hour class actions.

1 Since 2002, I have been lead counsel or co-lead counsel in hundreds of wage and hour class
2 actions. The following is a summary of my tasks and activities in prosecuting this matter: review
3 client intake; research and investigation regarding claims; client interviews; review documents
4 provided by client; conferences regarding claims and causes of action; review class action
5 complaint and PAGA notice; reviewing the PAGA complaint; conferences related to litigation
6 and discovery plan; correspondence with counsel in related actions; conferences with counsel in
7 related actions; conferences with witnesses; memos and notes regarding interviews and claims;
8 due diligence; conferences with co-counsel re strategy; reviewing documents to prepare for
9 mediation; preparation and strategy regarding litigation of the action; preparation and strategy
10 regarding the mediation; preparing damages models and consulting with experts; review and
11 revise mediation statement; conferences with mediator and continued negotiations; attending
12 mediation; conferences regarding consolidation; reviewing issues related to consolidation;
13 conference regarding MOU, conference regarding settlement agreement; review and revise
14 pleadings and declarations in support of preliminary and final approval; consulting regarding
15 client inquiries; consulting regarding class member inquiries; conferences and correspondence
16 regarding the action. My hourly rate is \$1,050.00 per hour. The number of hours I have
17 expended for work performed and the corresponding attorney's fees of \$175,350.00 are
18 reasonable and necessary.

19 46. Christina Lucio is Of Counsel to James Hawkins, APLC and has been the lead day to day
20 attorney on this case. She has devoted in excess of 115.8 hours in prosecuting the Action. Such
21 hours were reasonable and necessary. Ms. Lucio has 16 years of experience and primarily
22 handled the day-to-day litigation of this matter during the action. Ms. Lucio graduated from the
23 University of California, Riverside in 2003 and received her law degree from the University of
24 Southern California in 2007. She has been a member of the State Bar of California since 2007.
25 Her practice focuses primarily on employment law including wrongful termination,
26 discrimination, retaliation, wage and hour violations (individual and class action), and sexual
27 harassment claims. In recent years, a substantial part of her practice has been focused on class
28 actions, including wage and hour litigation. The following is a summary of Ms. Lucio's tasks and

1 activities in prosecuting this matter: conferences with client regarding claims, review client
2 documents, research regarding Defendant entities, draft and revise CMC statements, draft
3 informal discovery list, research regarding legal issues, correspondence with client,
4 correspondence with defense counsel, review defense document production, conference regarding
5 mediation preparation, draft mediation brief, participate in mediation, strategizing regarding
6 damages model and research re theories and financial condition, participating in conferences with
7 consultants regarding claims and potential barriers to resolution, continued negotiations post-
8 mediation with defense counsel and mediator, correspondence regarding settlement, multiple
9 drafts and revisions regarding settlement agreement and notice documents, review and revise
10 preliminary approval motion, review and revise related documents, review and revise final
11 approval motion, draft relevant pleadings, draft stipulations, CMC statements, and status
12 conference statements, appear at case management conferences in two different proceedings,
13 correspondence with administrator regarding administration and notice process. Ms. Lucio's
14 hourly rate is currently \$775 per hour. The number of hours Ms. Lucio expended for work
15 performed and the corresponding attorney's fees of \$89,745 are reasonable and necessary.

16 47. Samantha Smith was formerly of counsel to James Hawkins, APLC. She was admitted to
17 the State Bar of California in 2004. Ms. Smith has dedicated 35.9 hours in prosecuting this action
18 on behalf of Plaintiffs and the class. Such hours are reasonable and necessary. The following is a
19 summary of Ms. Smith's tasks and activities in prosecuting this matter: drafting the complaints
20 and related documents; performing initial investigation and intake; research regarding the entities
21 and operating company status; meeting and conferring with defense counsel; preparing for case
22 management proceedings; conferences with client; conferences with co-counsel and overlap in
23 actions; day to correspondence and conferences; preparing a discovery plan and reviewing
24 documentation provided. Ms. Smith's hourly rate is \$775.00 per hour. The number of hours
25 expended by Ms. Smith for work performed and the corresponding attorney's fees of \$27,822.00
26 are reasonable and necessary.

27 48. Mitchell Murray is Of Counsel to James Hawkins, APLC. Mr. Murray is a 2007 graduate
28 of the University of California, San Diego and 2012 graduate of California Western School of

1 Law. He was admitted to the State Bar of California in 2012. He is a member of the Consumers
2 Attorneys of San Diego. He was selected as a “Rising Star” in 2019 by Super Lawyers Magazine.
3 Mr. Murray’s legal experience has focused primarily on all areas of employment law. Since 2016,
4 he has focused his practice in the area of wage and hour class action. Mr. Murray has dedicated
5 3.5 hours in prosecuting this action on behalf of Plaintiffs and the class. Such hours are
6 reasonable and necessary. The following is a summary of Mr. Murray’s tasks and activities in
7 prosecuting this matter: preparing for and appearing at various case management conferences,
8 drafting relevant stipulations, conferences and correspondence with co-counsel and defense
9 counsel, and assisting with pleadings and motions in the approval process. Mr. Murray's hourly
10 rate is \$725.00 per hour. The number of hours expended by Mr. Murray for work performed and
11 the corresponding attorney's fees of \$2,537.50 are reasonable and necessary.

12 49. Our junior associate attorneys have dedicated in excess of 29.7 hours in prosecuting this
13 action on behalf of Plaintiffs and the class. Our associates’ hourly rates are \$450.00 per hour. The
14 following is a summary of our associates’ tasks and activities in prosecuting this matter:
15 compiling relevant documentation and assisting with mediation preparation, reviewing settlement
16 agreement, reviewing preliminary approval order, creating the initial drafts of the final approval
17 motion, and drafting declarations related to final approval. The number of hours expended by our
18 associates for work performed and the corresponding attorney's fees of \$13,365.00 are reasonable
19 and necessary.

20 50. Our paralegals have dedicated over 72.9 hours in assisting with the prosecution of this
21 case. Their hourly rate is \$200.00 per hour. The number of hours expended for work performed
22 and the corresponding fees of \$14,580.00 are reasonable and necessary.

23 51. The lodestar for James Hawkins APLC is approximately \$322,502.50. I submit that the
24 requested attorneys’ fees of one-third the Maximum Settlement Amount that Class Counsel has
25 obtained on behalf of the Class Members is fair and reasonable, as are the hourly rates at which
26 our attorneys bill.

James Hawkins APLC Lodestar Summary				
Timekeeper	Years	Hours	Rate	Total
James Hawkins, Esq.	26	167.0	\$1050	\$175,350.00

Samantha Smith, Esq	19	35.9	\$775	\$27,822.50
Christina Lucio	16	115.8	\$775	\$89,745.00
Mitchell Murray	11	3.5	\$725	\$2,537.50
Junior Associate Attorneys	1-2	29.7	\$450	\$13,365.00
Paralegal Staff		72.9	\$200	\$14,580.00
TOTALS		79.98		\$322,502.50

52. We respectfully submit that our hourly rates are reasonable in light of the hourly rates charged in the marketplace for comparable skill, years of experience and services. A true and correct copy of this National Law Journal 2011 survey is attached hereto as **Exhibit 5**. See also the 2021 Wolters Kluwer Real Rate Report, attached as **Exhibit 6**, and the Laffey Matrix, attached as **Exhibit 7**.

53. The total fees incurred by attorneys and paralegals in this case to date on behalf of Plaintiffs and the class amounts to a lodestar of approximately \$444,728.87.¹ The requested award corresponds to a lodestar multiplier of 3.52.

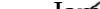
54. The Settlement that Class Counsel has negotiated on behalf of the Class confronts very difficult and individualized issues which make certification and proof of merits challenging and work intensive. I and our firm's attorneys and paralegals have secured this Settlement through persistent advocacy of the class claims, which has applied legal nuances and negotiation techniques to achieve a very favorable result for the Class Members. Other attorneys without our experience and comprehensive knowledge and perspective in connection with complex employment litigation may not have been able to achieve such superior settlement terms on behalf of the Class in the relatively brief time frame in which we negotiated this settlement. I believe the requested amount of up to \$1,566,666.67 in attorneys' fees under the Settlement is a reasonable allocation given the excellent result we have secured for the Class Members. I, therefore, respectfully request the Court approve the allocated attorneys' fees under the Parties' Settlement. Defendant and its counsel do not oppose the requested fee allocation.

¹ Summaries of the fees for the other firms serving as Class Counsel, Melmed Law Group, PC (\$67,290.10) and Ackermann & Tiljaef, PC (\$54,936.27), are provided in the declarations of Jonathan Melmed and Craig Ackermann, respectively.

55. In serving as Plaintiffs' counsel and Class Counsel in this matter, my firm will also seek reimbursement for the out-of-pocket costs of \$9,510.47, which combined with the costs incurred by the other firms acting as Class Counsel and anticipated costs for filing this motion totals \$22,319.47.² A summary of the costs incurred by our firm to date in this action, totaling \$9,510.37 is attached herewith as **Exhibit 9**, and our firm also expects to expend an additional \$250.00 in fees related to the filing, notice, and hearing of Plaintiffs' Final Approval Motion. As such, our firm requests a reimbursement of costs of \$9760.47. Any sums not awarded will be available for distribution to the Class as part of the Net Settlement Amount. I believe that all of these fees and costs are reasonable and necessarily incurred in litigating this matter and in pursuit of the settlement.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct.

Executed on this 13th day of September 2023 in Irvine, California


James R. Hawkins, Esq.

² Summaries of the costs for the other firms serving as Class Counsel, Melmed Law Group, PC (\$7,630.78) and Ackermann & Tiljaef, PC (\$4,928.22), are provided in the declarations of Jonathan Melmed and Craig Ackermann, respectively.

EXHIBIT 1

CLASS ACTION AND PAGA SETTLEMENT AGREEMENT

This Class and PAGA Action Settlement Agreement and Release (“Settlement” or “Settlement Agreement” or “Agreement”) is made by and between Plaintiffs Monica Fowler (“Plaintiff Fowler”) and Giana Benson (“Plaintiff Benson”) (together “Plaintiffs”), as individuals and on behalf of the Settlement Class and PAGA Employees (defined below), and on behalf of the State of California, and Defendant F21 OpCo, LLC (“Defendant” or “F21”) . The Agreement refers to Plaintiffs and F21 collectively as “Parties,” or individually as “Party.”

1. RECITALS.

1.1. On December 7, 2020, Plaintiff Fowler filed a representative action Complaint in the Los Angeles County Superior Court against F21 titled *Monica Fowler v. F21 OpCo, LLC*, Case No. 20STCV46857, wherein she alleged a single cause of action under the Labor Code Private Attorneys General Act of 2004, Lab. Code § 2698, et seq. (“PAGA”) seeking civil penalties for various alleged Labor Code violations based on Defendant’s alleged failure to pay all wages for hours worked (including overtime and minimum wages), failure to provide rest periods, failure to provide meal periods, failure to provide accurate itemized wage statements, failure to maintain payroll records, failure to reimburse business expenses, failure to timely pay wages during employment, and failure to pay wages at termination. Plaintiff Fowler purports to seek PAGA civil penalties on behalf of allegedly “aggrieved” individuals who are or were employed as hourly, non-exempt employees by F21 in California since February 29, 2020. (the “Fowler PAGA Action”).

1.2 Plaintiff Benson filed two separate lawsuits against F21: a putative class action and a PAGA action. Plaintiff Benson’s putative class action was filed on June 24, 2021 in the San Diego Superior Court against F21 OpCo, LLC, titled *Giana Benson v. F21 OPCO, LLC dba Forever 21*, Case No. 37-2021-00024619-CU-OE-CTL. Plaintiff Benson alleges wage and hour claims for: (1) failure to pay wages (including minimum wages and overtime wages); (2) failure to provide meal periods; (3) failure to provide rest periods; (4) failure to reimburse business expenses; (5) failure to pay vested vacation pay at termination; (6) failure to timely pay wages during employment and at termination; (7) failure to provide accurate itemized wage statements; and (8) violations of the unfair competition law, BPC §17200 et seq. Plaintiff Benson asserts these claims on behalf of a putative class of all persons who are or have been employed by Defendant in California as non-exempt employees or equivalent positions since February 29, 2020. (the “Benson Class Action”).

1.3 Plaintiff Benson’s PAGA action was filed on August 31, 2021 in San Diego Superior Court titled *Giana Benson v. F21 OpCo, LLC dba Forever 21*, Case No. 37-2021-000372560-CU-OE-CTL, predicated upon the same underlying claims as the Benson Class Action. Plaintiff Benson purports to seek civil penalties on behalf of allegedly “aggrieved” current and former employees that worked for F21 in California since August 31, 2020. (the “Benson PAGA Action”). On or about December 16, 2021, the Court granted the parties’ stipulation and ordered the Benson Class Action and Benson PAGA Action consolidated for all purposes.

1.4. Defendant denies all of the allegations in all of the Actions (defined below) and has asserted a number of affirmative defenses as to each of them.

1.5. On April 19, 2022, the Parties participated in an all-day mediation session with experienced employment law mediator Michael Dickstein. The Parties did not reach an agreement at mediation. After the mediation, however, the Parties continued negotiations with the assistance of the mediator and a global resolution of the Actions (defined below) in their entirety was reached when all Parties accepted the Mediator’s proposal on May 4, 2022. The Mediator’s proposal was memorialized in a Memorandum of Understanding (“MOU”), which was executed on September 16, 2022. The MOU is superseded in all respects by this Agreement upon execution by Plaintiffs and Defendant.

1.6. Prior to and in connection with the anticipated mediation, Plaintiffs asked F21 for extensive informal discovery, including production of time and pay records for its non-exempt California employees. In advance of mediation, F21 provided class-wide redacted time and payroll data for non-exempt California employees since February 29, 2020, relevant policy documents, and information which permitted Plaintiffs

and their lawyers to fully evaluate class-wide exposure. In these and other ways, the Parties investigated the facts and analyzed the relevant legal issues with regard to the claims in the Actions (as defined below) and F21's defenses to them. Plaintiffs believe that their investigation was sufficient to satisfy the criteria for Court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 ("*Dunk/Kullar*"). Based on this investigation and analysis, Plaintiffs believe the Actions have merit, while Defendant believes the Actions have no merit.

1.7. The Parties, through their counsel, have engaged in arm's-length negotiations with the assistance of a respected mediator concerning a resolution of the Actions. The Parties have each considered the uncertainties of continued litigation and the benefits to be obtained under the proposed settlement, and have considered the costs, risks, and delays associated with the continued prosecution of these Actions and the likely appeals of any ruling in favor of any of the Plaintiffs or Defendant. It is the Parties' intention and the objective of this Settlement Agreement to avoid the costs of further litigation and trial, and to settle and dispose of, fully and completely and forever, the claims released herein and described below.

1.8. As of the date of this Agreement, the Parties, Class Counsel and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

1.9. This Agreement is made in compromise of and embraces all claims against any of the Released Parties (defined below) as enumerated in Paragraph 2.41 below, including, but not limited to, all claims and statutory causes of action that were alleged or could have been alleged in any complaint filed in the Actions and/or the PAGA Notices (defined below), for violations of California's Labor Code and/or Wage Orders, attorney's fees, penalties, costs and interest or otherwise based on any facts, transactions, events, policies, occurrences, acts, disclosures, statements, omissions or failures to act pled in the Actions and/or PAGA Notices.

1.10. Because the settled matter is a putative class and representative action, this Agreement must receive preliminary and final approval by the Court. Accordingly, Plaintiffs and Defendant enter into this Agreement on a conditional basis. Should the Court, or any other Court taking jurisdiction of this matter, decline to approve all material aspects of the Settlement or make any ruling substantially altering the material terms of the Settlement, the Settlement shall be voidable and unenforceable as to Plaintiffs and Defendant, at the option of any Party and upon giving notice, in writing, to the other Parties and to the Court at any time before final approval by the Court of this Settlement; provided, however, that an award by the Court of a different amount than that sought by Plaintiffs and Class Counsel for the PAGA Payment, Class Representative Service Payments, or the Class Counsel award of attorneys' fees and/or costs, will not constitute a material term of the Settlement. Notwithstanding the foregoing, if the Court conditions approval on any material change to the Settlement, then the Parties shall work together in good faith to address any concerns raised by the Court. In the event that the Effective Date, as defined herein, does not occur, this Agreement shall be deemed null and void *ab initio* and shall be of no force or effect whatsoever, and shall not be referred to or utilized for any purpose. Defendant denies all of Plaintiffs' claims and all class and representative claims as to liability and damages. Defendant expressly reserves all rights to challenge any and all such claims and allegations upon all procedural and factual grounds, including the assertion of all defenses, if the Effective Date of the Settlement does not occur.

1.11. This Settlement contemplates (i) entry of an order preliminarily approving the Settlement, (ii) distribution of the Notice of Class Action and PAGA Settlement to Class Members and PAGA Employees, and (iii) entry of a Final Order and Judgment of the Settlement. The Court shall retain jurisdiction over the Action and Parties for purposes of enforcing the Settlement and resolving any disputes relating to the Settlement.

2. DEFINITIONS.

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

2.1. “Action(s)” means the Plaintiffs’ three lawsuits alleging individual, class, and representative claims for alleged wage and hour violations against F21 captioned *Monica Fowler v. F21 OpCo, LLC* pending in the Superior Court of the State of California, County of Los Angeles, Case No. 20STCV46857 (“*Fowler PAGA Action*”); *Giana Benson v. F21 OpCo, LLC dba Forever 21* pending in the Superior Court of the State of California, County of San Diego, Case No. 37-2021-00024619-CU-OE-CTL (“*Benson Class Action*”); and *Giana Benson v. F21 OpCo, LLC dba Forever 21* pending in the Superior Court of the State of California, County of San Diego, Case No. 37-2021-00372560-CU-OE-CTL (“*Benson PAGA Action*”). The *Benson Class Action* and *Benson PAGA Action* have been consolidated for all purposes.

2.2. “Attorneys’ Fees and Costs” means reasonable attorneys’ fees agreed upon by the Parties and approved by the Court for Class Counsel’s litigation and resolution of the Actions, and all out-of-pocket costs incurred and to be incurred by Class Counsel to prosecute the Actions. Class Counsel will request attorneys’ fees not in excess of one-third (1/3) of the Gross Settlement Amount, or One Million Five Hundred Sixty Six Thousand Six Hundred and Sixty Six Dollars and Sixty Six Cents (\$1,566,666.66). Moreover, Class Counsel will request costs up to \$30,000, subject to the Court’s approval. Defendant has agreed not to oppose Class Counsel’s request for fees and reimbursement of costs as set forth above.

2.3. “Benson PAGA Notice” means the PAGA notice submitted to the California Labor and Workforce Development Agency (“LWDA”), the agency entitled, under Labor Code section 2699, subd. (i) by Plaintiff Benson on June 4, 2021 (Case Number: LWDA-CM-834112-21).

2.4. “Class Counsel” means James R. Hawkins and Christina M. Lucio of James Hawkins APLC; Jonathan Melmed and Laura Supanich of Melmed Law Group; and Craig Ackermann and Avi Kreitenberg of Ackermann & Tilajef, P.C.

2.5. “Class Fund Settlement Amount” means the amount equal to ninety (90%) of the Net Settlement Amount that will be allocated to Participating Class Members.

2.6. “Class Member(s)” or “Settlement Class” means all individuals who are or were employed as hourly, non-exempt employees by Defendant F21 OpCo, LLC in California at any time during the Class Period.

2.7. “Class and PAGA Employee Data” means a complete list of all Class Members and PAGA Employees that Defendant will diligently and in good faith compile from its records and provide to the Settlement Administrator no later than twenty-one (21) days after the Court grants Preliminary Approval of the Settlement. The Class and PAGA Employee Data will include each Class Member’s and PAGA Employee’s full name, last-known mailing address, Social Security number, and the respective number of Pay Periods during which each Class Member worked during the Class Period and the respective number of Pay Periods during which each PAGA Employee worked during the applicable PAGA Period.

2.8. “Class Period” means the period from February 29, 2020, to September 16, 2022.

2.9. “Class Representatives” means Plaintiffs Giana Benson and Monica Fowler. They are the named Plaintiffs in the operative complaints in the Actions seeking Court approval to serve as Class Representatives.

2.10. “Class Representative Service Payments” means the amounts to be paid to the Class Representatives for their effort and work in prosecuting the Action, and for their general release of claims as set forth in Paragraph 6.8, which is in addition to whatever payments they may otherwise be entitled as Participating Class Members. Subject to the Court granting final approval of this Settlement Agreement and subject to the exhaustion of any and all appeals, Plaintiffs will request Court approval of Class Representative Service Payments not in excess of Ten Thousand Dollars (\$10,000), each.

2.11. “Consolidated Amended Complaint” means the consolidated amended complaint filed in the Benson Class Action by Plaintiffs for settlement purposes only, pursuant to the terms set forth in Paragraph 3.1, below.

2.12. “Court” means the Superior Court of California, County of San Diego.

- 2.13. “Defendant” means named Defendant F21 OpCo, LLC.
- 2.14. “Defense Counsel” means Jennifer C. Terry and Brittany M. Hernandez of Reed Smith LLP, Mark R. Phillips of Seals Phillips LLP, and Tracy Wei Costantino of Littler Mendelson P.C.
- 2.15. “Effective Date” means either (i) the sixty-first (61) calendar day after the Court enters the Final Approval Order and Judgment granting Final Approval of the Settlement, if no motions for reconsideration and no appeals or other efforts to obtain review have been filed, or (ii) in the event that a motion for reconsideration, appeal, or other effort to obtain review has been finally dismissed and is no longer subject to review, whether by appeal, petition for rehearing, petition for review, or otherwise. In this regard, it is the intention of the Parties that the Settlement shall not be effective until the Court’s Order approving the Settlement has become final, and there is no timely recourse by appellant or challenger who seeks to contest the Settlement.
- 2.16. “Final Approval” means the date on which the Court enters an order granting final approval of the Settlement.
- 2.17. “Final Approval Order and Judgment” or “Judgment” means the order and judgment to be issued and entered by the Court upon granting final approval of the Settlement and this Agreement as binding upon the Parties and the PAGA Employees and Participating Class Members, substantially in the form drafted and approved by counsel for all Parties, or as subsequently modified by the Court or between the Parties with approval of counsel for all Parties.
- 2.18. “Final Fairness Hearing” means the hearing to be requested by Plaintiffs and conducted by the Court after the filing by Plaintiffs of an appropriate motion and following appropriate notice to the Class Members, at which time Plaintiffs shall request that the Court finally approve the fairness, reasonableness, and adequacy of the terms and conditions of the Settlement, enter the Final Approval Order and Judgment, and take other appropriate action.
- 2.19. “Fowler PAGA Notice” means the PAGA notice submitted to the LWDA, the agency entitled, under Labor Code section 2699, subd. (i) by Plaintiff Fowler on October 5, 2020 (Case Number: LWDA-CM-808668-20).
- 2.20. “Gross Settlement Amount” means the maximum total amount that Defendant shall be required to pay, exclusive of the Employer’s Share of Payroll Taxes, for any and all purposes under this Settlement Agreement. The Gross Settlement Amount shall be Four Million Seven Hundred Thousand Dollars and Zero Cents (\$4,700,000.00) to be paid by F21 in full satisfaction of all Released Class Claims and Released PAGA Claims. The following shall be paid from the Gross Settlement Amount pursuant to the Plan of Allocation set forth in Section 4, Paragraphs 4.1-4.4 below: (1) all Individual Class Payments; (2) Attorneys’ Fees and Costs; (3) PAGA Settlement Amount; (4) Class Representative Service Payments; and (5) Settlement Administration Costs. In no event will Defendant be liable for more than the Gross Settlement Amount, except as to its share of Withholdings and Taxes arising from the Individual Class Payments. There will be no reversion of the Gross Settlement Amount to Defendant. Defendant will be separately responsible for any employer payroll taxes required by law, including the employer FICA, FUTA, and SDI contributions, which shall not be paid from the Gross Settlement Amount.
- 2.21. “Individual Class Payment” means the Participating Class Member’s pro rata share of the Class Fund Settlement Amount. The Individual Class Payment for Participating Class Members shall be calculated as described in Paragraph 4.3 below.
- 2.22. “Individual PAGA Payment” means the PAGA Employee’s pro rata share of the PAGA Fund. The Individual PAGA Payment shall be calculated as described in paragraph 4.3 below.
- 2.23. “Individual Settlement Payment” means each Participating Class Member’s and PAGA Employee’s respective Individual Class Payment and Individual PAGA Payment.
- 2.24. “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).

2.25. “Net Settlement Amount” means the portion of the Gross Settlement Amount remaining after deducting the following payments in the amounts approved by the Court: Attorneys’ Fees and Costs, Class Representative Service Payments, and the Settlement Administration Costs. Exactly ninety percent (90%) of the Net Settlement Amount will be allocated to Participating Class Members and the remaining ten percent (10%) will be allocated to the PAGA Settlement Amount.

2.26. “Notice of Class Action and PAGA Settlement” or “Notice” means the Court approved Notice of Class Action and PAGA Settlement to be mailed to Class Members substantially in the form attached as **Exhibit A** and incorporated by reference into this Agreement or whichever form is approved by the Court.

2.27. “Notice of Objection” means a Class Member’s valid and timely written objections to the Settlement Agreement. For the Notice of Objection to be valid, it must include: (i) the objector’s full name, signature, address, and telephone number; (ii) a written statement of all grounds for the objection accompanied by any legal support for such objections; and (iii) copies of any papers, briefs, or other documents upon which the objection is based.

2.28. “PAGA Employees” means all individuals who are or were employed as hourly, non-exempt employees by Defendant F21 OpCo, LLC in California at any time during the PAGA Period.

2.29. “PAGA Fund” means the sum equal to exactly Twenty-Five (25%) of the PAGA Settlement Amount that will be paid to all PAGA Employees.

2.30. “PAGA Notices” means the Benson PAGA Notice and the Fowler PAGA Notice.

2.31. “PAGA Period” means the period from February 29, 2020, to September 16, 2022.

2.32. “PAGA Settlement Amount” means the sum equal to exactly ten percent (10%) of the Net Settlement Amount, which is the sum that the Parties have agreed to pay to the LWDA and PAGA Employees in connection with Plaintiffs’ claims under the Labor Code Private Attorneys General Act of 2004 (Lab. Code, §§ 2698, et seq., “PAGA”). Pursuant to Labor Code Section 2699(i), the PAGA Payment will be distributed as follows: 25% to the PAGA Employees (PAGA Fund) and 75% to the LWDA (LWDA PAGA Payment). If it should later be determined by the Court that an additional amount is needed to effectuate a full and complete release of all Released PAGA Claims, the amount shall be deducted from the Gross Settlement Amount and such additional amount together with the original amount set forth in this Agreement as the “PAGA Settlement Amount” shall be, after Court’s determination, be referred to as “PAGA Settlement Amount” and such new PAGA Settlement Amount shall be allocated between the PAGA Employees and the LWDA pursuant to the same percentages as set forth in this paragraph.

2.33. “Participating Class Member(s)” means all Class Members who do not submit valid and timely Requests for Exclusion.

2.34. “Pay Period(s)” means the number of pay periods during which each Class Member worked during the Class Period, and the number of pay periods during which each PAGA Employee worked during the applicable PAGA Period. Pay Periods shall be calculated according to Defendant’s records.

2.35. “Plaintiffs” means Monica Fowler and Giana Benson, the named Plaintiffs in the Action.

2.36. “Plan of Allocation” means the manner in which the Class Fund Settlement Amount shall be allocated to Participating Class Members and the manner in which the PAGA Settlement Amount shall be allocated to PAGA Employees, as specified in Section 4, Paragraphs 4.1- 4.4 below.

2.37. “Preliminary Approval” or “Preliminary Approval Order” means the Court’s Order Granting Preliminary Approval of the Settlement, which shall, among other things, provisionally certify the Settlement Class for purposes of this Settlement only; determine that Plaintiffs adequately represent the Settlement Class and shall be its Class Representatives; appoint Class Counsel as counsel for the Settlement Class; approve CPT Group, Inc. as the Settlement Administrator; approve the content and distribution of the Notice of Class Action and PAGA Settlement to the Class Members and PAGA Employees; set the Response Deadline for submitting a Notice of Objection to the Settlement and/or Request for Exclusion;

and set the date of the Final Fairness Hearing, as contemplated in Paragraph 6.1 of this Settlement Agreement.

2.38. "Preliminary Approval Date" means that date upon which the Court enters the Preliminary Approval Order.

2.39. "Released Class Claims" means all claims for wages, statutory and civil penalties, damages and liquidated damages, interest, restitution, injunctive relief, fees and costs under California law that: were alleged in the complaints in the Actions (including the Consolidated Amended Complaint) or the PAGA Notices; or could have been alleged based on the facts alleged in any of the complaints in the Actions (including the Consolidated Amended Complaint) or the PAGA Notices, including (without limitation): claims for failure to pay for all hours worked, including overtime and minimum wage; failure to provide meal periods; failure to pay one hour of premium pay when lawful meal periods were not provided; failure to provide rest periods; failure to pay one hour of premium pay when lawful rest periods were not provided; failure to maintain accurate records of hours worked; failure to timely pay all wages at termination; failure to furnish accurate itemized wage statements; failure to pay all earned wages twice per month; failure to reimburse necessary expenses; Labor Code sections 201, 202, 203, 204, 210, 216, 218.5, 218.6, 221-224, 225.5, 226, 226.3, 226.7, 227.3, 510, 512, 516, 558, 1174, 1174.5, 1194, 1194.2, 1195, 1197, 1197.1, 1198, 1199, 2800, 2802; Business and Professions Code sections 17200-17208; all claims under the applicable IWC Wage Orders based on the preceding claims; all claims under the Code of Civil Procedure section 1021.5 as related to the claims specified forth herein; and all claims for interest, costs, and attorneys' fees as related to the claims specified herein. This release shall extend to all such Released Class Claims that accrued at any time during the Class Period. Expressly excluded from the Released Class Claims are claims for wages in Workers' Compensation and Unemployment Insurance benefits cases, and claims for benefits under the Employee Retirement Income Security Act of 1974 (ERISA).

2.40. "Released PAGA Claims" means all claims for civil penalties under the California Labor Code Private Attorneys General Act of 2004, Labor Code Sections 2698, *et seq.*, based on the Labor Code violations that: were alleged in the complaints in the Actions (including the Consolidated Amended Complaint) or the PAGA Notices; or could have been alleged based on the facts alleged in any of the complaints in the Actions (including the Consolidated Amended Complaint) or the PAGA Notices, including (without limitation): claims for failure to pay for all hours worked, including overtime and minimum wage; failure to provide meal periods; failure to pay one hour of premium pay when lawful meal periods were not provided; failure to provide rest periods; failure to pay one hour of premium pay when lawful rest periods were not provided; failure to maintain accurate records of hours worked; failure to timely pay all wages at termination; failure to furnish accurate itemized wage statements; failure to pay all earned wages twice per month; failure to reimburse necessary expenses; Labor Code sections 200, 201, 202, 203, 204, 210, 218.5, 218.6, 225.5, 226, 226.3, 226.7, 246, 248.5, 510, 512, 558, 558.1, 1174, 1174.5, 1182.11, 1182.12, 1193.6, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2698, *et seq.*, 2800, and 2802, and all claims for interest, costs, and attorneys' fees as related to the claims specified herein, as well as all facts, theories, or claims for civil penalties that would be considered administratively exhausted under applicable law by the PAGA Notices Plaintiffs sent to the LWDA. This release shall extend to all such Released PAGA Claims that accrued at any time during the PAGA Period. This release shall be binding on all PAGA Employees regardless of whether they submit a valid Request for Exclusion (defined below) from the Class.

2.41. "Released Parties" means: Defendant F21 OpCo, LLC and each of its respective former and present parents, affiliates, divisions and subsidiaries, acquired companies, and each of their respective present and former directors, officers, shareholders, agents, representatives, employees, partners, owners, attorneys, insurers, predecessors, successors, assigns, subsidiaries, affiliated companies and entities, if any, and any other individual or entity which could be liable for any of the Released Class Claims and/or Released PAGA Claims.

2.42. "Request for Exclusion" means a Class Member's submission of a timely written request to be excluded from the Settlement Class and the Released Class Claims. The Request for Exclusion must: (i) set forth the name, address, telephone number and last four digits of the Social Security Number of the Class Member requesting exclusion; (ii) be signed by the Class Member; (iii) be returned to the Settlement Administrator; (iv) clearly state that the Class Member does not wish to be included in the Settlement; and (v) be faxed, emailed, or postmarked on or before the Response Deadline.

2.43. "Response Deadline" means the deadline by which Class Members may: (a) fax, email, or mail Requests for Exclusion from the Settlement; (b) fax, email, or mail Notices of Objection to the Settlement; or (c) fax, email, or postmark disputes concerning the calculation of Individual Class Payments and Individual PAGA Payments. The Response Deadline will be forty-five (45) calendar days from the initial mailing of the Notice by the Settlement Administrator, unless the forty-fifth (45th) calendar day falls on a Sunday or State holiday, in which case the Response Deadline will be extended to the next day on which the U.S. Postal Service is open. If a Notice of Class Action and PAGA Settlement is returned as undeliverable with a forwarding address provided by the United States Postal Service on or by the Response Deadline, the Settlement Administrator will promptly resend the Notice to that forwarding address along with a brief letter stating that the recipient of the Notice has until the original deadline set forth on the Notice, or ten (10) calendar days after the date of re-mailing of the Notice of Class Action and PAGA Settlement (whichever is later) to object or submit a Request for Exclusion. In no event shall this be more than 10 days after the Response Deadline.

2.44. "Settlement Administrator" means CPT Group, Inc., or any other neutral third-party class action settlement administrator agreed to by the Parties and approved by the Court for the purpose of administering this Settlement pursuant to the terms of this Settlement Agreement, the Notice of Class Action and PAGA Settlement, the Preliminary Approval Order, and the Judgment. The Settlement Administrator shall agree to confidentiality terms as may be required by Defendant regarding personnel and payroll data provided to the Settlement Administrator and shall work with Class Counsel and Defense Counsel to implement and administer appropriate fraud-prevention policies.

2.45. "Settlement Administration Costs" means the amount approved by the Court to be paid to the Settlement Administrator for administering this Settlement. The Settlement Administration Costs will be paid from the Gross Settlement Amount, including, if necessary and reasonable, any such fees and costs in excess of the amount represented by the Settlement Administrator as being the maximum costs necessary to administer the Settlement as set forth in the "not to exceed" bid submitted to the Court in connection with Preliminary Approval of the Settlement.

2.46. "Settlement Agreement" means this Class and PAGA Action Settlement Agreement and Release, including all Exhibits referred to herein and attached hereto.

2.47. "Withholdings and Taxes" means all withholdings from the Individual Settlement Payments required by law plus all federal, state, and local employment payroll taxes due in regards to the Individual Settlement Payments, whether owed by a Participating Class Member or by Defendant. Defendant shall provide the Settlement Administrator with an amount sufficient to cover its share of Withholdings and Taxes arising from the portion of the Individual Settlement Payments that constitute wages. The Settlement Administrator shall handle the calculation of the taxes owed, payment of such amounts to the appropriate agencies and reporting.

3. TERMS OF AGREEMENT.

The Plaintiffs, on behalf of themselves and the Settlement Class and the State of California, and Defendant agree as follows:

3.1. Consolidated Amended Complaint in the Benson Class Action. For the sole purpose of effectuating Settlement, Plaintiffs prepared a draft Consolidated Amended Complaint to be filed in the Benson Class Action to amend the operative pleading in order to consolidate the Actions for purposes of Settlement approval. The Consolidated Amended Complaint was filed in the Benson Class Action on January 23, 2023. Defendant stipulated to the filing of the Consolidated Amended Complaint, likewise for the sole purpose of effectuating the Settlement. The Consolidated Amended Complaint serves to (i) add a PAGA cause of action asserting all of the claims asserted in the Fowler PAGA Notice and the Benson PAGA Notice; (ii) name Plaintiff Fowler, in addition to Plaintiff Benson, as Plaintiffs and PAGA representatives in the Benson Class Action; and (iii) assert the added PAGA cause of action on behalf of all PAGA Employees during the PAGA Period, all with the intent of consolidating the Actions for settlement purposes. Upon the filing of the Consolidated Amended Complaint, Defendant concurrently shall be deemed to deny all of the allegations contained in it and to raise all affirmative defenses, without the need to file an answer thereto. In the event the Court does not grant preliminary or final approval of the Settlement, the

Consolidated Amended Complaint shall be immediately withdrawn and the Parties in the Actions shall return to their respective positions as if the Settlement had not been entered into.

3.2. Conditional Class Action Certification for Settlement Purposes Only. For purposes of settlement and the proceedings contemplated by this Settlement Agreement only, the Settlement Class shall be provisionally certified, in the Benson Class Action only, and consist of Plaintiffs and all Class Members. If, for any reason, the Settlement is not approved, the stipulation to certification will be void. The Parties further agree that certification for purposes of the Settlement is not an admission that class action certification is proper under the standards applied to contested certification motions and that this Settlement Agreement will not be admissible in this or any other proceeding as evidence that either: (i) a class action should be certified; or (ii) Defendant is liable to Plaintiffs or any Class Member, other than according to the Settlement's terms. Defendant does not consent to certification of the Settlement Class in this Action or any settlement class for any purpose other than to effectuate the Settlement of the Actions. If, for any reason, the Settlement does not become final, any certification of any Settlement Class will be vacated and the Parties will be returned to their positions with respect to the Actions as if the Agreement had not been entered into. In the event that Final Approval is not achieved: (a) any Court order preliminarily approving the certification of any class contemplated by this Agreement shall be null, void, and vacated, and shall not be used or cited thereafter by any person or entity; and (b) the fact of the Settlement reflected in this Agreement, that Defendant did not oppose the certification of the Settlement Class under this Agreement, or that the Court preliminarily approved the certification of the Settlement Class, shall not be used or cited thereafter by any person or entity in any manner whatsoever, including without limitation any contested proceeding relating to the certification of any class.

3.3. Funding of the Gross Settlement Amount. In full settlement of the Released Class Claims and Released PAGA Claims and following the Effective Date, Defendant will transmit the Gross Settlement Amount of Four Million Seven Hundred Thousand Dollars (\$4,700,000) into a Qualified Settlement Account to be established by the Settlement Administrator. Defendant will deposit one-half (1/2) of the Gross Settlement Amount in the sum of Two Million Three Hundred and Fifty Thousand Dollars (\$2,350,000) within fifteen (15) business days of the Effective Date ("Initial Funding Date"). Defendant will deposit the remainder of the Gross Settlement Amount in the sum of Two Million Three Hundred and Fifty Thousand Dollars (\$2,350,000) within ninety (90) days of the Initial Funding Date ("Second Funding Date"). Concurrently with its delivery of the remainder of the Gross Settlement Amount on the Second Funding Date, Defendant shall deliver its share of Withholdings and Taxes separately, as calculated by the Settlement Administrator based on the wage portion of the Individual Class Payments. The Gross Settlement Amount will be used for: (i) all Individual Settlement Payments; (ii) the PAGA Settlement Amount; (iii) all Class Representative Service Payments; (iv) Attorneys' Fees and Costs; and (v) Settlement Administration Costs. This is a non-reversionary settlement.

3.3.1. Class Representative Service Payments To Plaintiffs: In exchange for the general releases as set forth in Paragraph 6.8 below, and in recognition of Plaintiffs' effort and work in prosecuting the Actions, Defendant agrees not to oppose or impede any application or motion for Class Representative Service Payments ("Service Payments") to the Class Representatives of not more than \$20,000 (\$10,000 to Plaintiff Fowler and \$10,000 to Plaintiff Benson). The Service Payments will be paid from the Gross Settlement Amount and will be in addition to Plaintiffs' Individual Settlement Payments paid pursuant to the Settlement. As part of the motion for Class Counsel Attorneys' Fees and Costs, Plaintiffs will seek Court approval for any Service Payments no later than 16 Court days prior to the Final Approval Hearing. An award by the Court of Service Payments in amounts less than the amounts applied for by Plaintiffs, or any of them, will not be grounds for Plaintiffs or Class Counsel, or any of them, to challenge or withdraw from the Settlement, and any amounts not awarded as Service Payments will be included in the Net Settlement Amount. Each Service Payment shall be reported by the Settlement Administrator on IRS Form 1099-HISC as non-wage income and provided by it to the Plaintiff receiving the Service Payment as well as applicable governmental authorities. Plaintiffs will be solely and legally responsible and assume full responsibility and liability to pay any and all applicable taxes owed on the Class Representative Service Payment.

3.3.2. Attorneys' Fees and Costs: Defendant agrees not to oppose or impede any application or motion by Class Counsel for Attorneys' Fees of not more than 1/3 (33.33%) of the Gross Settlement Amount, which is currently estimated to be \$1,566,666.66 and a reimbursement of all out-of-pocket costs

and expenses of not more than \$30,000, both of which will be paid from the Gross Settlement Amount, subject to Court approval. The Attorneys' Fees and Costs shall represent payment for all claims for Class Counsel's Attorneys' Fees and Costs, past and future, incurred in the Actions. Plaintiffs agree not to petition to the Court for more than \$1,566,666.66 for attorneys' fees or more than \$30,000 for costs. Plaintiffs and/or Class Counsel will file a motion for Class Counsel Attorneys' Fees and Costs no later than 16 Court days prior to the Final Approval Hearing. An award by the Court of Attorneys' Fees and Costs that is less than the amounts applied for will not be grounds for Plaintiffs or Class Counsel, or any of them, to challenge or withdraw from the Settlement, and any amounts not awarded in attorneys' fees or costs will be included in the Net Settlement Amount. Released Parties shall have no liability to Class Counsel or any other Plaintiffs' Counsel arising from any claim to any portion any Class Counsel Attorneys' Fees and Costs. Class Counsel and Defendant agree that such awards of Attorneys' Fees and Costs are reasonable under the circumstances. Nothing in this Agreement shall restrict Plaintiffs' or Class Counsel's ability to appeal any decision by the Court to award less than the requested Attorneys' Fees and Costs or Class Representative Service Payments. A decision by the Court to award less than the requested Attorneys' Fees and Costs or Class Representative Service Payments, however, is not a material change to the Settlement or this Agreement. Any order relating to the award of attorney's fees, costs or Class Representative Service Payments, or any appeal from any order relating thereto or reversal or modification thereof, will not operate to terminate or cancel this Agreement or to give rise to any right to terminate this Agreement, however, the Effective Date shall not occur until any such appeal is resolved. If the amount of, Class Representative Service Payments, attorneys' fees and/or costs awarded by the Court is less than the requested amounts, the difference shall serve to increase the Net Settlement Amount to be distributed to Settlement Class Members as part of their Individual Settlement Payments. Nothing in this Agreement will require Defendant to pay more than the Gross Settlement Amount under any circumstances.

3.3.3. Settlement Administration Costs: The Settlement Administrator will be paid for the reasonable costs of administration of the Settlement and distribution of payments from the Gross Settlement Amount, which is currently estimated not to exceed \$100,000.00 except for a showing of good cause and as approved by the Court. If the actual cost of settlement administration is less or more than the amount approved by the Court, those funds shall be added to or subtracted from the Net Settlement Amount. All costs associated with settlement administration shall come out of the Gross Settlement Amount. These costs, which will be paid from the Gross Settlement Amount, will include, *inter alia*: (i) printing and mailing and re-mailing (if necessary) of Notices of Class Action and PAGA Settlement to Class Members and PAGA Employees and receiving Requests for Exclusion and Objections from Class Members and Objections from PAGA Employees; (ii) preparing and submitting to Settlement Class Members, PAGA Employees, and government entities all appropriate tax filings and forms; (iii) computing the amount of and distributing Individual Settlement Payments, Class Representative Service Payments, and Class Counsel Attorneys' Fees, Costs and Expenses; (iv) processing and validating disputes concerning the calculation of Individual Settlement Payments; (v) establishing a Qualified Settlement Fund, as defined by the Internal Revenue Code; and (vi) calculating and remitting to the appropriate government agencies all employer and employee payroll tax obligations arising from the Settlement and preparing and submitting filings required by law in connection with the payments required by the Settlement; (vii) performing a National Change of Address (NCOA) search and a skip trace in order to obtain the best possible address for Class Members and PAGA Employees; and (viii) providing necessary reports and declarations, as requested by the Parties.

3.3.4. Website, Email Address and Toll-Free Number. The Settlement Administrator will also establish and maintain a dedicated website that Class Members and PAGA Employees can access to obtain information about the Settlement, Court filings, and contact information. The Settlement Administrator will also maintain and monitor an email address and a toll-free telephone number to receive Class Member calls, faxes and emails.

3.4. PAGA Settlement Amount: Subject to Court approval, the Parties agree that the PAGA Settlement Amount will be designated for satisfaction of Plaintiffs' PAGA claims. Pursuant to PAGA, Seventy-Five Percent (75%) of the PAGA Settlement Amount will be paid to the LWDA and Twenty-Five Percent (25%) of the PAGA Settlement Amount will be paid to PAGA Employees in proportion to the number of Pay Periods worked during the applicable PAGA Period, as reflected in Defendant's records.

3.5. No Right to Exclusion or Objections by PAGA Employees. Because this settlement resolves claims and actions brought pursuant to PAGA by Plaintiffs acting as proxies and as Private Attorneys General of,

and for, the State of California and the LWDA, the Parties agree that no PAGA Employee has the right to exclude himself or herself from the release of the Released PAGA Claims. PAGA Employees will be bound by the release of the Released PAGA Claims upon its approval by the Court at the Final Fairness Hearing, regardless of whether he or she requested exclusion as a Class Member, and regardless of whether he or she cashes the Individual PAGA Payment. The Parties also agree that no PAGA Employee has the right to object to the terms of the Settlement Agreement in his/her capacity as a PAGA Employee.

3.6. Interim Stay of Proceedings and Dismissal: The Parties agree to the entry of a formal stay of all proceedings in all of the Actions, except such proceedings as may be necessary to implement and complete the Settlement, pending the Final Fairness Hearing to be conducted by the Court. Within ten (10) calendar days after notice of entry of the Court's Judgment, Plaintiff Fowler shall take any and all actions necessary to secure the complete dismissal with prejudice of the *Fowler* PAGA Action, in its entirety, that is pending and currently stayed in the Los Angeles Superior Court.

4. PLAN OF ALLOCATION

4.1. Plan of Allocation. Calculation of All Individual Settlement Payments. Ninety Percent (90%) of the Net Settlement Amount shall be allocated to Participating Class Members through the Class Fund Settlement Amount, and the remaining Ten Percent (10%) will be allocated to the PAGA Settlement Amount. No portion of the Net Settlement Amount will revert to or be retained by Defendant. Plaintiffs and Defendant recognize and agree that the asserted claims in the Actions are extremely difficult to quantify with any certainty for any given year, or at all, and are subject to a myriad of differing calculations and formulas. Plaintiffs and Defendant agree that the formulas for allocating Individual Class Payments and Individual PAGA Payments provided herein are reasonable and designed to provide a fair settlement, despite the uncertainties of the amounts alleged to be owed to Participating Class Members and PAGA Employees and the calculation of them.

4.2. PAGA Fund. The PAGA Fund is equal to exactly Twenty-Five (25%) of the PAGA Settlement Amount, and represents the portion of the PAGA Settlement Amount that will be paid to all PAGA Employees allocated to the Individual PAGA Payments. The Parties have agreed to allocate 10% of the Net Settlement Amount to the PAGA Settlement Amount. The entire PAGA Fund will be distributed based on the PAGA Employees' pro rata number of Pay Periods worked during the applicable PAGA Period as a percentage of all PAGA Employees' total number of Pay Periods worked during the applicable PAGA Period as reflected in Defendant's records. No portion of the PAGA Fund will revert to or be retained by Defendant.

4.3. Individual Settlement Payment Calculations. Individual Settlement Payments will be calculated and apportioned from the Class Fund Settlement Amount and PAGA Fund based on the number of Pay Periods a Class Member worked during the Class Period, and number of Pay Periods a PAGA Employee worked during the applicable PAGA Period. Specific calculations of Individual Settlement Payments will be made as follows:

4.3.1. Payment Allocation of the Class Fund Settlement Amount. To determine each Class Member's share of the Class Fund Settlement Amount, the Settlement Administrator will use the following formula: Individual Class Payment = individual Class Member's total Pay Periods during the Class Period ÷ all Class Members' total Pay Periods during the Class Period × Class Fund Settlement Amount. If there are any valid and timely Requests for Exclusion, the Settlement Administrator shall proportionally increase each Participating Class Member's share of the Class Fund Settlement Amount so that the amount actually distributed to the Settlement Class equals 100% of the Class Fund Settlement Amount. Governmentally-required employee tax withholdings shall be deducted from that portion of each Individual Class Payment allocated as wages (as set forth below in Paragraph 5.11). No portion of the Class Fund Settlement Amount will revert to or be retained by Defendant.

4.3.2. Payment Allocation of the PAGA Fund. To determine each PAGA Employee's share of the PAGA Fund, the Settlement Administrator will use the following formula: Individual PAGA Payment = individual PAGA Employee's total Pay Periods during the PAGA Period ÷ all PAGA Employees' total Pay Periods during the PAGA Period × PAGA Fund. PAGA Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment (as set forth below in Section 5).

4.4. No Credit Towards Benefit Plans. The Individual Settlement Payments made to Participating Class Members under this Settlement, as well as any other payments made pursuant to this Settlement, will not be utilized to calculate any additional benefits under any benefit plans to which any Class Members may be eligible, including, but not limited to profit-sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan. Rather, it is the Parties' intention that this Settlement Agreement will not affect any rights, contributions, or amounts to which any Class Members may be entitled under any benefit plans.

5. PROCEDURES FOR SETTLEMENT ADMINISTRATION.

5.1 Administration Process. The Parties agree to cooperate in the administration of the Settlement and to make all reasonable efforts to control and minimize the costs and expenses incurred in administration of the Settlement.

5.2 Notices to the LWDA. Plaintiffs shall submit this Settlement to the LWDA at the same time it is submitted to the Court in compliance with Labor Code section 2699(1)(2). Plaintiffs shall submit a copy of the Court's Judgment to the LWDA within ten (10) calendar days after notice of entry of the Judgment in compliance with Labor Code section 2699(1)(3).

5.3 Delivery of the Class and PAGA Employee Data. Within twenty-one (21) calendar days following entry of the Preliminary Approval Order, Defendant will deliver the Class and PAGA Employee Data to the Settlement Administrator, in a secure format to be determined by the Settlement Administrator and Defendant. The information Defendant provides to the Settlement Administrator, along with any updated contact information identified by the Settlement Administrator as set forth in Paragraph 5.4.1 below, shall be used solely to administer the Notice of Class Action and PAGA Settlement and Plan of Allocation process described herein, shall remain confidential, and shall not be disclosed to anyone, except pursuant to the express written authorization of Defendant or the individual in question, by order of the Court, or to the extent necessary to fulfill the Settlement Administrator's reporting obligations hereunder. The Settlement Administrator shall be responsible for following all privacy laws and taking appropriate steps to ensure that Class Members' and PAGA Employees' personal information is safeguarded and protected from improper disclosure or use.

5.4. Notice of Class Action and PAGA Settlement by First-Class U.S. Mail. Within thirty (30) calendar days after receiving the Class and PAGA Employee Data from Defendant, the Settlement Administrator shall mail the Notice of Class Action and PAGA Settlement ("Notice") in the form approved by the Court in its Preliminary Approval Order to all Class Members via regular First-Class U.S. Mail, using the most current, known mailing addresses identified in the Class and PAGA Employee Data.

5.4.1. Confirmation of Contact Information in the Class and PAGA Employee Data. Prior to mailing, the Settlement Administrator will perform a search based on the National Change of Address Database for information to update and correct for any known or identifiable address changes. Any Notice of Class Action and PAGA Settlement ("Notice") returned to the Settlement Administrator as non-deliverable on or before the Response Deadline will be sent promptly via regular First-Class U.S. Mail to the forwarding address affixed thereto and the Settlement Administrator will indicate the date of such re-mailing on the Notice. If no forwarding address is provided, the Settlement Administrator will promptly attempt to determine the correct address using a skip-trace, or other search using the name, address and/or Social Security number of the Class Member involved, and will then perform a single re-mailing. Those Class Members who receive a re-mailed Notice Packet, whether by skip-trace or by request, will have either: (i) an additional fifteen (15) calendar days from the date of the re-mailing of the Notice Packet; or (ii) until the Response Deadline, whichever is later, to submit a Request for Exclusion or an objection to the Settlement.

5.4.2. Each Notice will provide: (i) information regarding the nature of the Actions; (ii) a summary of the Settlement's principal terms; (iii) the Settlement Class definition; (iv) the total number of Pay Periods each Class Member worked for Defendant during the Class Period based on Defendant's records; (v) each Class Member's estimated Individual Class Payment and the formula for calculating Individual Class Payments; (v) each PAGA Employee's estimated Individual PAGA Payment and the formula for calculating Individual PAGA Payments (vi) the dates which comprise the Class Period and PAGA Period;

(vii) instructions on how to submit Requests for Exclusion or Notices of Objection; (viii) the Response Deadline by which the Class Member may postmark or fax a Request for Exclusion, or postmark a Notice of Objection to the Settlement; and (ix) the claims to be released.

5.5 Disputed Information on Notices. If a Class Member or PAGA Employee wishes to contest the number of Pay Periods assigned to him or her by the Settlement Administrator, the Class Member or PAGA Employee may produce evidence to the Settlement Administrator showing that such information is inaccurate. Defendant's records will be presumed correct, but the Settlement Administrator shall contact Defense Counsel regarding any dispute and Defendant will work in good faith to resolve it. All disputes must be submitted to the Settlement Administrator by the Response Deadline, and will be decided within ten (10) business days after the Response Deadline. All decisions regarding whether an adjustment to the number of Pay Periods worked by a Class Member or PAGA Employee is warranted shall be final and not appealable or otherwise susceptible to challenge.

5.6 Requests for Exclusion (Opt-outs) Procedures. Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the Settlement Administrator, by fax, email, or mail, a signed written Request for Exclusion within the Response Deadline. In the case of Requests for Exclusion that are mailed to the Settlement Administrator, the postmark date will be the exclusive means to determine whether a Request for Exclusion has been timely submitted. The Request for Exclusion must be personally signed by the Class Member who seeks to opt out. No Class Member may opt out by having a Request for Exclusion submitted by an actual or purported agent or attorney acting on behalf of the Class Member. No Request for Exclusion may be made on behalf of a group of Class Members. In the event more than ten (10) percent of Class Members request to be excluded from the Settlement Agreement, Defendant may terminate the settlement in its sole discretion, in which case all of Defendant's obligations under this Settlement Agreement and the Memorandum of Understanding executed on September 16, 2022 shall cease to be of any force or effect, and this Settlement Agreement and the Memorandum of Understanding shall be null and void. If Defendant exercises this option, it shall: (i) provide Plaintiffs with written notice of its election within thirty (30) days of the Response Deadline, with a copy to the Settlement Administrator, at which point the Parties shall return to their respective positions with respect to the Actions as if the Agreement had never been entered into; and (ii) pay for all Settlement Administration Costs incurred up to the date of rescission. Class Members shall be bound by this Agreement unless they submit a completed, signed and timely Request for Exclusion. However, the Released PAGA Claims shall be binding on all PAGA Employees regardless of whether they submit a valid Request for Exclusion from the Class (as set forth below in Paragraph 6.7).

5.7. Objection Procedures. To object to the Settlement Agreement, a Class Member may either postmark a valid Notice of Objection to the Settlement Administrator on or before the Response Deadline, or appear in person at the Final Approval Hearing. Class Members who fail to object either by submitting a valid Notice of Objection or appearing in person at the Final Approval Hearing will be deemed to have waived all objections to the Settlement and will be foreclosed from making any objections, whether by appeal or otherwise, to the Settlement Agreement. At no time will any of the Parties or their counsel seek to solicit or otherwise encourage Class Members to submit written objections to the Settlement Agreement or appeal from the Final Approval Order and Judgment. Class Counsel will not represent any Class Members with respect to any such objections to this Settlement. If a Class Member timely submits both a Notice of Objection and a Request for Exclusion, the Request for Exclusion will be given effect and considered valid, the Notice of Objection shall be rejected, and the Class Member shall not participate in or be bound by the Settlement. However, the Released PAGA Claims shall be binding on all PAGA Employees regardless of whether they submit a valid Request for Exclusion from the Class (as set forth below in Paragraph 6.7).

5.8. Weekly Reports. The Settlement Administrator will provide Weekly Reports to Class Counsel and Defense Counsel that, among other things, certifies the number of: Notices mailed or re-mailed, Notices returned undelivered, Requests for Exclusion (whether valid or invalid) received, objections received, and the number of disputes to Pay Periods received and/or resolved ("Weekly Report"). Additionally, the Settlement Administrator will provide to counsel for both Parties any updated reports regarding the administration of the Settlement Agreement as needed or requested.

5.8.1. Administrator's Declaration. Not later than 21 days before the date by which Plaintiffs are required to file the Motion for Final Approval of the Settlement, the Administrator will provide to Class

Counsel and Defense Counsel, a declaration attesting to its due diligence and completion of the notice process set forth in this Agreement including, but not limited to, its mailing of Notice of Class Action and PAGA Settlement, the total number and names of the Requests for Exclusion (opt outs), any objections to the Settlement, and a summary of any disputes raised by any Class Members and/or PAGA Employees. This declaration shall be filed with the Court by Class Counsel along with a motion requesting final approval of the Settlement. Any written objections submitted by Class Members shall be turned over to Class Counsel, who shall then file them with the Court at the time of their Motion for Final Approval.

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

5.9. Timing of Distribution of Gross Settlement Amount. Within ten (10) calendar days of the Second Funding Date as set forth in Paragraph 3.3, the Settlement Administrator will issue payments from the Gross Settlement Amount to: (i) Participating Class Members and PAGA Employees; (ii) the LWDA; (iii) Plaintiffs; and (iv) Class Counsel. The Settlement Administrator will also issue a payment to itself for Court-approved Settlement Administration Costs for services performed in connection with the Settlement. The payments to Class Counsel for Attorneys' Fees and Costs and the Class Representative Service Payments shall not precede disbursement of Individual Class Payments and Individual PAGA Payments.

5.10. Negotiation of Individual Settlement Payment Checks. Any checks tendered to Participating Class Members or PAGA Employees shall remain valid and negotiable for one hundred and eighty (180) days from the date of mailing. Any Individual Class Payment checks or Individual PAGA Payment checks that remain uncashed after One Hundred Eighty (180) days from issuance shall be void and the Settlement Administrator shall transmit any amounts from such uncashed checks to the California Controller's Office Unclaimed Property Division, with an identification of the person to whom the funds belong, in accordance with California Code of Civil Procedure Section 384, to be held in trust for those Participating Class Members and/or PAGA Employees who did not cash their checks. Funds represented by Individual Settlement Payment checks returned as undeliverable will also be tendered to the State Controller's Office, Unclaimed Property Division with an identification of the person to whom the funds belong, in accordance with California Code of Civil Procedure Section 384, to be held in trust for those persons. In such event, the Participating Class Member and/or PAGA Employee shall nevertheless remain bound by the Settlement's Released Class Claims and/or Released PAGA Claims, as applicable. The Parties agree that this disposition results in no "unpaid residue" under Code of Civil Procedure section 384, as the entire Net Settlement Amount will be paid out to Participating Class Members and PAGA Employees, whether or not they all cash their Individual Class Payment and/or Individual PAGA Payment checks. Therefore, Defendant will not be required to pay any interest on such amounts.

5.11. Treatment of Individual Settlement Payments. The Individual Class Payments are payments for all Released Class Claims for the Participating Class Members. The Individual PAGA Payments are payments for the Released PAGA Claims for the PAGA Employees. The Settlement Administrator shall be authorized to establish a Qualified Settlement Fund ("QSF") pursuant to Internal Revenue Service ("IRS") rules and regulations in which the Gross Settlement Amount shall be placed and from which payments required by the Settlement shall be made. All Individual Settlement Payments will be allocated as follows: (i) twenty percent (20%) of the portion of each Participating Class Member's Individual Class Payment derived from the Class Fund Settlement Amount will be allocated as wages for which IRS Forms W-2 will be issued and all applicable withholdings shall be made; and (ii) eighty percent (80%) of the portion of each Participating Class Member's Individual Class Payment derived from the Class Fund Settlement Amount will be allocated as non-wages, for which IRS Forms 1099-MISC will be issued. The portion of all Individual PAGA Payments derived from the PAGA Fund will be allocated as penalties, for which IRS Forms 1099-MISC will be issued. The Parties recognize that the Individual Settlement Payments reflect settlement of a dispute over the Released Class Claims and the Released PAGA Claims. The Parties agree that except for the PAGA Settlement Amount, which is a civil penalty, all other portions of the Gross Settlement Amount are not, and are not intended to be made as amounts paid or incurred to, or at the direction of, a government, governmental entity, or non-governmental entity in relation to the violation of law, or investigation or inquiry into a potential violation of such law within the meaning of section 162(f) of the Internal Revenue Code of 1986, as amended. With the exception of the PAGA Settlement Amount, all payments under the

Gross Settlement Amount are considered restitution, remediation, or are being paid to come into compliance with the law.

5.12. Administration of Taxes by the Settlement Administrator. The Settlement Administrator will be responsible for issuing to Plaintiffs, Participating Class Members, PAGA Employees, and Class Counsel any W-2, 1099, or other tax forms as may be required by law for all amounts paid pursuant to this Settlement. The Settlement Administrator will also be responsible for forwarding all payroll taxes and penalties to the appropriate government authorities.

5.13. Tax Liability. Defendant makes no representation as to the tax treatment or legal effect of the payments called for hereunder, and Plaintiffs, Participating Class Members, PAGA Employees, and Class Counsel are not relying on any statement, representation, or calculation by Defendant or by the Settlement Administrator in this regard.

5.14. Circular 230 Disclaimer. EACH PARTY TO THIS AGREEMENT (FOR PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY” AND EACH PARTY TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN “OTHER PARTY”) ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR WILL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER, OR ITS OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISOR TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY’S OR ADVISOR’S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT.

6. ENTRY OF JUDGMENT AND RELEASES.

6.1 Preliminary Approval Hearing. Plaintiffs will obtain a hearing date before the Court in Benson Class Action to request the Preliminary Approval of the Settlement Agreement, and the entry of a Preliminary Approval Order for: (i) provisional certification of the Settlement Class for settlement purposes only, (ii) Preliminary Approval of the proposed Settlement Agreement, and (iii) setting a date for a Final Fairness Hearing. The Preliminary Approval Order will provide for the Notice of Class Action and PAGA Settlement to be sent to all Class Members and PAGA Employees as specified therein. In conjunction with the Preliminary Approval hearing, Plaintiffs will submit this Settlement Agreement, which sets forth the terms of this Settlement, and will include the proposed Notice of Class Action and PAGA Settlement, attached as **Exhibit A**. Class Counsel will be responsible for drafting all documents necessary to obtain Preliminary Approval. Class Counsel will provide Defense Counsel a draft of the papers for review and approval at least three (3) days prior to filing.

6.2. Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the Motion for Preliminary Approval no later than 45 days after the full execution of this Agreement; obtaining a prompt hearing date for the Motion for Preliminary Approval; and for appearing in Court to advocate in favor of the Motion for Preliminary Approval. Class Counsel is responsible for delivering the Court’s Preliminary Approval Order to the Settlement Administrator.

6.3. Final Settlement Approval Hearing and Entry of Judgment. Upon expiration of the deadlines to postmark Requests for Exclusion or objections to the Settlement Agreement, and with the Court's permission, a Final Fairness Hearing will be conducted to determine the Final Approval of the Settlement Agreement along with the amounts properly payable for: (i) Attorneys' Fees and Costs; (ii) the Class Representative Service Payments; (iii) Individual Settlement Payments; (iv) the LWDA PAGA Payment; and (v) all Settlement Administration Costs. The Final Fairness Hearing will not be held earlier than thirty (30) calendar days after the Response Deadline. Class Counsel will be responsible for drafting all documents necessary to obtain final approval, which Class Counsel will provide Defense Counsel a draft of for review and approval at least three (3) days before they are filed. Class Counsel will also be responsible for drafting the Attorneys' Fees and Costs application to be heard at the Final Fairness Hearing.

6.3.1. Response to Objections. Each Party retains the right to respond to any objection raised by a Participating Class Member, including the right to file responsive documents in Court no later than three (3) Court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.

6.4. Judgment and Continued Jurisdiction. Upon Final Approval of the Settlement by the Court or after the Final Fairness Hearing, the Parties will present the Judgment to the Court for its approval. After entry of the Judgment, the Court will have continuing jurisdiction solely for purposes of addressing: (i) the interpretation and enforcement of the terms of the Settlement, (ii) Settlement administration matters, and (iii) such post-Judgment matters as may be appropriate under Court rules or as set forth in this Settlement Agreement. A copy of the Judgment will be posted to the Settlement Administrator's website. Pursuant to California Rules of Court, Rule 3.771(b), the Settlement Administrator shall post on its website a copy of the Judgment for a period of thirty days from the date the Court signs the Judgment.

6.5. Settlement Terms Bind All Class Members Who Do Not Opt-Out. Any Class Member who does not affirmatively opt-out of the Settlement Agreement by submitting a timely and valid Request for Exclusion will be bound by all of its terms, including those pertaining to the Released Class Claims and Released PAGA Claims, as well as any Judgment that may be entered by the Court if it grants Final Approval to the Settlement and Defendant fully funds the Gross Settlement Amount and its share of Withholdings and Taxes.

6.6. Releases by Participating Class Members. Upon the Second Funding Date, and except as to such rights or claims as may be created by this Settlement Agreement, each Participating Class Member, together and individually, on their behalf and on behalf of their respective heirs, executors, administrators, agents, and attorneys, shall fully and forever release and discharge all of the Released Parties, or any of them, from each of the Released Class Claims (defined in Paragraph 2.39 above) arising during the Class Period.

6.7. Releases by PAGA Employees. Upon the Second Funding Date, and except as to such rights or claims as may be created by this Settlement Agreement, each PAGA Employee, together and individually, on their behalf and on behalf of their respective heirs, executors, administrators, agents, and attorneys, shall fully and forever release and discharge all of the Released Parties, or any of them, from each of the Released PAGA Claims (as defined in Paragraph 2.40 above) during the PAGA Period. The Released PAGA Claims shall be binding on all PAGA Employees regardless of whether they submit a valid Request for Exclusion from the Settlement Class.

6.8. General Release by Plaintiffs. Upon the Second Funding Date, in addition to the claims being released by all Participating Class Members and PAGA Employees, Plaintiffs Gianna Benson and Monica Fowler, will release and forever discharge the Released Parties, to the fullest extent permitted by law, of and from any and all claims, known and unknown, asserted and not asserted, which Plaintiffs have or may have against the Released Parties as of the date of execution of this Settlement Agreement. To the extent the foregoing release is a release to which Section 1542 of the California Civil Code or similar provisions of other applicable law may apply, Plaintiffs Gianna Benson and Monica Fowler expressly waive any and all rights and benefits conferred upon them by the provisions of Section 1542 of the California Civil Code or similar provisions of applicable law which are as follows:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR
RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT**

THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

7. ADDITIONAL PROVISIONS.

7.1. Non-Admission of Liability. The Parties enter into this Settlement to resolve the disputes that have arisen between them and to avoid the burden, expense and risk of continued litigation. In entering into this Settlement, Defendant does not admit, and specifically denies, that it violated any federal, state, or local law; violated any regulations or guidelines promulgated pursuant to any statute or any other applicable laws, regulations or legal requirements; breached any contract; violated or breached any duty; engaged in any misrepresentation or deception; or engaged in any other unlawful conduct with respect to its employees. Neither this Settlement Agreement, nor any of its terms or provisions, nor any of the negotiations connected with it, will be construed as an admission or concession by Defendant of any such violations or failures to comply with any applicable law. Except as necessary in a proceeding to enforce the terms of this Settlement, this Settlement Agreement and its terms and provisions will not be offered or received as evidence in any action or proceeding to establish any liability or admission on the part of Defendant or to establish the existence of any condition constituting a violation of, or a non-compliance with, federal, state, local or other applicable law.

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

7.3. Nullification of Settlement Agreement. In the event that: (i) the Court does not finally approve the Settlement as provided herein; or (ii) the Settlement does not become final for any other reason, then this Settlement Agreement, and any documents generated to bring it into effect, will be null and void. Any order or judgment entered by the Court in furtherance of this Settlement Agreement will likewise be treated as void from the beginning.

7.4. Entire Agreement. The Exhibits to this Agreement are integral parts of this Agreement and are hereby incorporated and made a part of the Agreement. This Settlement Agreement and any attached Exhibits constitute the entirety of the Parties' settlement terms. Any inconsistency between this Settlement Agreement and the attached Exhibits will be resolved in favor of this Agreement. No other prior or contemporaneous written or oral agreements may be deemed binding on the Parties. The Parties expressly recognize California Civil Code Section 1625 and California Code of Civil Procedure Section 1856(a), which provide that a written agreement is to be construed according to its terms and may not be varied or contradicted by extrinsic evidence, and the Parties agree that no such extrinsic oral or written representations or terms will modify, vary or contradict the terms of this Settlement Agreement.

7.5. Amendment or Modification. No amendment, change, or modification to this Settlement Agreement will be valid unless in writing and signed, either by the Parties or their counsel. Notwithstanding the foregoing, the Parties authorize their counsel to make all non-material changes ordered by the Court as a prerequisite to obtaining approval through their counsel's signatures on any necessary and non-material amendment or modification to this Agreement.

7.6. Authorization to Enter Into Settlement Agreement. Counsel for all Parties warrant and represent they are expressly authorized by the Parties whom they represent to negotiate this Settlement Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant to this Settlement Agreement to effectuate its terms and to execute any other documents required to effectuate the terms of this Settlement Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement. If the Parties are unable to reach agreement on the form or content of any document needed to implement the Settlement, or on any supplemental provisions that may become necessary to effectuate the terms of this Settlement, the Parties may seek the assistance of the Court to resolve such disagreement.

- 7.7. Binding on Successors and Assigns. This Settlement Agreement will be binding upon, and inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.
- 7.8. Settlement Agreement Constitutes a Complete Defense. To the extent permitted by law, this Settlement Agreement may be pleaded as a full and complete defense to any action, suit, or other proceeding that may be instituted, prosecuted, or attempted in breach of or contrary to this Settlement Agreement.
- 7.9. California Law Governs. All terms of this Settlement Agreement and Exhibits hereto will be governed by and interpreted according to the laws of the State of California.
- 7.10. Invalidity of Any Provision. Before declaring any provision of this Settlement Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest extent possible consistent with applicable precedents so as to define all provisions of this Settlement Agreement valid and enforceable.
- 7.11. Waiver of Certain Appeals. The Parties agree to waive appeals and to stipulate to class certification for purposes of this Settlement only. Notwithstanding the foregoing, Class Counsel reserve the right to appeal any reduction to the Attorneys' Fees and Costs below the amount they request from the Court. If, however, Class Counsel, or any of them, appeals any reduction to the Attorneys' Fees and Costs, then the Effective Date shall not occur until after the conclusion of any such appeal(s).
- 7.12. No Public Comment: The Parties and their counsel agree that they will not issue any press releases, initiate any contact with the press, respond to any press inquiry, or have any communication with the press about the fact, amount, or terms of the Settlement. Unless they first obtain Defendant's express written consent, Class Counsel and Plaintiffs shall not discuss, reveal, disclose, publicize, or promote the terms of this Settlement, or the negotiations leading to the Settlement, to any third party (including but not limited to the media, the legal community, or the public at large, including on Class Counsel's respective websites or otherwise). Nothing in this Agreement is intended to prevent Plaintiffs or Class Counsel from disclosing or discussing the terms of this Settlement: (i) with the Court; (ii) with any Class Member; (iii) with the Settlement Administrator; (iv) in Court filings to establish adequacy of counsel or for purposes of obtaining Court approval of comparable wage and hour settlements; or (v) as otherwise required by law.
- 7.13. Waiver. No waiver of any condition or covenant contained in this Settlement Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or constitute a further waiver by such party of the same or any other condition, covenant, right, or remedy.
- 7.14. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms and conditions of this Settlement Agreement. Accordingly, this Settlement Agreement will not be construed more strictly against one party than another merely by virtue of the fact that it may have been prepared by counsel for one of the Parties, it being recognized that, because of the arms-length negotiations between the Parties, all Parties have contributed to the preparation of this Settlement Agreement.
- 7.15. Voluntary Agreement. This Settlement Agreement is executed voluntarily and without duress or undue influence on the part of or on behalf of any Party, or of any other person, first or entity. Each Party has made such investigation of the facts pertaining to this Agreement and of all other matters pertaining hereto as she, he, or it deems necessary.
- 7.16. Representation By Counsel. The Parties acknowledge that they have been represented by counsel throughout all negotiations that preceded the execution of this Settlement Agreement, and that this Settlement Agreement has been executed with the consent and advice of counsel. Further, Plaintiffs and Class Counsel warrant and represent that there are no liens on the Settlement Agreement.
- 7.17. All Terms Subject to Final Court Approval. All amounts and procedures described in this Settlement Agreement herein will be subject to final Court approval.
- 7.18. Mutual Full Cooperation. All Parties will cooperate in good faith and execute all documents to the extent reasonably necessary to effectuate the terms of this Settlement Agreement. The Parties agree to cooperate fully with each other to accomplish the terms of this Settlement Agreement, including but not

limited to execution and delivery of any and all additional papers, documents, and other assurances and taking such other action that may be reasonably necessary to implement the terms of this Settlement Agreement. The Parties and their counsel shall use their best efforts, including all efforts contemplated by this Settlement Agreement and any other efforts that may become necessary by order of the Court, to effectuate this Settlement Agreement and the terms set forth herein.

7.19. Binding Agreement. The Parties warrant that they understand and have full authority to enter into this Settlement Agreement, and further intend that this Settlement Agreement will be fully enforceable and binding on all Parties, and agree that it will be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality provisions that otherwise might apply under federal or state law.

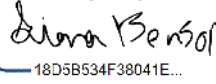
7.20. Execution and Counterparts. This Settlement Agreement is subject only to the execution of all Parties. However, the Settlement Agreement may be executed in one or more counterparts. All executed counterparts and each of them, including electronic (e.g., DocuSign), facsimile, and scanned copies of the signature page, will be deemed to be one and the same instrument.

IN WITNESS WHEREOF, this Agreement is executed by the Parties and their duly authorized attorneys, as of the day and year herein set forth.

Dated: 2/15/2023

GIANA BENSON

DocuSigned by:


18D5B534F38041E...

Dated: _____

MONICA FOWLER

Dated: _____

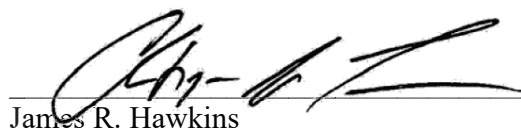
F21 OPCO, LLC dba FOREVER 21

Name: _____

Title: _____

Dated: 02/15/2023

JAMES HAWKINS APLC


James R. Hawkins
Christina M. Lucio

Attorneys for Plaintiffs
GIANA BENSON and the Settlement Class

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IN WITNESS WHEREOF, this Agreement is executed by the Parties and their duly authorized attorneys, as of the day and year herein set forth.

Dated: _____

GIANA BENSON

Dated: 2/15/2023

MONICA FOWLER


23A810CA3170405...

Dated: _____

F21 OPCO, LLC dba FOREVER 21

Name:
Title:

Dated: _____

JAMES HAWKINS APLC

James R. Hawkins
Christina M. Lucio

Attorneys for Plaintiffs
GIANA BENSON and the Settlement Class

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IN WITNESS WHEREOF, this Agreement is executed by the Parties and their duly authorized attorneys, as of the day and year herein set forth.

Dated: _____

GIANA BENSON

Dated: _____

MONICA FOWLER

Dated: 2/16/2023 | 5:59:05 PM PST

F21 OPCO, LLC dba FOREVER 21

DocuSigned by:

Scott Hampton

3C19500986F2449...

Name: Scott A. Hampton

Title: Vice-President & General Counsel

Dated: _____

JAMES HAWKINS APLC

James R. Hawkins

Christina M. Lucio

Attorneys for Plaintiffs

GIANA BENSON and the Settlement Class

Dated: February 15, 2023

ACKERMANN & TILAJEF, P.C.
MELMED LAW GROUP P.C.



Jonathan Melmed
Laura Supanich
Craig J. Ackermann

Attorneys for Plaintiffs
MONICA FOWLER

Dated: _____

REED SMITH LLP
SEALS PHILLIPS LLP

Jennifer C. Terry
Brittany M. Hernandez
Mark R. Phillips

Attorneys for Defendant
F21 OpCo, LLC in *Benson* Class Action and
Benson PAGA Action

Dated: _____

LITTLER MENDELSON P.C.

Tracy Wei Costantino

Attorney for Defendant
F21 OpCo, LLC dba Forever 21 in *Fowler* PAGA Action

Dated: _____

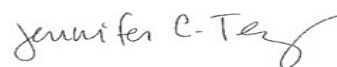
ACKERMANN & TILAJEF, P.C.
MELMED LAW GROUP P.C.

Jonathan Melmed
Laura Supanich
Craig J. Ackermann

Attorneys for Plaintiffs
MONICA FOWLER

Dated: 2/20/2023

REED SMITH LLP
SEALS PHILLIPS LLP



Jennifer C. Terry
Brittany M. Hernandez
Mark R. Phillips

Attorneys for Defendant
F21 OpCo, LLC in *Benson* Class Action and
Benson PAGA Action

Dated: _____

LITTLER MENDELSON P.C.

Tracy Wei Costantino

Attorney for Defendant
F21 OpCo, LLC dba Forever 21 in *Fowler* PAGA Action

Dated: _____

ACKERMANN & TILAJEF, P.C.
MELMED LAW GROUP P.C.

Jonathan Melmed
Laura Supanich
Craig J. Ackermann

Attorneys for Plaintiffs
MONICA FOWLER

Dated: _____

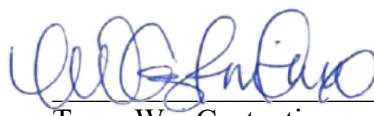
REED SMITH LLP
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Jennifer C. Terry
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Mark R. Phillips

Attorneys for Defendant
F21 OpCo, LLC in *Benson* Class Action and
Benson PAGA Action

Dated: 02/15/2023

LITTLER MENDELSON P.C.



Tracy Wei Costantino

Attorney for Defendant
F21 OpCo, LLC dba Forever 21 in *Fowler* PAGA Action

EXHIBIT 2

JAMES HAWKINS APLC

James R. Hawkins (SBN 192925)
Christina M. Lucio (SBN 253677)
9880 Research Drive, Suite 200
Irvine, CA 92618
Tel.: (949) 387-7200
Fax: (949) 387-6676
Email: james@jameshawkinsaplc.com
Email: christina@jameshawkinsaplc.com

[additional counsel on next page]

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

GIANA BENSON, and on behalf of all others
similarly situated, MONICA FOWLER, an
individual, on behalf of herself and all others
similarly situated,

Plaintiffs,

v.

F21 OPCO, LLC dba FOREVER 21, a
Delaware Corporation; and DOES 1-10,
inclusive,

Defendants.

Case No. 37-2021-00024619-CU-OE-CTL

Assigned for All Purposes to:
Hon. Eddie C. Sturgeon
Dept. 67

**DECLARATION OF JAMES R. HAWKINS
IN SUPPORT OF PLAINTIFFS' MOTION
FOR:**

- (1) PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT;**
- (2) APPROVAL OF NOTICE TO CLASS
MEMBERS AND RELATED
MATERIALS;**
- (3) APPROVAL OF SETTLEMENT
ADMINISTRATOR; AND**
- (4) SETTING HEARING FOR FINAL
APPROVAL OF SETTLEMENT**

Date: April 21, 2023
Time: 9:00a.m.
Dept.: C-67

Complaint Filed: June 4, 2021
Trial: Not Set

1 **MELMED LAW GROUP P.C.**

Jonathan Melmed (SBN 290218)

2 *jm@melmed law.com*

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Maria Burciaga (SBN 334545)

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5 Los Angeles, California 90067

6 Phone: (310) 824-3828

7 Fax: (310) 862-6851

8 **ACKERMANN & TILAJEF, P.C.**

Craig J. Ackermann, Esq. (SBN 229832)

9 *cja@ackermanntilajef.com*

1180 South Beverly Drive, Suite 610

10 Los Angeles, California 90035

Telephone: (310) 277-0614

11 Facsimile: (310) 277-0635

12 Attorneys for Plaintiffs GIANA BENSON, MONICA FOWLER, the Putative Class, and the
13 Aggrieved Employees

1 I, James R. Hawkins, declare as follows:

2 1. I am an individual over the age of 18. I am the founding partner at the Law Firm of
3 James Hawkins, APLC. My firm, along with co-counsel Craig J. Ackermann of Ackermann &
4 Tilajef, P.C. and Jonathan Melmed of Melmed Law Group P.C. (“collectively “Class Counsel”) are
5 the attorneys of record for Plaintiffs GIANA BENSON and MONICA FOWLER (“Plaintiff(s)” or
6 “Class Representative(s)”), who have filed this Class Action on behalf of themselves and the
7 proposed settlement class (the “Class”) and/or Aggrieved Employees in the above-captioned matter
8 against Defendant F21 OPCO, LLC dba FOREVER 21 (“Defendant” or “Forever 21”) (with
9 Plaintiff, the “Parties”). I have personal knowledge of the facts set forth below, and if called to
10 testify regarding them, I could and would do so competently.

11 2. I submit this Declaration in support of Plaintiff’s Motion for Preliminary Approval
12 of Class Action Settlement, Approval of Class Notice, Approval of Settlement Administrator and
13 Setting Hearing for Final Approval of Settlement (the “Preliminary Approval Motion”), which is
14 filed concurrently herewith, along with the Memorandum of Points and Authorities.

15 3. I have no knowledge of the existence of any conflicting interests between my firm
16 and any of its attorneys, my co-counsel’s firms or any of their attorneys, and Plaintiffs or any other
17 Class Member.

18 4. Through mediation, the Plaintiffs and Defendant have entered into a Class Action
19 and PAGA Settlement Agreement (“Settlement Agreement” and/or “Settlement”).

20 5. The Settlement Agreement seeks to fully release and discharge Defendant from the
21 claims brought against it in this matter in exchange for Defendant’s agreement to pay \$4,700,000.00
22 on a non-reversionary, non-claims made basis (each Settlement Class Member will receive his/her
23 share of the Net Settlement Amount without having to submit a claim form or taking action, except
24 for those who opt-out). Plaintiffs seek to represent a settlement class of approximately 10,491 current
25 and former non-exempt hourly employees of Defendant in California based on allegations that they
26 were not provided compliant rest and meal periods, rest and meal period premiums, all minimum
27 and overtime wages owed, compliant wage statements, reimbursement for business expenses, final
28

1 pay at termination of employment, vested vacation pay, and other statutory penalties.

2 6. Under the terms of the Settlement Agreement, Defendant will not oppose Class
3 Counsels' application for a reasonable award of attorney's fees not to exceed 33.33% of the
4 Settlement Amount, Class Counsels' litigation costs not to exceed \$30,000.00, Settlement
5 Administration Costs not to exceed \$55,000.00, PAGA penalties of \$302,833.34 (of which
6 \$227,125.00 or 75% will be paid to the LWDA and the remaining \$75,708.34 or 25% will be paid
7 to the Settlement Class Members), and Service Awards to Plaintiffs not to exceed \$10,000.00 each,
8 for a total of \$20,000.00.

9 7. I fully support the Settlement on these terms, and respectfully submit that the
10 Settlement is fair, reasonable, and adequate in light of all known facts.

11 8. Given the realistic value of Plaintiffs' claims as set forth in detail in the concurrently
12 filed Declaration of Craig J. Ackermann in Support of Plaintiffs' Motion for Preliminary Approval
13 of Class Action Settlement, the \$4,700,000.00 Settlement Amount is an excellent result for the
14 Settlement Class.

15 9. Preliminary approval is appropriate since the Settlement will provide significant
16 monetary relief to the Settlement Class.

17 10. The Settlement was the product of extensive arm's length negotiations between
18 counsel and was facilitated by an experienced wage-and-hour class action mediator. Though cordial
19 and professional, the Settlement negotiations were adversarial and non-collusive in nature. The
20 Settlement reached is the product of substantial effort by the Parties and their counsel. Although
21 Plaintiffs and Class Counsel believed that there was a possibility of certifying the claims, they
22 recognized the potential risk, expense, and complexity posed by litigation, such as unfavorable
23 decisions on class certification, summary judgment, at trial and/or on the damages awarded, and/or
24 on an appeal that can take several more years to litigate. In addition, if Defendant prevailed on any
25 of its defenses, the Settlement Class Members may not have received any substantial monetary
26 recovery.

1 11. The Settlement will result in a fair payment to each Settlement Class Member based
2 on the number of Weeks Worked during the Class Period. As set forth in the concurrently filed
3 Declaration of Craig J. Ackermann in Support of Plaintiffs' Motion for Preliminary Approval of
4 Class Action Settlement, Plaintiffs and their counsel have diligently investigated the claims and
5 defenses on behalf of the Settlement Class Members and worked to achieve a resolution of the claims
6 to maximize the recovery by avoiding further expenditure of attorneys' fees and costs. After
7 evaluating the significant risks attendant with further litigation described above and weighing them
8 against the benefits of a known compromise and settlement as set forth in the Settlement Agreement,
9 settlement on the terms agreed to is believed to be in the best interest of Plaintiffs and the Settlement
10 Class, and is a fair and reasonable resolution of the claims alleged.

11 12. Plaintiffs' counsel brought to bear a great deal of collective experience in negotiating
12 the settlement of this case. As detailed in the concurrently filed Declaration of Craig J. Ackermann
13 in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement, Plaintiffs'
14 counsel engaged in necessary informal discovery, investigation, sampling and expert evaluation,
15 making it possible to exercise informed judgment throughout the settlement process, including
16 significant document review (e.g., documents pertaining to Defendant's policies and procedures,
17 personnel documents, wage statements, time records, among others) and conducted an extensive
18 analysis and extrapolation of the sampling of class-wide data provided by Defendant.

19 13. Based on our experience in other cases, including wage and hour matters, I believe
20 my co-counsel and I are qualified to evaluate the class claims and viability of defenses in this class
21 action. In this case, the recovery for each Settlement Class Member is reasonable, fair and adequate,
22 and a settlement at this time is in the best interest of the Settlement Class. The Settlement provides
23 each Settlement Class Member with compensation for the alleged violations when viewed in relation
24 to the costs and risks inherent in obtaining class certification and proceeding to trial.

25 14. Plaintiffs' counsel fully endorse the terms and conditions of the Settlement as set
26 forth in the abovementioned Settlement Agreement.

1 15. Of course, the Settlement Amount represents a compromise figure, taking into
2 account the various risks surrounding class certification and the merits of Defendant's asserted
3 defenses. Nevertheless, the Settlement provides for fair and adequate payments to the Settlement
4 Class Members, with no reversion to Defendant.

5 16. Plaintiffs seek a Service Award in an amount of \$10,000.00 each, which we believe
6 is fair and warranted. Plaintiffs agreed to come forward in an effort to effectuate a policy and practice
7 change that benefitted all other Settlement Class Members, and to recover unpaid wages and
8 penalties. They assumed significant risk in bringing this litigation, namely, had they lost, they would
9 have been ordered to pay Defendant's costs.

10 17. Plaintiffs provided invaluable assistance to the investigation and prosecution of this
11 case, including: providing factual background for the Complaints which were consolidated and gave
12 rise to this action; reviewing the litigation documents; providing information and documentation
13 about Defendant's policies and practices; participating in phone calls to discuss litigation and
14 settlement strategy; assisting with the litigation of this matter; locating witnesses and documents;
15 assisting attorneys in mediation and preparation for mediation; and reviewing the settlement
16 documents. Plaintiffs agreed to participate in this case with no guarantee of personal benefit.
17 Plaintiffs' comprehensive declaration setting forth all of the reasons why they believe that the
18 Service Awards should be approved has been filed herewith.

19 18. When this case was taken on a contingency fee basis, with our firms agreeing to
20 assume responsibility for all litigation costs, the ultimate result was far from certain. In the course
21 of this litigation, we paid all costs including the filing fees, court costs, research/database fees,
22 mediation costs, and expert costs. There was never a guarantee that our firms would recoup these
23 expenditures.

24 19. It is our experience that attorneys' fee awards of one-third of a common fund
25 settlement are the standard in California. Defendant does not oppose this fee request. The fee is
26 further warranted because it is within the range of reasonableness typically awarded in class actions.
27
28

1 Our collective costs as Class Counsel will not exceed \$30,000 and will be based on the actual amount
2 incurred at the time of final approval.

3 20. For the foregoing reasons, it is respectfully requested that the Court grant preliminary
4 approval of the Settlement as being fair, reasonable, and in the best interests of the Settlement Class,
5 as well as preliminarily approve the requested attorneys' fees and costs, and service awards to the
6 Class Representatives.

7 **Plaintiffs' Counsel Is Experienced in Wage and Hour Litigation**

8 21. I am an attorney at law licensed to practice before the Courts of the State of
9 California and before this Court.

10 22. In 1993, I graduated from the University of California, Los Angeles with a Bachelor
11 of Arts Degree. Following graduation, I attended Whittier Law School. In 1996, while a full-time
12 law student, I was also a full-time Judicial Extern for the Honorable Consuelo B. Marshall, United
13 States District Court, Central District. After approximately five months of service for Judge
14 Marshall, I became a full-time extern for the United States Attorney's Office, Central District of
15 California. My externship lasted for approximately five months. Thereafter, in 1997, I graduated
16 from Whittier Law School. The same year, I was admitted to practice law in the State of California.

17 23. From 1997-2007, I was a named partner at Hawkins & Sofonio, a law firm based out
18 of Irvine, California. At Hawkins & Sofonio, I pioneered the employment department litigating
19 plaintiff related employment issues such as: Wrongful Termination, Age Discrimination,
20 Disability, Wage and Hour and Sexual Harassment claims. Through the success and experience I
21 obtained litigating employment related matters, I commenced the Wage and Hour division of our
22 employment department in 2002. Since then, I have spent the vast majority of my practice litigating
23 wage and hour class actions.

24 24. In 2007, I incorporated my wage and hour class action practice as James Hawkins
25 APLC. Since its inception, this law firm has been exclusively involved in class action and complex
26 litigation. In 2009, I opened an additional office in Miami, Florida, prosecuting wage and hour class
27 actions. I have been lead or co-lead counsel in all of the cases listed below.

1 25. I have a great deal of experience in wage and hour class action litigation. I have been
2 certified and approved as class counsel in many other wage/hour class actions, and I am currently
3 litigating numerous others before this Court and others. Although not an all-inclusive list, over the
4 years I have prosecuted the following class action matters as lead and/or co-lead counsel, all of which
5 implicated similar law and facts to those associated with this Action:

- 6 a. *Mojica v. Compass Group, Inc., et. al.* USDC Central District, Case No. 8:13-cv-
7 01754. Wage and Hour Class Action case seeking past wages for meal and rest
8 break violations for production workers in the State of California. Plaintiff's
9 Counsel preliminarily appointed as Class Counsel. Case settled. Final approval
10 granted, and funds fully disbursed.
- 11 b. *Dao v. 3M Company, et al.* USDC, CENTRAL DISTRICT, Case No. CV-08-
12 04554. Wage and Hour Class Action case seeking past wages for "off the clock",
13 overtime and meal and rest break violations for production workers in the State of
14 California. Plaintiff's Counsel appointed as Lead Counsel. Case settled, Final
15 Approval granted, no objections and funds fully distributed.
- 16 c. *Ortiz v. Kmart*, USDC, CENTRAL DISTRICT, Case No. SACV 06-638 ODW.
17 Wage and Hour Class Action case seeking past wages for meal and rest period
18 violations for retail employees in the State of California. Plaintiff's counsel
19 appointed co-lead counsel. Case settled, Final Approval granted, no objections and
20 funds fully distributed.
- 21 d. *Morgan v. Aramark Campus, LLC*, USDC, CENTRAL DISTRICT, Case No.
22 SACV08-00412. Wage and Hour Class Action case seeking past wages for meal
23 and rest period violations for retail employees in the State of California. Plaintiff's
24 Counsel appointed as Lead Counsel. Case settled, Final Approval granted, no
25 objections and funds fully distributed.
- 26 e. *West v Iron Mountain Information Management, Inc, et. al.*; Los Angeles County
27 Superior Court, Case No. BC393709. Wage and Hour Class Action seeking past
28

1 wages for overtime, meal and rest break violations for driver employees in the
2 State of California. Stipulation for “binding arbitration.” Arbitration Award for
3 Plaintiff Class. Arbitration Award confirmed. Plaintiff’s counsel lead trial counsel
4 and class counsel.

5 f. *Gonzalez v. Superior Industries International, Inc.*, et al., Los Angeles County
6 Superior Court, Case No. BC 357912. Wage and Hour Class Action seeking past
7 wages for overtime, meal and rest breaks violations for production employees in
8 the State of California. Plaintiff’s counsel appointed as lead counsel. Case settled,
9 Final Approval granted, no objections and funds fully distributed.

10 g. *Acosta v. Fleetwood Travel Trailers of California, Inc.*, et al., Riverside County
11 Superior Court, Case No. RIC 440630. Wage and Hour Class Action seeking past
12 wages for overtime, meal and rest break violations for production employees in the
13 State of California. Plaintiff’s counsel appointed as co-lead counsel. Case settled,
14 Final Approval granted, no objections and funds fully distributed.

15 h. *Walker v. Sharkeez*, et al., Orange County Superior Court, Case No. 05CC00293.
16 Wage and Hour Class Action seeking past wages for unlawful deductions, meal
17 and rest break violations for restaurant employees in the State of California.
18 Plaintiff’s counsel appointed as lead counsel. Case settled. Final Approval granted
19 and funds fully distributed.

20 i. *Padron v. Universal Protection Service, et al*, Orange County Superior Court, Case
21 No. 05CC00013. Wage and Hour Class Action seeking past wages for overtime,
22 meal and rest break violations for security officers in the State of California.
23 Plaintiff’s counsel appointed as co-lead counsel. Case settled, Final Approval
24 granted, no objections and funds fully distributed.

25 j. *Martinez v. Securitas Security Services USA, et al.*, Santa Clara Superior Court,
26 Case No. 105-CV047499, et al. J.C.C.P. No. 4460. Wage and Hour Class Action
27 seeking past wages for meal and rest break violations for security officers
28

1 employed by defendant in the State of California. Plaintiff's counsel and co-
2 counsel. Case settled, Final Approval granted and funds fully distributed.

- 3 k. *Velasquez-Lopez v. Hotel Cleaning Services, Inc. et al.*, Riverside Superior Court,
4 Case No. RIC 420909. Wage and Hour Class Action seeking past wages for
5 overtime, meal and rest break violations for housekeepers employed by defendant
6 in the State of California. Plaintiff's counsel appointed as lead counsel. Case
7 settled, Final Approval granted, no objections and funds fully distributed.
- 8 l. *Ruiz, et al. v. Unisource Worldwide, Inc., et al.*, USDC, CENTRAL DISTRICT,
9 Case No. CV09-05848. Wage and Hour Class Action seeking past wages for meal
10 and rest period violations for non-exempt employees employed by defendant in the
11 state of California. Case settled. Awaiting Preliminary Approval hearing. Plaintiff
12 has petitioned the Court for Lead Counsel.
- 13 m. *Herrador v. Culligan International Company, et al.*, USDC, CENTRAL
14 DISTRICT, Case No. SACV 08-680. Wage and Hour Class Action seeking past
15 wages for field and branch employees of defendant in the State of California.
16 Plaintiff's counsel appointed as lead counsel. Case settled and awaiting Final
17 Approval.
- 18 n. *Defries v. Domain Restaurants, et al.*, Orange County Superior Court, Case No.
19 05CC00128. Wage and Hour Class Action seeking past wages for restaurant
20 employees of defendant in the State of California. Plaintiff's counsel appointed as
21 lead counsel. Case settled, Final Approval granted, no objections and funds fully
22 distributed.
- 23 o. *Denton v. BLB Enterprises, Inc., et al.*, Orange County Superior Court, Case No.
24 07CC01292. Wage and Hour Class Action seeking unpaid overtime, meal and rest
25 break violations for security guards employed by defendant in the State of
26 California. Plaintiff's counsel appointed as lead counsel. Case settled, Final
27 Approval granted, no objections and funds fully distributed.
- 28

- 1 p. *Rios v. Sandberg Furniture Manufacturing Co., Inc, et al.*, Los Angeles Superior
2 Court, Case No. BC411477. Wage and Hour Class Action seeking unpaid meal
3 and rest break violations for production employees employed by defendant in the
4 State of California. Plaintiff counsel appointed as lead counsel. Case settled, Final
5 Approval granted, no objections and funds fully distributed.
- 6 q. *McMurray v. Dave and Busters, Inc., et al.*, Orange County Superior Court, Case
7 No. 06CC00099. Wage and Hour Class Action seeking past wages for meal and
8 rest break violations for restaurant employees employed by defendant in the State
9 of California. Plaintiff's counsel appointed as co-lead counsel. Case settled, Final
10 Approval granted, no objections and funds fully distributed.
- 11 r. *Osuna v. DFG Restaurants, Inc., et al.*, Los Angeles Superior Court, Case No. BC
12 330145. Wage and Hour Class Action seeking past wages of overtime for mis-
13 classification of managers employed by Defendant, DBA Carl's Jrs. in the State of
14 California. Plaintiff's counsel appointed as co-lead counsel. Case settled, Final
15 Approval granted, no objections and funds fully distributed.
- 16 s. *Burns v. Gymboree Operations, Inc., et al.*, San Francisco Superior Court, Case No.
17 CGC-07-461612. Wage and Hour Class Action seeking past wages for meal and
18 rest break violations for retail employees employed by defendant in the State of
19 California. Plaintiff's counsel appointed lead counsel. Case settled, Final
20 Approval granted, no objections and funds fully distributed.
- 21 t. *Willems v. Diedrich Coffee, Inc., et al.*, Orange County Superior Court, Case No.
22 07CC00015. Wage and Hour Class Action seeking past wages of overtime for
23 mis-classification of managers employed by Defendant in the State of California.
24 Plaintiff's counsel appointed lead counsel. Case settled, Final Approval granted,
25 no objections and funds fully distributed.
- 26 u. *Davila, et al. v. Beckman Coulter, Inc., et al.*, Orange County Superior Court, Case
27 No. 07CC01347. Wage and Hour Class Action seeking past wages for overtime,
28

1 meal and rest break violations for production workers employed by defendant in
2 the State of California. Plaintiff's counsel appointed lead counsel. Case settled,
3 Final Approval granted, no objections and funds fully distributed.

- 4 v. *Perez v. Naked Juice Company of Glendora, Inc.*, Los Angeles Superior Court,
5 Case No. BC387088. Wage and Hour Class Action seeking past wages for
6 overtime, meal and rest period violations for production employees employed by
7 defendant in the State of California. Plaintiff counsel appointed as lead counsel.
8 Case settled. Final Approval granted, no objections and funds fully distributed.
- 9 w. *Coordination Proceeding Special Title [Rule 1550(b)] Wackenhut Wage and Hour*
10 *Cases*, Los Angeles Superior Court, Case No. JCCP 4545. Wage and Hour Class
11 Action seeking past wages for overtime, meal and rest period violations for security
12 guards employed by defendant in the State of California. Certification granted.
13 Plaintiff's counsel appointed as co-lead counsel. Writ taken. Court stays action
14 pending Appellate Court ruling. Court lifts stay.
- 15 x. *Placencia v. Amcor Packaging Distribution, Inc.*, Orange County Superior Court,
16 Case No. 30-2013-00694012-CU-OE-CXC. Wage and Hour Class Action seeking
17 past wages for overtime, meal and rest period violations, and penalties on behalf of
18 non-exempt production, maintenance, shipping, and receiving employees employed
19 by Defendant in California. Plaintiff counsel appointed as lead counsel. Case
20 settled. Final Approval granted, no objections and funds fully distributed.
- 21 y. *Trani v. Lisi Aerospace, et al.*, Los Angeles Superior Court, Case No. BC495527.
22 Wage and Hour Class Action seeking past wages for overtime, meal and rest period
23 violations, and penalties on behalf of non-exempt manufacturing employees
24 employed by Defendant in California. Plaintiff counsel appointed as lead counsel.
25 Case settled. Final Approval granted, no objections and funds fully distributed.
- 26 z. *Galvan v. Goodwin Co.*, Orange County Superior Court, Case No. 30-2013-
27 00637062-CU-OE-CXC, Wage and Hour Class Action seeking past wages for meal
28

1 period violations, and non-compliant wage statements on behalf of non-exempt
2 production employees employed by Defendant in California. Plaintiff counsel
3 appointed as lead counsel. Case settled. Final Approval granted, no objections and
4 funds fully distributed.

5 aa. *Reyes v. Bristol Fiberlite*, Orange County Superior Court, Case No. 30-2013-
6 00653425-CU-OE-CXC. Wage and Hour Class Action seeking past wages for
7 overtime, meal and rest period violations, inaccurate wage statements, and
8 penalties on behalf of non-exempt employees employed by Defendant in
9 California. Plaintiff counsel appointed as lead counsel. Case settled. Final
10 Approval granted, no objections and funds fully distributed.

11 bb. *Gutierrez v. HMT Tank*, USDC Central Dist., Case No. CV14-1967-CAS(MANx).
12 Wage and Hour Class Action seeking past wages for meal and rest period
13 violations, failure to indemnify necessary expenses, inaccurate wage statements,
14 and penalties on behalf of non-exempt employees working in positions related to
15 servicing, refabricating and repairing storage tanks employed by Defendant in
16 California. Plaintiff counsel appointed as lead counsel. Case settled. Final
17 Approval granted, no objections and funds fully distributed.

18 cc. *Williams v. Il Fornaio America Corp.*, Sacramento County, Case No. 34-2011-
19 0009616. Wage and Hour Class Action seeking past wages for overtime, meal and
20 rest period violations, reimbursements, and penalties on behalf of non-exempt
21 restaurant employees employed by Defendant in California. Plaintiff counsel
22 appointed as lead counsel. Case settled. Final Approval granted, and funds fully
23 distributed.

24 dd. *Aguilar v. 7-Eleven, Inc.*, Orange County, Case No. 30-2009-002687141-CU-OE-
25 CXC. Wage and Hour Class Action seeking past wages for overtime, meal and rest
26 period violations, and penalties on behalf of non-exempt retail clerks employed by
27
28

1 Defendant in California. Plaintiff counsel appointed as lead counsel. Case settled.
2 Final Approval granted, no objections and funds fully distributed.

3 *ee. Madrigal v. Huntington Beach Market Broiler, Inc.*, Orange County, Case No. 30-
4 2012-00611260. Wage and Hour Class Action seeking past wages for overtime,
5 meal and rest period violations, reimbursements, and penalties on behalf of non-
6 exempt employees employed by Defendant in California. Plaintiff counsel
7 appointed as lead counsel. Case settled. Final Approval granted, no objections and
8 funds fully distributed.

9 *ff. Vang v. Jazz Semiconductor, Inc.*, Orange County, Case no. 30-2011-00460278.
10 Wage and Hour Class Action seeking past wages for overtime, meal and rest period
11 violations, reimbursements, and penalties on behalf of non-exempt production
12 workers employed by Defendant in California. Plaintiff counsel appointed as lead
13 counsel. Case settled. Final Approval granted, no objections and funds fully
14 distributed.

15 *gg. Cano v. Financial Statement Services, Inc.*, Orange County, Case No. 30-2013-
16 00653349-CU-OE-CXC.

17 *hh. Gonzalez v. Quality Aluminum Force, LLC*, Orange County, Case No. 30-2015-
18 00817941-CU-OE-CXC.

19 *ii. Smith v. Space Exploration Technologies Corp.*, Los Angeles County Case No.
20 BC554258.

21 *jj. Madrigal v. Balda C Brewer, Inc.*, Orange County Case No. 30-2015-00820218-
22 CU-OE-CXC.

23 *kk. Mendez v. Liberty Glass Fabricators, Inc.*, Riverside County Case No. RIC
24 1800119.

25 *ll. Attia v. Neiman Marcus Group, Inc.*, United States District Court for the Central
26 District of California Case No. 8:16-cv-001504-DOC-FFM
27
28

1 mm. *Vigueras v. Red Robin*, United States District Court for the Central District of
2 California Case No. 8:17-cv-1422-JVS-DFM.

3 nn. *Payne v. Marriott Ownership Resorts, Inc.*, San Diego County Case No. 37-2018-
4 00015175-CU-OE-CTL.

5 26. In sum, my firm has been lead or co-lead counsel in hundreds of cases since its
6 inception. We have recovered hundreds of millions of dollars for employees in the State of
7 California and millions for the State as well through PAGA.

8 27. Our firm has served as class counsel in a number of significant wage and hour
9 settlements. Of particular note, in 2019, our firm was co-lead counsel in securing the largest
10 wage and hour class action settlement in California history at \$130,000,000. During this case,
11 plaintiffs appealed a decertification order. This case involved several appeals. The appellate
12 record amassed an extensive appellate record comprising a 23-volume joint appendix, a three-
13 volume reporters transcript, five briefs, four letter briefs, two motions for judicial notice, a
14 motion to augment the record, and several additional letters informing the appellate court of new
15 legal authority issued after *Dukes*. The matter was argued to and submitted by the Court of
16 Appeal on September 15, 2016, and on November 21, 2016, the decertification order was
17 reversed and the case was remanded for further proceedings. (*Lubin v. The Wackenhut*
18 *Corporation* (“*Lubin*”), 5 Cal. App. 5th 960 (2016)). Wackenhut filed a petition for review of the
19 Court of Appeal decision to the California Supreme Court. The Supreme Court denied
20 Wackenhut’s petition for review of *Lubin*. The Court of Appeal issued remittitur on April 10,
21 2017. Eventually through more litigation, the parties were able to secure the \$130 million
22 settlement that was approved on October 21, 2019 by Judge Highberger in the Los Angeles
23 Superior Court.

24 28. Additionally, in early 2020, our firm served as lead counsel in a class action jury
25 trial in the Central District of California involving the class and PAGA representative claims of
26 over 23,000 employees which successfully resolved in the midst of trial for \$8,500,000.

1 29. Our firm has settled many high-stakes class and representative actions. Hawkins’
2 settlements have directly compensated hundreds of thousands of California workers and
3 consumers. Hawkins’ actions have also forced employers to modify their policies for the benefit
4 of employees including changing the compensation structure for certain employees and changing
5 practices to ensure that workers will be able to take timely rest and meal breaks. A leader in
6 prosecuting class and PAGA enforcement actions, Hawkins has secured millions of dollars for
7 workers and in civil penalties for the State of California.

8 30. Based on our experience, demonstrated competence, resources to prosecute the
9 claims at issue and reputation among our colleagues in the both the defense and plaintiffs’ bar, I
10 respectfully submit our firm’s experience in the field of wage and hour cases provides us the
11 ability to prosecute claims swiftly and often times without the need for protracted litigation.
12 Although, as demonstrated in the *Wackenhut* cases, we do not give up fighting for class members
13 when challenged and necessary.

14 31. Further, based on our experience, we consider ourselves experienced and qualified
15 to evaluate the claims and viability of the defenses. Based on the history of this case and given our
16 firm's extensive experience as class and representative action employment and wage and hour
17 litigators, it is our view that the settlement is fair, reasonable, and adequate, and in the best interest
18 of the Class.

19
20 I declare under penalty of perjury that the foregoing is true and correct.

21 Executed on this 8th day of March, 2023 at Irvine, California.

22
23 
24 _____
James R. Hawkins, Esq.

EXHIBIT 3

JAMES HAWKINS APLC
James R. Hawkins (192925)
Christina Lucio (253677)
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Irvine, CA 92618
Tel.: (949) 387-7200
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Email: christina@jameshawkinsaplc.com

[additional counsel on next page]

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

GIANA BENSON, and on behalf of all others
similarly situated, MONICA FOWLER, an
individual, on behalf of herself and all others
similarly situated,

Plaintiffs,

v.

F21 OPCO, LLC dba FOREVER 21, a
Delaware Corporation; and DOES 1-10,
inclusive,

Defendants.

Case No. 37-2021-00024619-CU-OE-CTL

Assigned for All Purposes to Hon. Eddie C.
Sturgeon, Dept. 67

**PLAINTIFFS' NOTICE OF MOTION
AND MEMORANDUM IN SUPPORT
OF MOTION FOR:**

**(1) PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT;**

**(2) APPROVAL OF NOTICE TO CLASS
MEMBERS AND RELATED
MATERIALS;**

**(3) APPROVAL OF SETTLEMENT
ADMINISTRATOR; AND**

**(4) SETTING HEARING FOR FINAL
APPROVAL OF SETTLEMENT**

Date: April 21, 2023

Time: 9:00 a.m.

1 **MELMED LAW GROUP P.C.**

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7 **ACKERMANN & TILAJEF, P.C.**

8 Craig J. Ackermann, Esq. (SBN 229832)

9 *cja@ackermanntilajef.com*

1180 South Beverly Drive, Suite 610

10 Los Angeles, California 90035

Telephone: (310) 277-0614

11 Facsimile: (310) 277-0635

12 Attorneys for Plaintiffs, the Putative Class, and the Aggrieved Employees

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

2 **NOTICE IS HEREBY GIVEN** that on April 21, 2023 at 9:00 a.m. or as soon thereafter as the
3 matter may be heard, in Department 67 of the San Diego County Superior Court, 330 West Broadway,
4 San Diego, California 92101, before the Honorable Eddie C. Sturgeon, Plaintiffs Giana Benson and
5 Monica Fowler (“Plaintiffs”), through their undersigned Class Counsel, will and hereby do move the
6 Court for entry of the Proposed Order Granting Motion for Preliminary Approval of Class Action and
7 PAGA Settlement filed concurrently herewith:

8 1. Provisionally certifying the following Class for purposes of settlement only: all
9 individuals who are or were employed as hourly, non-exempt employees by Defendant F21 OpCo, LLC
10 (“Defendant”) in California at any time during the Class Period from February 29, 2020 to September
11 16, 2022.

12 2. Preliminarily appointing Plaintiffs Giana Benson and Monica Fowler as Class
13 Representatives for purposes of settlement only;

14 3. Appointing James Hawkins and Christina Lucio of James Hawkins ALPC, Jonathan
15 Melmed, Laura Supanich, and Maria Burciaga of Melmed Law Group P.C. and Craig J. Ackermann and
16 Avi Kreitenberg of Ackermann & Tilajef, P.C. as Class Counsel for purposes of settlement;

17 5. Preliminarily approving the class action settlement as fair, adequate, and reasonable, and
18 approving the PAGA action settlement based upon the terms set forth in the Class Action and PAGA
19 Settlement Agreement (the “Settlement Agreement”), including payment by Defendant of the non-
20 reversionary Gross Settlement Amount of \$4,700,000.00 (“Gross Settlement Amount” or “GSA”);

21 6. Preliminarily approving payment of reasonable attorneys’ fees and costs from the Gross
22 Settlement Amount in an amount of up to one-third of the Gross Settlement Amount (estimated to be
23 \$1,566,666.66), plus actual litigation costs up to \$30,000.00;

24 7. Preliminarily approving Class Representative Payments to Plaintiffs in an amount
25 totaling \$20,000.00 (\$10,000.00 to each of the Plaintiffs) from the Gross Settlement Amount to
26 compensate them for the burden, responsibility, time, effort and risk involved in coming forward on
27 behalf of the Class and for their general release of claims broader than the Class release;

28 8. Preliminary approving a PAGA Settlement Amount in the sum equal to exactly ten

1 percent (10%) of the Net Settlement Amount, which is the amount that the Parties have agreed to pay to
2 the LWDA and PAGA Employees in connection with Plaintiffs' claims under the Labor Code Private
3 Attorneys General Act of 2004 (Lab. Code, §§ 2698, *et seq.*), including the PAGA payment to the
4 LWDA in the amount estimated to be approximately \$227,125.00 (representing 75% of the PAGA
5 Settlement Amount);

6 9. Preliminarily approving CPT Group, Inc. as the Settlement Administrator and further
7 approving distribution of up to \$55,000.00 from the Gross Settlement Amount to cover the Settlement
8 Administrator's expenses in administering this settlement;

9 10. Directing distribution to the Class of the Notice of Class Action and PAGA Settlement
10 (the "Class Notice"), including notice of the opportunity to exclude oneself from, or object to, the
11 settlement (except for its PAGA component); and

12 11. Setting a date for a final fairness hearing to determine, following dissemination of notice
13 to the class, whether to grant final approval to the Settlement.

14 This motion is based upon this Notice of Motion and Motion; the Memorandum of Points and
15 Authorities in Support thereof; the Declarations of Craig J. Ackermann, Esq., Jonathan Melmed, Esq.,
16 James R. Hawkins, Esq., Christina M. Lucio, Esq., Giana Benson, and Monica Fowler in support thereof;
17 the Settlement Agreement; the Proposed Order Granting Preliminary Approval of Class Action
18 Settlement; the other records, pleadings, and papers filed in this action; and upon such other evidence
19 or argument as may be presented to the Court at the hearing of this motion.

20 As this Motion is unopposed, Plaintiffs also respectfully request relief from the page limit
21 requirement set by California Rules of Court, Rule 3.1113(d).

22 Respectfully submitted,

23 **JAMES HAWKINS APLC**
24 **MELMED LAW GROUP P.C.**
25 **ACKERMANN & TILAJEF, P.C.**

26 Dated: March 10, 2023

27 By:



28 James R. Hawkins, Esq.
Christina Lucio, Esq.
Jonathan Melmed, Esq.
Laura Supanich, Esq.

1 Maria Burciaga, Esq.
2 Craig J. Ackermann, Esq.
3 Avi Kreitenberg, Esq.
4 *Attorneys for Plaintiffs and the Putative Class*
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 This motion seeks preliminary approval of a putative class and PAGA representative action
4 settlement for alleged wage and hour violations in the non-reversionary Gross Settlement Amount of
5 \$4,700,000.00 (“GSA”) between Plaintiffs Giana Benson and Monica Fowler (“Plaintiffs” or “Class
6 Representatives”) and Defendant F21 OpCo, LLC dba Forever 21 (“Defendant” or “Forever 21”)
7 (collectively referred to herein as the “Parties”), for a putative settlement class estimated to be
8 approximately 10,491 individuals consisting of: The Class that is defined as all individuals who are or
9 were employed as hourly, non-exempt employees by Defendant F21 OpCo, LLC in California at any
10 time during the Class Period (the “Class” or “Class Members”). The Class Period is the period from
11 February 29, 2020 to September 16, 2022.¹ The PAGA Employees are defined as all individuals who
12 are or were employed as hourly, non-exempt employees by Defendant F21 OpCo, LLC in California at
13 any time during the period from February 29, 2020 to September 16, 2022 (“PAGA Period”)

14 In this case, Plaintiffs alleged that Defendant violated California state wage and hour laws a
15 result of alleged failure to, among other things: (1) pay minimum and overtime wages to employees for
16 all hours worked; (2) pay overtime wages and meal/rest premiums at the correct rate of pay; (3) provide
17 employees with meal and rest periods; (4) timely pay all wages owed to employees during each pay
18 period and upon termination of their employment; (5) reimburse employees for necessary business
19 expenses; (6) timely pay vested vacation pay at termination; and (7) provide employees with accurate,
20 itemized wage statements. Based on the same claims, Plaintiffs have also asserted claims for violation
21 of the Business and Professions Code § 17200 et seq. and a claim for civil penalties under the California
22 Private Attorneys General Act (Labor Code §§ 2698, et seq.) (“PAGA”). . Defendant has denied, and
23 continues to deny the factual and legal allegations in this case and believes it has valid defenses to
24 Plaintiffs’ claims, and argued, among other things, that many Class Members signed enforceable
25

26
27 ¹ The settlement resolves the wage and hour claims in the following three related cases: (1) *Monica Fowler v. F21 OpCo,*
28 *LLC*, Los Angeles Superior Court Case No. 20STCV46857; (2) *Giana Benson v. F21 OPCO, LLC dba Forever 21*, San
Diego Superior Court Case No. 37-2021-00024619-CU-OE-CTL; and (3) *Giana Benson v. F21 OpCo, LLC dba Forever 21*,
San Diego Superior Court Case No. 37-2021-000372560-CU-OE-CTL

1 arbitration agreements with class action waivers, a Court would be unlikely to certify the Plaintiffs’
2 primary claim for non-compliant rest periods based on Defendant’s alleged on-premises rest period
3 policy may fail on the merits in light of recent case law, a Court would be unlikely to certify the Class
4 at issue on Plaintiffs’ various claims, a PAGA case of this size is unmanageable, and that Courts
5 routinely reduce PAGA penalties to as little as 5% or less of the available penalties.

6 Because the class action (and PAGA) settlement is fair and reasonable and was negotiated at
7 arms’ length during a full-day mediation with employment-law mediator Michael Dickstein, followed
8 by additional settlement negotiations aided by the mediator, it should be preliminarily approved. If the
9 Court grants preliminary and final approval to the settlement, the GSA of \$4,700,000.00, after
10 deductions from the GSA for attorneys’ fees (up to \$1,566,666.66) and litigation costs (up to
11 \$30,000.00), settlement administration costs (up to \$55,000.00), the service awards to the Class
12 Representatives (up to \$10,000.00 to each of the Plaintiffs, totaling \$20,000.00), and the PAGA payment
13 to the LWDA (estimated to be approximately \$227,125.00, representing 75% of the PAGA Settlement
14 Amount) and PAGA payment to the PAGA Employees (estimated to be approximately \$75,708.33,
15 representing 25% of the PAGA Settlement Amount to be distributed to all PAGA Employees) — the
16 PAGA Settlement Amount is calculated as 10% of the Net Settlement Amount), will be distributed to
17 all the Class Members who do not affirmatively request exclusion from the class action part of the
18 settlement, with no reversion to Defendant. All Class Members who do not opt-out will be bound to the
19 class release of Claims negotiated in the Settlement. Preliminary settlement approval is appropriate as
20 the proposed Settlement is within the “ballpark” of reasonableness and is fair, adequate, and reasonable
21 to the Class Members.

22 Accordingly, Plaintiffs request that the Court enter an order: (1) granting preliminary approval
23 of the class action settlement and approval of the PAGA action settlement in accordance with the terms
24 of the Settlement Agreement; (2) appointing Plaintiffs as the Class Representatives; (3) appointing
25 Plaintiffs’ counsel as Class Counsel; (4) provisionally certifying the Class under California Code of
26 Civil Procedure section 382 and Cal. Rule of Court 3.769(d) for settlement purposes only and
27 preliminarily approving the Settlement pursuant to California Rule of Court; (5) approving the Parties’
28

proposed Notice of Class Action and PAGA Settlement (the “Class Notice”);² (6) appointing CPT Group, Inc. (“CPT”) as the Settlement Administrator; and (7) scheduling a hearing for the Court to consider the results of the notice plan and whether to grant final approval to the Settlement Agreement.

II. RELEVANT FACTUAL BACKGROUND

A. THE PARTIES AND CLASS MEMBERS

Defendant does business as the Forever 21 retail establishments. CJA Decl., ¶4. Defendant employed Plaintiffs and Class Members within the state of California during the Class Period. *Id.*

Class Members are defined as all individuals who are or were employed as hourly, non-exempt employees by Defendant in California at any time during the Class Period. The Class Period is defined as the period from February 29, 2020 to September 16, 2022. The Class Members are co-extensive with the PAGA Employees. According to information produced by Defendant, the Settlement Class consists of approximately 10,491 non-exempt hourly employees. *Id.*, ¶5.

B. PROCEDURAL HISTORY, INFORMAL DISCOVERY, MEDIATION AND SETTLEMENT

On December 7, 2020, Plaintiff Fowler filed a representative action Complaint in the Los Angeles County Superior Court against Defendant titled *Monica Fowler v. F21 OpCo, LLC*, Case No. 20STCV46857, wherein she alleged a single cause of action under the Labor Code Private Attorneys General Act of 2004, Lab. Code § 2698, et seq. (“PAGA”) seeking civil penalties for various alleged underlying Labor Code violations based on Defendant’s alleged failure to pay all wages for hours worked (including overtime and minimum wages), failure to provide rest periods, failure to provide meal periods, failure to provide accurate itemized wage statements, failure to maintain payroll records, failure to reimburse business expenses, failure to timely pay wages during employment, and failure to pay wages at termination. (the “Fowler PAGA Action”). CJA Decl., ¶6.

Plaintiff Benson filed two separate lawsuits against Defendant: a putative class action and a PAGA action. Plaintiff Benson’s putative class action was filed on June 24, 2021 in the San Diego

² The Class Action and PAGA Settlement Agreement (the “Settlement Agreement or “S.A.”) is attached as **Exhibit 1** to the Declaration of Craig J. Ackermann in Support of Motion for Preliminary Approval of Class Action Settlement (“CJA Decl.”). The Proposed Class Notice is attached as **Exhibit A** to the Settlement Agreement.

1 Superior Court against F21 OpCo, LLC, titled *Giana Benson v. F21 OPCO, LLC dba Forever 21*, Case
2 No. 37-2021-00024619-CU-OE-CTL. *Id.*, ¶7. Plaintiff Benson alleges wage and hour claims for: (1)
3 failure to pay wages (including minimum wages and overtime wages); (2) failure to provide meal
4 periods; (3) failure to provide duty-free, off-premises rest periods; (4) failure to reimburse business
5 expenses; (5) failure to pay vested vacation pay at termination; (6) failure to timely pay wages during
6 employment and at termination; (7) failure to provide accurate itemized wage statements; and (8)
7 violations of the unfair competition law, BPC §17200 *et seq.* (the “Benson Class Action”). *Id.*

8 Plaintiff Benson’s PAGA action was filed on August 31, 2021 in San Diego Superior Court titled
9 *Giana Benson v. F21 OpCo, LLC dba Forever 21*, Case No. 37-2021-000372560-CU-OE-CTL,
10 predicated upon the same underlying claims as the Benson Class Action (the “Benson PAGA Action”).
11 *Id.*, ¶8. On or about December 16, 2021, the Court granted the parties’ stipulation and ordered the
12 Benson Class Action and Benson PAGA Action consolidated for all purposes. *Id.*

13 The Parties then agreed to participate in a global mediation in order to resolve the Actions and
14 all of the claims set forth therein. *Id.*, ¶9. In connection with the anticipated mediation, the Parties
15 exchanged extensive informal discovery, including production of time and pay records for a sizable
16 sample of Defendant’s non-exempt California employees. In advance of mediation, Defendant provided
17 class-wide redacted time and payroll data for non-exempt California employees since February 29, 2020
18 and relevant policy documents. *Id.*

19 On April 19, 2022, the Parties participated in an all-day mediation session with experienced
20 employment law mediator Michael Dickstein. *Id.*, ¶10. The Parties did not reach an agreement at
21 mediation. After the mediation, however, the Parties continued negotiations with the assistance of the
22 mediator and a global resolution of the Actions in their entirety was reached when all Parties accepted
23 the Mediator’s proposal on May 4, 2022. The Mediator’s proposal was memorialized in a Memorandum
24 of Understanding (“MOU”), which was executed on September 16, 2022. *Id.*

25 Pursuant to the Parties’ agreement, for the sole purpose of effectuating Settlement, Plaintiff
26 Benson filed her Consolidated First Amended Complaint in this Court on or about January 23, 2023,
27 which alleges all of the claims in the foregoing Actions as a class action for the Class Members, added
28 a PAGA cause of action asserting all of the claims asserted in the Fowler PAGA Notice and the Benson

1 PAGA notice on behalf of all PAGA Employees during the PAGA Period, and naming Plaintiff Fowler
2 as an additional Plaintiff. *Id.*, ¶11. Thereafter, the Parties drafted, finalized and executed the Settlement
3 Agreement, now conditioned on court approval. *Id.*

4 **III. SUMMARY OF THE PARTIES' CLAIMS AND DEFENSES**

5 In the Consolidated First Amended Complaint, Plaintiffs, individually and on behalf of all others
6 similarly situated, allege nine causes of actions for: (1) failure to provide duty-free, off-premises rest
7 periods; (2) failure to provide meal periods; (3) failure to pay wages; (4) failure to reimburse business
8 expenses; (5) failure to pay vested vacation pay upon termination; (6) failure to pay final wages; (7)
9 failure to provide accurate itemized wage statements; (8) UCL violations; and (9) penalties pursuant to
10 PAGA. *Id.*, ¶13.

11 **A. DEFENDANT'S ALLEGED FAILURE TO PROVIDE OFF-DUTY REST PERIODS**

12 The rest period provisions of the applicable Wage Order require that every employer “authorize
13 and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each
14 work period. The authorized rest period time shall be based on the total hours worked daily at the rate
15 of ten (10) minutes net rest time per four (4) hours or major fraction thereof.” 8 Cal. Code. Regs.
16 §11050(12)(A). Furthermore, if an employer fails to provide a compliant rest period, it must pay the
17 employee a premium of one hour of pay at the regular rate of compensation. 8 Cal. Code. Regs.
18 §11050(12)(B); Cal. Lab. Code § 226.7(c). During a rest period, an employer must “relinquish any
19 control over how employees spend their break time, and relieve their employees of all duties - including
20 the obligation that an employee remain on call. A rest period, in short, must be a period of rest.”
21 *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016) (“... one cannot square
22 the practice of compelling employees to remain at the ready, *tethered by time and policy to particular*
23 *locations or communication devices*, with the requirement to relieve employees of all work duties and
24 employer control during 10-minute rest breaks.”) (emphasis added).

25 Plaintiffs alleged that Defendant failed to authorize or permit Plaintiffs and Class Members to
26 take duty-free rest periods of not less than 10 minutes for every major fraction of four hours worked.
27 CJA Decl., ¶14. Specifically, Plaintiffs alleged that Defendant failed to have a lawful rest period policy
28 in place that informed Plaintiffs and Class Members of their right to take off-duty rest periods for shifts

1 that were a major fraction of a four-hour work period and to make rest periods available to these
2 employees. Specifically, Plaintiff alleged that Defendant’s employee handbook states that “Employees
3 may not leave the premises during their rest break.” Additionally, Plaintiffs alleged that when they and
4 Class Members were not provided compliant rest periods, Defendant failed to rest period premiums. *Id.*

5 The California Division of Labor Standards Enforcement (DLSE) in November 2017 specifically
6 addressed the issue of on-premises rest break policies. Through its amendment, the DLSE subscribed to
7 the clear implication of *Augustus* that requiring employees to stay on the work premises during rest
8 periods does not relinquish control and accordingly does not comply with California law. *See* California
9 Department of Industrial Relations, Rest Periods/Lactation Accommodation, *available at*
10 www.dir.ca.gov/dlse/faq_restperiods.htm (November 2017) (Question 5) (“Q. can my employer require
11 that I stay on the work premises during my rest period? A. No, your employer cannot impose any
12 restraints not inherent in the rest period requirement itself. . . .”).

13 California appellate courts in *Bono*, *Morillion*, and *Frlekin* all support the DLSE’s position that
14 policies unconditionally requiring employees to remain on-premises during rest breaks are unlawful.
15 *See Bono Enterprises, Inc. v. Bradshaw*, 32 Cal. App. 4th 968, 975 (1995) (“When an employer directs,
16 commands, or restrains an employee from leaving the work place during his or her lunch hour and thus
17 prevents the employee from using the time effectively for his or her own purposes, that employee
18 remains subject to the employer’s control [and] must be paid.”); *Morillion v. Royal Packing*, 22 Cal. 4th
19 575, 582 (2000) (holding that agricultural employees must be paid for mandatory time spent riding to
20 and from fields on employer buses, because “an employee who is subject to an employer’s control does
21 not have to be working during that time to be compensated under [the applicable Wage Order.]”); *Frlekin*
22 *v. Apple Inc.*, 8 Cal. 5th 1038, 1056 (2020) (holding that employer’s requirement of on-premises exit
23 searches, which were “enforced through threat of discipline[,]” are compensable time under the Wage
24 Order’s “hours worked” control clause).

25 Plaintiffs contended Defendant’s alleged failure to authorize and permit rest breaks as required
26 by the IWC Wage Order— through its alleged act of promulgating a facially-unlawful on-premises rest
27 break policy—triggers liability for rest break premiums pursuant to Labor Code § 226.7, and equally
28 triggers PAGA penalties pursuant to Labor Code § 2699.5, according to Plaintiffs. *See Brinker Rest.*

1 *Corp. v. Superior Court*, 53 Cal. 4th 1004, 1033 (2012) (“An employer is required to authorize and
2 permit the amount of rest break time called for under the wage order for its industry. If it does not—if
3 for example, it adopts a uniform policy authorizing and permitting only one rest break for employees
4 working a seven-hour shift when two are required—it has violated the wage order and is liable.”).

5 **B. DEFENDANT’S ALLEGED FAILURE TO PROVIDE COMPLIANT MEAL PERIODS**

6 Defendant is required to provide its non-exempt employees with meal periods consistent with
7 California Labor Code section 512(a) and Applicable Wage Order. If an uninterrupted, 30-minute meal
8 period is not provided by the fifth hour of work, the employee is entitled to a premium payment of one
9 additional hour of pay. Cal. Lab. Code § 226.7.

10 Plaintiffs alleged that Defendant failed to provide compliant meal periods to Plaintiffs and Class
11 Members because Class Members were not relieved of all duties during their meal periods. CJA Decl.,
12 ¶15. Plaintiffs alleged that Defendant created a work environment in which Class Members were not
13 provided all of their meal periods due to shift scheduling and/or work-related demands placed upon them
14 by Defendants as well as lack of sufficient staffing to meet the needs of Defendant’s business. Plaintiffs
15 further alleged that Class Members were required by supervisors to work through meal periods to make
16 sure orders are filed, shelves are stocked, and that the store is cleaned. Accordingly, Plaintiff alleged
17 that meal periods taken by Class Members are all on-duty. *Id.*

18 Further, Defendant’s employee handbook expressly states that the “Manager will schedule rest
19 breaks and meal breaks according to workload and applicable law.” *Id.*, ¶16. Notably, Plaintiffs alleged
20 that Defendant’s meal period policy in the employee handbook was silent on the timing and quantity of
21 meal periods. See *Ricaldai v. U.S. Investigations Servs, LLC*, 878 F. Supp. 2d 1038, 1044 (C.D. Cal.
22 2012) (denying an employer’s motion for summary judgment in a meal break case because of pressures
23 to miss breaks and a flawed meal period policy, the Court noted: “[t]he employee handbook contained
24 only a single statement as to meal periods—not to work during them—and did not inform employees of
25 their other essential meal period rights—i.e. to take a 30–minute meal break every workday of five hours
26 or more, and to do so prior to the fifth hour of work.”). As such, Plaintiffs alleged that first meal periods
27 were frequently short or late when provided and second meal periods were not provided on shifts over
28 ten hours and alleged that Class Members were not paid a meal period premium as required by law for

1 such violations. *Id.* Data analysis revealed, however, that the violation rate was only 10.8% on this claim.
2 *Id.*

3 **C. DEFENDANT’S ALLEGED FAILURE TO PAY ALL MINIMUM AND OVERTIME WAGES**

4 “Under California law . . . a plaintiff may establish liability for an off-the-clock claim by proving
5 that: (1) he performed work for which he did not receive compensation; (2) that defendants knew or
6 should have known that plaintiff did so; but that (3) the defendants stood idly by.” *Jimenez v. Allstate*
7 *Ins. Co.*, 765 F.3d 1161, 1165 (9th Cir. 2014). “Hours worked” is defined in the Wage Order as “the
8 time during which an employee is subject to the control of an employer, and includes all the time the
9 employee is suffered or permitted to work, whether or not required to do so...” 8 Cal. Code Regs. §
10 11050(2)(K).

11 An employee who is subject to an employer’s control does not have to be working during that
12 time to be compensated...” *See Morillion v. Royal Packing Co.*, 22 Cal.4th 575, 582 (2000). Indeed, it
13 is well established that an employee’s on call or standby time may require compensation. When an
14 employer requires an employee to remain at the work premises and restricts him from leaving, thereby
15 precluding the employee from using the time effectively for his own purposes, the employee remains
16 subject to the employer’s control and must be paid. *Morillion*, 22 Cal.4th at 583.

17 Plaintiffs alleged that Plaintiffs and Class Members were not paid all minimum and overtime
18 wages due because Defendant regularly alters Class Member time punches to reflect scheduled hours
19 rather than actual time worked. CJA Decl., ¶17. Further, Plaintiffs alleged that Class Members were
20 required to complete opening duties prior to clock in for their shift, including turning off the alarm
21 system and opening every door to the store, as well as closing duties after clocking out, including locking
22 down the store and setting the alarm system. Plaintiffs alleged that Class Members were not paid for any
23 of this mandatory pre- and post-shift work. *Id.*

24 Further, Plaintiffs alleged that Class Members were required to go through a security and/or bag
25 check at the end of their shifts. *Id.*, ¶18. Specifically, Plaintiffs alleged that after clocking out, Class
26 Members had to wait for a manager and/or lead to inspect their bag prior to leaving the premises. Thus,
27 Plaintiffs contend that the security and/or bag checks were performed off-the-clock and Class Members
28 were not paid for this time. *Id.*

1 **D. DEFENDANT’S ALLEGED FAILURE TO REIMBURSE BUSINESS EXPENSES**

2 California Labor Code section 2802(a) requires an employer to “indemnify his or her employee
3 for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge
4 of his or her duties.” In *Cochran v. Schwan's Home Services, Inc.* 228 Cal. App. 4th 1137, 1140 (2014),
5 a Court of Appeal explained, “We hold that when employees must use their personal cell phones for
6 work-related calls, Labor Code section 2802 requires the employer to reimburse them. Whether the
7 employees have cell phone plans with unlimited minutes or limited minutes, the reimbursement owed
8 is a reasonable percentage of their cell phone bills.”

9 Plaintiffs alleged Defendant required Class Members to use their personal cell phones for work
10 purposes. CJA Decl., ¶19. Specifically, Plaintiffs alleged that Defendant required Class Members to
11 download cell phone applications to their personal cell phones for work-related purposes, including the
12 Crew app to communicate with other employees, and the Afterpay App. Further, Plaintiffs alleged that
13 Defendant required Class Members to bear the cost associated with business use of their personal cell
14 phones. *Id.*

15 **E. DEFENDANT’S ALLEGED FAILURE TO PAY VESTED VACATION PAY**

16 California Labor Code § 227.3 provides that whenever a contract of employment or employer
17 policy provides for paid vacations, and an employee is terminated without having taken off his or her
18 vested vacation time, all vested vacation shall be paid to him or her as wages at his or her final rate.

19 Plaintiffs alleged that Defendant failed to pay Plaintiff and Class Members all earned and vested
20 vacation/PTO wages upon termination. CJA Decl., ¶20. Defendant’s employee handbook states, “The
21 company provides all active full time employees with a paid time off benefit each year as a way of
22 expressing its appreciation to provide employees with means to refresh and renew their energy. PTO
23 hours are to be used for sick days, vacation and other personal time away from work.” The employee
24 handbook also provides, “Upon termination of employment or change of employment status from full
25 time to part time, all accrued but unused PTO benefits will be forfeited unless prohibited by law.”
26 Plaintiffs alleged that Defendant’s forfeiture provision is unlawful. *Id.*

27 **F. DEFENDANT’S ALLEGED FAILURE TO PAY ALL WAGES DUE AT SEPARATION**

28 Labor Code § 203 provides “if an employer willfully fails to pay . . . any wages of an employee

1 who is discharged or who quits, the wages of the employee shall continue as a penalty. . .” for up to 30
2 days. Lab. Code § 203; *Mamika v. Barca*, (1998) 68 Cal.App.4th 487, 492. *Naranjo v. Spectrum Security*
3 *Services, Inc.*, 2022 Cal. LEXIS 2878 (Cal. May 23, 2022) (holding that section 226.7 claims can trigger
4 section 226 and 203 claims).

5 As described above, Defendant allegedly failed to pay Plaintiffs and the Subclass of former
6 employees of Defendant whose employment has ended during the relevant time period, rest period
7 premiums, meal period premiums, and all minimum wages and overtime wages owed within the time
8 constraints proscribed in Labor Code §§ 201-202 at the time of their termination/separation. CJA Decl.,
9 ¶21. Thus, as result of Defendant’s alleged faulty policies described above, Class Members whose
10 employment has ended during the relevant time period left their employment with Defendant allegedly
11 without being compensated for each and every hour worked at the appropriate rate. *Id.*

12 **G. DEFENDANT’S ALLEGED FAILURE TO PROVIDE COMPLIANT WAGE STATEMENTS**

13 Labor Code § 226 obligates employers, semi-monthly or at the time of each payment to furnish
14 a wage statement in writing showing: (1) gross wages earned; (2) total hours worked by the employee;
15 (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece
16 rate; (4) all deductions, provided that all deductions made on written orders of the employee may be
17 aggregated and shown as one item; (5) net wages earned; (6) the inclusive dates of the period for which
18 the employee is paid; (7) the name of the employee and only the last four digits of his or her social
19 security number or an employee identification number other than a social security number; (8) the name
20 and address of the legal entity that is the employer...; (9) all applicable hourly rates in effect during the
21 pay period and the corresponding number of hours worked at each hourly rate by the employee...

22 Plaintiffs alleged that Defendant intentionally and knowingly failed to provide Plaintiffs and
23 employees with accurate itemized wage statements as required by Labor Code § 226, as Plaintiffs and
24 others have allegedly not been properly compensated by Defendant for all hours worked and have not
25 been paid all compensation due and owing, including all minimum and overtime wages, and meal and
26 rest period premiums. CJA Decl., ¶24. Accordingly, the wage statements issued by Defendant allegedly
27 do not include the correct amount of gross and net wages earned, total hours worked by the employee,
28 and all applicable hourly rates in effect during the pay period and the corresponding number of hours

1 worked at each hourly rate by the employee as required under Labor Code section 226. *Id.*

2 **H. DEFENDANT’S ALLEGED UCL VIOLATIONS**

3 In California, wage and hour claims may be brought under the Unfair Competition Law (“UCL”
4 – Cal. Bus. & Prof. Code §§17200-17210). Unfair competition includes “any unlawful, unfair or
5 fraudulent business act or practice,” which courts have held includes Labor Code violations.³ A remedy
6 under the UCL does not preclude any other available remedies under state law.⁴ Plaintiffs’ operative
7 Complaint alleged that by failing to provide compliant rest and meal periods, rest and meal period
8 premiums, minimum wages, overtime wages, accurate itemized wage statements, reimbursement for
9 business expenses, final pay, vested vacation pay and other statutory penalties to Class Members, and
10 committing the above-described Labor Code violations, Defendant engaged in unlawful, unfair, and/or
11 fraudulent business practices and is liable for restitution to the Class Members. Moreover, this cause of
12 action lengthens the statute of limitation of the class claims to 4 years.

13 **I. DEFENDANT’S ALLEGED LIABILITY FOR PAGA PENALTIES**

14 Plaintiffs further argued that they and the other PAGA Employees were entitled to penalties
15 under the Private Attorneys General Act of 2004 (“PAGA” – Labor Code §§ 2699-2699.5). The PAGA
16 allows an aggrieved employee to bring suit against an employer for violations of most Labor Code
17 provisions. Suits brought under PAGA do not affect the employee’s right to recover other remedies
18 under state or federal law.⁵ The statute of limitations for PAGA suits is one year. An employee who
19 prevails in an action brought under PAGA is entitled to an award of reasonable attorney’s fees and costs.

20 The penalties available under PAGA are those provided in the underlying Labor Code provision
21 that is violated or, if no penalty is listed, those provided by PAGA itself. Where the Labor Code does
22 not provide for a penalty, PAGA establishes a discretionary civil penalty of \$100 for each aggrieved
23 employee per pay period for the initial violation and \$200 for each aggrieved employee per pay period
24 for each subsequent violation.⁶ For any civil penalties collected under PAGA, seventy-five percent of
25

26
27 ³ *Cortez v. Purolator Air Filtration Prods. Co.*, 23 Cal. 4th 163, 178 (2000).

28 ⁴ § 17205.

⁵ § 2699(g); *Caliber Bodyworks, Inc. v. Superior Court*, 134 Cal. App. 4th 365, 375 (2005).

⁶ § 2699(f). Wherever the Labor Code gives the Labor and Workforce Development Agency discretion to assess a civil

1 the penalties are distributed to the LWDA for enforcement and education, and twenty-five percent is
2 distributed to the aggrieved employees.

3 Plaintiffs alleged that by virtue of each of Defendant's foregoing Labor Code violations,
4 Plaintiffs and the other PAGA Employees are, in addition to other remedies, entitled to civil penalties
5 under PAGA.

6 **J. DEFENDANT'S TOTAL DENIAL OF LIABILITY AND THEIR LEGAL AND FACTUAL**
7 **DEFENSES**

8 Defendant denied and continues to deny each, and all of the allegations, claims, and contentions
9 alleged by Plaintiffs. CJA Decl., ¶27. First, Defendant contended that with respect to Plaintiffs' class
10 claims, many Class Members signed individual arbitration agreements with enforceable class action
11 waivers (specifically, Plaintiffs signed arbitration agreements). *Id.*, ¶28. If enforced by the Court, these
12 arbitration agreements would eliminate all of their claims at issue in Court other than those employees'
13 PAGA penalty claims, as all other claims would be compelled to individual arbitration.

14 This risk has only become more significant after the issuance of *Epic Systems Corp. v. Lewis*,
15 138 S. Ct. 1612 (May 21, 2018), where the United States Supreme Court ruled that arbitration
16 agreements requiring individual arbitration are enforceable under the Federal Arbitration Act, regardless
17 of allowances set out within the National Labor Relations Act, and *Viking River Cruises v. Moriana*,
18 142 S. Ct. 1906 (2022) ("*Viking River*"), where the Court held that PAGA claims would also be subject
19 to individual arbitration. The arbitration agreements for those Class Members thus posed a very serious
20 risk of zero recovery and could have (and potentially would have) wiped out all their claims. *Cf. Adolph*
21 *v. Uber Technologies*, Cal. Ct. App. Case No. 6059860 (writ submitted July 20, 2022) (California
22 Supreme Court has agreed to examine if SCOTUS relied on an incorrect understanding of California
23 state law in *Viking River*. Therefore, Plaintiffs discounted their claims to account for the risk of
24 Defendant compelling those employees' cases to individual arbitration.

25 Moreover, the arbitration agreements signed by Class Members pose a risk on class certification
26

27
28
penalty, a court is authorized to exercise the same discretion. § 2699(e)(1).

1 for Plaintiffs. *See, Campanelli v. Image First Healthcare Laundry Specialists, Inc.*, 2018 WL 6727825,
2 at *7 (N.D. Cal. Dec. 21, 2018) (concluding that a plaintiff who was not subject to an arbitration clause
3 or class action waiver was “not an adequate representative and his claims lack typicality with respect
4 to putative Rule 23 plaintiffs who have signed [these agreements]”); *Tan v. GrubHub, Inc.*, 2016 WL
5 4721439, at *3 (N.D. Cal. July 19, 2016) (concluding that the named plaintiff, who opted out of a class
6 action waiver, lacked adequacy and typicality because he “would be unable to credibly make several
7 procedural unconscionability arguments on behalf of unnamed class members[.]”). Therefore, Plaintiffs
8 discounted their claims to account for the risk of Defendant compelling many employees’ cases to
9 individual arbitration and for certification risks associated therewith. Alternatively, the discount can be
10 thought of as zeroing out the claims for those Class Members with arbitration agreements and another
11 discount for those Class Members based on certification risk and issues on the merits associated with
12 arbitration agreements.

13 Second, Defendant contended that under Labor Code section 2699(e)(2) courts routinely
14 significantly reduce the civil penalty specified under PAGA, if based on the facts and circumstances of
15 the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive or
16 confiscatory. Courts often exercise their discretion to reduce the amount of PAGA penalties awarded to
17 as little as \$5.00 per pay period or 18% of the available PAGA penalties.⁷ Furthermore, in *Gola v.*
18 *University of San Francisco*, San Francisco Superior Court Case No. CGC-18-5655018, Proposed
19 Statement of Decision, dated July 21, 2020, Judge Curtis A. Karnow of San Francisco Complex
20 concluded (after a full-blown bench trial) that a penalty of 15% of the maximum PAGA penalties was
21 the appropriate penalty. Lastly, a proposed initiative, the Labor Code Fair Pay and Accountability will
22 be on the ballot in November 2024 which may effectively repeal PAGA by taking away the ability to
23 pursue civil penalties via a representative action. If this proposed initiative were to pass, coupled with
24 the *Viking River* decision and arbitration agreements in play, Plaintiffs may not be able to proceed with
25

26
27 ⁷ See e.g., *Kileigh Carrington v. Starbucks Corporation, et al.*, San Diego Superior Court Case No. 37-2014-00018637-CU-
28 OE-CTL (Apr. 3, 2017) (holding that the plaintiff was only entitled to collect the reduced penalty amount of \$5.00 for each
pay period in which a meal period violation occurred or 5% of the PAGA penalties at issue); *Fleming v. Covidien, Inc.* (C.D.
Cal. Aug. 12, 2011) 2011 WL 7563047, at *4 (reducing PAGA penalties by 82%)

1 their PAGA claims at all. Plaintiffs view this initiative as a significant additional risk. CJA Decl., ¶29.

2 Third, Defendant contended that Plaintiffs' PAGA claim is unmanageable. *See, Wesson v,*
3 *Staples the Office Superstore, LLC* (2021) 68 Cal.App5th 746, 765; *see also, Ortiz v. CVS Caremark*
4 *Corp.* (N.D. Cal. 2014) 2014 U.S. Dist. LEXIS 36833 (dismissing PAGA claim as unmanageable
5 because "a multitude of individualized assessments would be necessary"); *Lifty v. Merrill Lynch & Co.*
6 (C.D. Cal. 2014) 2014 U.S. Dist. LEXIS 160448 (striking PAGA claim as unmanageable because
7 "individualized issues predominate in this action" and a "multitude of individualized assessments would
8 be necessary"); *Amiri v. Cox Communs. Cal., LLC* (C.D. Cal.) 272 F.Supp.3d 1187, 1194 (striking
9 PAGA claim as unmanageable); *cf. Estrada v., Royalty Carpet Mills*, (4th Dist. 3123122) (disagreeing
10 with *Wesson*). Specifically, Defendant contended that Plaintiffs' claims include significant
11 manageability concerns given the need for individualized proof and the massive size of the PAGA
12 Employee group covering thousands of workers at different locations. CJA Decl., ¶30.

13 Fourth, with respect to Plaintiffs' claims that Defendant promulgated an unlawful on-premises
14 rest period policy, prior to 2022, Courts were split as to the lawfulness of on-premises rest period
15 policies. *See, Ritenour v. Carrington Mortg. Servs., LLC*, No. SACV1602011CJCDFMX, 2018 WL
16 5858658, at *7 (C.D. Cal. Sept. 12, 2018) ("The California Supreme Court never stated that an employer
17 cannot require an employee to remain on the premises during a rest period"); *Hubbs v. Big Lots Stores,*
18 *Inc.*, No. LACV1501601JAKASX, 2018 WL 5264141, at *4-5 (C.D. Cal. Mar. 16, 2018) ("*Augustus*
19 nevertheless recognized that an employer may require an employee to remain "on premises" during such
20 rest periods. . . For these reasons, requiring that an employee remain on premises during a ten-minute
21 rest period does not create a claim under PAGA."); and *Bell v. Home Depot U.S.A., Inc.*, No.
22 212CV02499JAMCKD, 2017 WL 1353779, at *1-2 (E.D. Cal. Apr. 11, 2017) ("a policy requiring
23 employees to remain on the premises during their rest breaks does not violate the applicable California
24 wage order and statute."); *cf. Diaz v. Medline Industries, Inc.*, San Joaquin County Superior Court, Case
25 No. STK-CV-UOE-2019-5651, Order Denying in Part and Granting in Part Defendant's Motion for
26 Judgment on the Pleadings.

27 Further, Courts were also split on whether on-premises rest period cases can be certified. *See,*
28 *Cacho v. Eurostar, Inc.*, 2019 Cal. App. Unpub. LEXIS 8085 (December 4, 2019) (certification denied

1 where the Defendant promulgated a facially invalid meal and rest break policy where, in practice, many
2 employees actually took their meal and rest breaks in compliance with California law); *see also*,
3 *Davidson v. O'Reilly Auto Enterprises, LLC*, No. 18-56188 (9th Cir. August 3, 2020) (certification
4 denied where Defendant promulgated a facially invalid rest break policy where, Plaintiff failed to show
5 the facially invalid rest break policy was used in practiced); *cf. El Pollo Loco Wage and Hour Cases*,
6 JCCP Case No. 4957, Orange County Complex Superior Court, Minute Order, dated July 30, 2018, from
7 the Hon. William Claster (certifying on premises rest break policy challenge); and *Frlekin v. Apple, Inc.*,
8 2020 Cal. LEXIS 547 (February 13, 2020) (hours worked is defined as the time during which an
9 employee is subject to the control of an employer, and includes all the time the employee is suffered or
10 permitted to work, whether or not required to do so).

11 However, most recently, in *Estrada v. Royalty Carpet Mills, Inc.*, 76, Cal.App.5th 685, 706
12 (2022) the California Court of Appeals appears to have said on-premises rest periods are legal when it
13 stated in dicta, “there are material differences between rest breaks and meal breaks, their length.
14 ‘Because rest periods are 10 minutes in length, they imposed practical limitations on an employee’s
15 movement. That is, during a rest period an employee generally can travel at most five minutes from a
16 work post before returning to make it back on time. Thus, one would expect that employees will
17 ordinarily have to remain on site or nearby. This constraint, which is of course common to all rest
18 periods, is not sufficient to establish employer control.’” This dicta strongly suggests that on-premises
19 rest periods are legal, an argument that would kill Plaintiffs’ on-premises rest period theory entirely.
20 Moreover, Defendant also contended that Plaintiffs would be unable to certify their rest period claims
21 because Defendant’s different retail store locations had different practices resulting in individualized
22 issues.

23 Fifth, with respect to Plaintiffs’ claims for meal period violations, Defendant argued that there
24 is no common policy or practice to deprive employees of meal periods and that Defendant’s meal period
25 policies comply with California law. CJA Decl., ¶32. Specifically, Defendant cited *Brinker*, which states
26 that an employer is required only to “provide” employees with an opportunity to take uninterrupted
27 breaks, but is not required to ensure that they are taken. *Id.* Defendant further argued that Plaintiffs
28 would be unable to certify their meal period claim because meal period practices were highly

1 individualized because each of Defendant's stores had different practices.

2 Sixth, with respect to Plaintiff's claims for unpaid minimum and overtime wages, Defendant
3 argued that they would defeat certification on Plaintiffs' claims for unpaid security and/or bag check
4 time, and contended that such security and/or bag check time are conducted on the clock after employees
5 clocked in for their shift. *See, Armendariz v. Kinkisharyo Intl.*, 2022 U.S. Dist. LEXIS 191137 (C.D.
6 Cal. October 19, 2022) ("Plaintiff has not shown that common questions will predominate over
7 individual ones with respect to claims based on a failure to compensate putative class members for time
8 spent at security and bag checks . . . Plaintiff has not presented substantial evidence as to a uniform
9 policy or practice requiring off-the-clock security and bag checks. In the absence of a uniform policy or
10 practice, certification is not appropriate."); *see also, Nevarez v. Costco Wholesale Corp.*, 2019 U.S. Dist.
11 LEXIS 223881, 2019 WL 7421960, at *6 (C.D. Cal. Dec. 26, 2019) ("[W]here no substantial evidence
12 points to a uniform , companywide policy, and proof of off-the-clock liability would have had to
13 continue in an employee-by-employee fashion, class certification is inappropriate."); *Hubbs v. Big Lots*
14 *Stores, Inc.*, 2017 U.S. Dist. LEXIS 85280, 2017 WL 2304754, at *9 (C.D. Cal. May 23, 2017) (class
15 certification denied where plaintiffs failed to provide "sufficient evidence to show that there was a
16 common and consistent policy among [d]efendants to subject all employees of their stores to off-the-
17 clock bag checks" and plaintiffs "only presented limited evidence that supports the position that
18 managers at certain store may have required off-the-clock bag checks"); *Christensen v. Carter's Retail,*
19 *Inc.*, 2021 U.S. Dist. LEXIS 204050, 2021 WL 4932244, at *10 (C.D. Cal. Oct. 21, 2021) (denied
20 certification of a proposed security check class where "the evidence upon which Plaintiff relies indicates
21 a lack of commonality across Defendant's stores in California.").

22 Seventh, at the time of mediation and settlement, Defendant contended that Plaintiffs' wage
23 statement claim was meritless because it is derivative of Plaintiffs' underlying claims. *See Naranjo v.*
24 *Spectrum Sec. Servs., Inc.*, 40 Cal. App. 5th 444, 474 (2019) ("we hold that section 226.7 actions do not
25 entitle employees to pursue the derivative penalties in sections 203 and 226"); *see also Maldonado v.*
26 *Epsilon Plastics, Inc.* (2018) 22 Cal.App.5th 1308 (the class alleged they were not paid overtime owed,
27 and as a result, their wage statements were inaccurate. The court held that the wage statement claim was
28 not viable as a separate claim from the overtime claim and that "the absence of accurate wages earned

1 will be remedied by the violated wage and hour law itself”); *Bentancourt v. OS Restaurant Services,*
2 *LLC*, 49 Cal. Ap. 5th 240, 247-48 (2020) (Actions for nonprovision of meal or rest periods do not entitle
3 employees to pursue the derivative penalties in Labor Code section 226 wage statement violations). The
4 California Supreme Court has since overturned the appellate decision in *Naranjo* but this was a risk that
5 was present at the time of mediation. *See, Naranjo v. Spectrum Security Services, Inc.*, 2022 Cal. LEXIS
6 2878 (Cal. May 23, 2022). Additionally, Defendant contended that the Class suffered no actual “injury”
7 as required under Labor Code section 226(e) and that any violation of the Labor Code was not “knowing
8 and intentional”. CJA Decl., ¶34.

9 Eighth, Defendant contended that Plaintiffs and the Class were not entitled to waiting time
10 penalties under Labor Code section 203. *Id.*, ¶35. First, Defendant contended that any Labor Code
11 violations were not intentional and as a result Plaintiffs would have difficulty proving the requisite
12 willfulness required under Labor Code sections 201-203. *See, Barnhill v. Robert Saunders & Co.*, 125
13 Cal. App. 3d 1, 8-9 (1981) (employer's good-faith belief negated a finding his nonpayment of wages
14 was willful). Second, in late 2019, the California Court of Appeals held that there are no derivative
15 section 203 penalties based on an underlying claim that meal or rest break premiums were not timely
16 paid (*see Naranjo*, 40 Cal. App. 5th 444, 474 (2019) (“we hold that section 226.7 actions do not entitle
17 employees to pursue the derivative penalties in sections 203 and 226”)). As stated earlier, *Naranjo* has
18 since been overturned by the California Supreme Court, but this risk was significant at the time of
19 mediation and settlement.

20 Ninth, Defendant contended that Plaintiffs would be unable to certify their expense
21 reimbursement claims since it will involve an individual inquiry as to each specific situation during
22 which the employee used his or her personal cell phone. CJA Decl., ¶36. Additionally, Defendant
23 contended that there was no uniform policy or practice requiring or expecting Class Members to
24 download or use cell phone applications. *See, Carlos v. Wal-Mart Assocs., Inc.*, U.S. Dist. LEXIS
25 231841 (C.D. Cal. September 6, 2022) (“Plaintiff has not demonstrated that there is a uniform policy or
26 practice of requiring or expecting the putative class members to download or use any of the three mobile
27 applications during the new-hire orientation.”).

28 ///

1 **K. FAIR VALUATION OF PLAINTIFFS' CLAIMS**

2 Plaintiffs' realistic, risk-adjusted valuation of claims is based on the following analysis of data
3 provided by Defendant's counsel:

- 4 • There are approximately 10,491 Class Members, of which approximately 6,454 are former
5 employees.
- 6 • There are approximately 105,153 pay periods during the period from February 29, 2020 through
7 March 1, 2022 and 195,438 workweeks during the period from February 29, 2020 through March
8 1, 2022. Extrapolating out these figures through the end of the Class Period, September 16, 2022,
9 there are approximately 133,636 pay periods⁸ and 248,374 workweeks⁹ during the Class Period.
- 10 • Many Class Members signed enforceable arbitration agreements with class action waivers,
11 including Plaintiffs Benson and Fowler.
- 12 • Plaintiff hired a data analyst to analyze Defendant's meal period records for Plaintiff Fowler and
13 determined the violation rate at approximately 10.8%.
- 14 • The average hourly rate among the Class is approximately \$16.35 per hour.

15 Defendant has strong defenses to Plaintiffs' claims including that many Class Members signed
16 arbitration agreements which would preclude them from being able to bring their claims in Court.
17 Further, Defendant had strong arguments on Plaintiffs' position regarding class certification, including
18 that Defendant has many stores, subject to different policies and practices, and that Defendant
19 promulgated lawful policies. Additionally, Plaintiffs' primary claim alleging Defendant promulgated an
20 unlawful, on-premises rest period policy is completely undermined by the dicta in *Estrada*. Further,
21 Defendant contended that Plaintiffs' penalty claims are not meritorious because Defendant had a good
22 faith belief that their conduct was lawful, and that Plaintiffs would fail on their underlying claims. In
23 light of the foregoing, despite Defendant's massive maximum exposure, Plaintiffs calculated
24 Defendant's realistic, risk-adjusted exposure at \$4,805,987.41, each claim separately valued as follows:

25 _____
26
27 ⁸ 105,153 pay periods between February 29, 2020 and March 1, 2022 / 24 months = 4,382 pay periods per month. 105,153
pay periods + (4,382 pay periods per month * 6.5 additional months) = 133,636 pay periods.

28 ⁹ 195,438 workweeks between February 29, 2020 and March 1, 2022 / 24 months = 8,144 workweeks per month. 195,438
workweeks + (8,144 workweeks per month * 6.5 additional months) = 248,374 workweeks.

1 Plaintiffs calculated Defendant's realistic, risk-adjusted for rest period premiums at
2 \$2,030,457.45 after taking discounts for Defendant's arbitration agreements and the likelihood that
3 Plaintiffs' claim could fail on the merits are not be certified based on Court's reasoning in *Ritenour*,
4 *Hubbs, Bell*, and the dicta in *Estrada*. See CJA Decl. ¶ 42.

5 Plaintiffs calculated Defendant's realistic, risk-adjusted exposure for meal period premiums at
6 \$438,578.80 based on a 10.8% violation rate and further discounts for the risk of certification. *Id.*

7 Plaintiffs calculated Defendant's realistic, risk-adjusted exposure for unpaid wages at
8 \$253,807.18 based on five minutes of unpaid overtime wages per day and discounts for Defendant's
9 arguments on certification, including that Defendant's policy was facially valid. *Id.*

10 Plaintiffs calculated Defendant's realistic, risk-adjusted exposure for wage statement penalties
11 at \$641,952.50 based on discounts for Defendant's arbitration agreements and the risks associated with
12 Plaintiffs' underlying wage and premium claims and Defendant's arguments that their conduct was not
13 "knowing and intentional" and that Class Members suffered no "actual" injury. *Id.*

14 Plaintiffs calculated Defendant's realistic, risk-adjusted exposure for waiting time penalties at
15 \$506,509.02 based on Defendant's arbitration agreements and discounts based on the risks of losing the
16 underlying claims on the merits and the difficulty in proving the requisite "willfulness". *Id.*

17 Plaintiffs calculated Defendant's realistic, risk-adjusted exposure for unreimbursed business
18 expenses at \$11,454.96 based on Defendant's arbitration agreements and the risks on certification given
19 that Defendant's did not have a uniform policy requiring cell phone use. *Id.*

20 Plaintiffs calculated Defendant's realistic, risk-adjusted exposure for unpaid vested vacation pay
21 at \$422,091.60 based on an estimate that each former employee had approximately five days vested after
22 taking into account Defendant's arbitration agreements. *Id.*

23 Plaintiffs calculated Defendant's realistic, risk adjusted for PAGA penalties at \$501,135.00
24 based on the Court's reasoning in *Gola* for reducing PAGA penalties, Defendant's arguments on the
25 merits of the underlying Labor Code violations, the *Viking River* and pending *Adolf* decision, and
26 considering Defendant's numerous locations, with different policies and practices, the *Wesson* decision
27 on manageability potentially limits Plaintiffs' ability to succeed in any case alleging PAGA penalties
28 because of individual issues that would arise between different locations, departments, shifts, and

1 individuals. Moreover, under PAGA, the court has discretion to reduce any award of civil penalties
2 pursuant to Labor Code section 2699, subd. (e)(2)..

3 **IV. SUMMARY OF THE PROPOSED SETTLEMENT**

4 The Settlement Agreement entered into by the parties is attached as **Exhibit 1** to CJA Decl. and
5 incorporated herein by reference in its entirety. The following is a summary of the principal terms of
6 the Settlement Agreement:

7 **A. THE SETTLEMENT SUM, ATTORNEYS' FEES, LITIGATION COSTS, ADMINISTRATION**
8 **COSTS, PAGA SETTLEMENT AMOUNT, AND REPRESENTATIVE AWARDS**

9 The non-reversionary Gross Settlement Amount ("GSA") of \$4,700,000.00, includes (1) the fees
10 and expenses of the Settlement Administrator, estimated to be up to \$55,000.00; (2) Plaintiffs' service
11 awards totaling \$20,000.00 (\$10,000 each); (3) attorneys' fees of up to one-third of the GSA (i.e.,
12 \$1,566,666.66); (4) litigation expenses and costs incurred of Plaintiffs' Counsel of no more than
13 \$30,000.00; and (5) deductions for the PAGA Settlement Amount in the amount of \$302,833.34—
14 representing 10% of the Net Settlement Amount (\$227,125.00 of which to be paid to the LWDA and
15 \$75,708.34 to be paid pro rata to the PAGA Employees). *See*, S.A., ¶3.3.

16 **B. NET FUNDS AVAILABLE TO CLASS PARTICIPANTS**

17 After all Court-approved deductions from the non-reversionary GSA, it is estimated that
18 \$3,028,333.34 (the "Net Settlement Amount") will be distributed on a "checks cashed" basis to the Class
19 Members as follows:

20 Individual Class Payment = individual Class Member's total Pay Periods during the Class
21 Period ÷ all Class Members' total Pay Periods during the Class Period × Class Fund
22 Settlement Amount.

23 In addition, to determine each PAGA Employee's share of the PAGA Fund (equal to exactly 25% of the
24 PAGA Settlement Amount) the Settlement Administrator will use the following formula:

25 Individual PAGA Payment = individual PAGA Employee's total Pay Periods during the
26 PAGA Period ÷ all PAGA Employees' total Pay Periods during the PAGA Period × PAGA
27 Fund.

28 S.A., ¶4.3. If the settlement is finally approved the average individual class settlement payment per Class

Member will be 288.66¹⁰ on a net basis and \$448¹¹ per Class Member on a gross basis. CJA Decl., ¶46. The amount obtained per Class Member compares favorably to other class action settlements where the primary claim resolved was a challenge to employers' on-premises rest period policies, including the following cases:

- a. *El Pollo Loco Wage and Hour Cases*, Case No. JCCP 4957 (Orange County Superior Court) – \$16 million class action settlement for 31,667 Class Members (between the two consolidated classes in the global settlement) where the average gross net settlement payment per class member was \$505;
- b. *Westbrook v. Winco Holdings, Inc.*, Riverside County Superior Court, Case No. RIC1710168, final approval granted January 17, 2019 by the Honorable Raquel A. Marquez – \$3 million settlement for 13,382 Class Members where the average gross payment was \$137.39¹²; and
- c. *Liggins v. ESA Management, LLC*, Case No. 30-2018-01005614-CU-OE-CXC (Orange County Superior Court) - \$4.45 million settlement for 5,473 Class Members where the average gross net settlement payment per class member was \$500.94.

Class Members will be provided with notice of the Settlement, its terms, their individual settlement amount, and their right to opt out, object, appear at the fairness hearing or challenge their number of pay periods worked as set out in the Class Notice, S.A. at ¶5.4.2.

Class Participants shall have 180 days to cash their checks. Any funds associated will be sent by the Settlement Administrator to the State Controller's Unclaimed Property Fund in the name of the individual who did not cash his or her check. *See*, S.A. at ¶5.10.

All Individual Settlement Payments will be allocated as follows: (i) twenty percent (20%) of the portion of each Class Member's Individual Settlement Payment derived from the Net Settlement Amount will be allocated as wages for which IRS Forms W-2 will be issued and all applicable

¹⁰ \$3,028,333.34 Net Settlement Amount / 10,491 Class Members = \$288.66.

¹¹ \$4,700,000 Gross Settlement Amount / 10,491 Class Members = \$448.

¹² Notably, in *Winco*, all Class Members signed arbitration agreements.

withholdings shall be made; and (ii) eighty percent (80%) of the portion of each Class Member's Individual Settlement Payment derived from the Net Settlement Amount will be allocated as non-wages, for which IRS Forms 1099-MISC will be issued. The portion of all Individual Settlement Payments derived from the PAGA Settlement Amount will be allocated as penalties, for which IRS Forms 1099-MISC will be issued. *Id.*, ¶5.11.

C. RELEASE

In exchange for the Gross Settlement Amount, Class Members will release the Released Parties from, respectively, the Released Class Claims and Released PAGA Claim.

The "Released Parties" are:

Defendant F21 OpCo, LLC and each of its respective former and present parents, affiliates, divisions and subsidiaries, acquired companies, and each of their respective present and former directors, officers, shareholders, agents, representatives, employees, partners, owners, attorneys, insurers, predecessors, successors, assigns, subsidiaries, affiliated companies and entities, if any, and any other individual or entity which could be liable for any of the Released Class Claims and/or Released PAGA Claims.

S.A., ¶2.41.

The "Released Class Claims" are:

All claims for wages, statutory and civil penalties, damages and liquidated damages, interest, restitution, injunctive relief, fees and costs under California law that: were alleged in the complaints in the Actions (including the Consolidated Amended Complaint) or the PAGA Notices; or could have been alleged based on the facts alleged in any of the complaints in the Actions (including the Consolidated Amended Complaint) or the PAGA Notices, including (without limitation): claims for failure to pay for all hours worked, including overtime and minimum wage; failure to provide meal periods; failure to pay one hour of premium pay when lawful meal periods were not provided; failure to provide rest periods; failure to pay one hour of premium pay when lawful rest periods were not provided; failure to maintain accurate records of hours worked; failure to timely pay all wages at termination; failure to furnish accurate itemized wage statements; failure to pay all earned wages twice per month; failure to reimburse necessary expenses; Labor Code sections 201, 202, 203, 204, 210, 216, 218.5, 218.6, 221-224, 225.5, 226, 226.3, 226.7, 227.3, 510, 512, 516, 558, 1174, 1174.5, 1194, 1194.2, 1195, 1197, 1197.1, 1198, 1199, 2800, 2802; Business and Professions Code sections 17200-17208; all claims under the applicable IWC Wage Orders based on the preceding claims; all claims under the Code of Civil Procedure section 1021.5 as related to the claims specified forth herein; and all claims for interest, costs, and attorneys' fees as related to the claims specified herein. This release shall extend to all such Released Class Claims that accrued at any time during the Class Period. Expressly excluded from the Released Class Claims are claims for wages in Workers' Compensation and Unemployment Insurance benefits cases, and claims for benefits under the Employee Retirement Income Security Act of 1974 (ERISA).

1 S.A., ¶2.39.

2 The “Released PAGA Claims” are:

3 All claims for civil penalties under the California Labor Code Private Attorneys
4 General Act of 2004, Labor Code Sections 2698, *et seq.*, based on the Labor Code
5 violations that: were alleged in the complaints in the Actions (including the
6 Consolidated Amended Complaint) or the PAGA Notices; or could have been
7 alleged based on the facts alleged in any of the complaints in the Actions
8 (including the Consolidated Amended Complaint) or the PAGA Notices,
9 including (without limitation): claims for failure to pay for all hours worked,
10 including overtime and minimum wage; failure to provide meal periods; failure to
11 pay one hour of premium pay when lawful meal periods were not provided; failure
12 to provide rest periods; failure to pay one hour of premium pay when lawful rest
13 periods were not provided; failure to maintain accurate records of hours worked;
14 failure to timely pay all wages at termination; failure to furnish accurate itemized
15 wage statements; failure to pay all earned wages twice per month; failure to
reimburse necessary expenses; Labor Code sections 200, 201, 202, 203, 204, 210,
218.5, 218.6, 225.5, 226, 226.3, 226.7, 246, 248.5, 510, 512, 558, 558.1, 1174,
1174.5, 1182.11, 1182.12, 1193.6, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2698,
et seq., 2800, and 2802, and all claims for interest, costs, and attorneys’ fees as
related to the claims specified herein, as well as all facts, theories, or claims for
civil penalties that would be considered administratively exhausted under
applicable law by the PAGA Notices Plaintiffs sent to the LWDA. This release
shall extend to all such Released PAGA Claims that accrued at any time during
the PAGA Period. This release shall be binding on all PAGA Employees
regardless of whether they submit a valid Request for Exclusion (defined below)
from the Class.

16 S.A., ¶2.40.

17 **D. CLASS NOTICE AND ADMINISTRATION**

18 Subject to Court approval, the parties agree to engage CPT Group, Inc. as the Settlement
19 Administrator. S.A. ¶2.44.

20 Within twenty-one (21) calendar days following entry of the Preliminary Approval Order,
21 Defendant will deliver the Class and PAGA Employee Data to the Settlement Administrator, in a secure
22 format to be determined by the Settlement Administrator and Defendant. S.A., ¶5.3. Prior to mailing,
23 the Settlement Administrator will perform a search based on the National Change of Address Database
24 for information to update and correct for any known or identifiable address changes. Any Class Notice
25 returned to the Settlement Administrator as non-deliverable on or before the Response Deadline will be
26 sent promptly via regular First-Class U.S. Mail to the forwarding address affixed thereto and the
27 Settlement Administrator will indicate the date of such re-mailing on the Notice. If no forwarding
28 address is provided, the Settlement Administrator will promptly attempt to determine the correct address

1 using a skip-trace, or other search using the name, address and/or Social Security number of the Class
2 Member involved, and will then perform a single re-mailing. Those Class Members who receive a re-
3 mailed Notice Packet, whether by skip-trace or by request, will have either: (i) an additional fifteen (15)
4 calendar days from the date of the re-mailing of the Notice Packet; or (ii) until the Response Deadline,
5 whichever is later, to submit a Request for Exclusion or an objection to the Settlement. S.A., ¶5.4.1.
6 Within thirty (30) calendar days after receiving the Class and PAGA Employee Data from Defendant,
7 the Settlement Administrator shall mail the Class Notice in the form approved by the Court in its
8 Preliminary Approval Order to all Class Members via regular First-Class U.S. Mail, using the most
9 current, known mailing addresses identified in the Class and PAGA Employee Data. S.A., ¶5.4.

10 All Class Members will be mailed a Notice Packet. Each Notice Packet will provide: (i)
11 information regarding the nature of the Actions; (ii) a summary of the Settlement's principal terms; (iii)
12 the Settlement Class definition; (iv) the total number of Pay Periods each Class Member worked for
13 Defendant during the Class Period based on Defendant's records; (v) each Class Member's estimated
14 Individual Settlement Payment and the formula for calculating Individual Settlement Payments; (vi) the
15 dates which comprise the Class Period; (vii) instructions on how to submit Requests for Exclusion or
16 Notices of Objection; (viii) the Response Deadline by which the Class Member must postmark or fax a
17 Request for Exclusion, or postmark a Notice of Objection to the Settlement; and (ix) the claims to be
18 released. S.A., ¶5.4.2.

19 Notice of final judgment shall also be given to the Class by way of a posting on the settlement
20 administrator's website. Cal. Rules of Court, Rule 3.771(b); CJA Decl., ¶47. The Class Notice provides
21 the web address for class members to access the final judgment. *Id.*

22 **V. PROVISIONAL CERTIFICATION OF THE SETTLEMENT CLASS UNDER THE**
23 **LESSER STANDARD OF SCRUTINY FOR SETTLEMENT-ONLY CERTIFICATION**
24 **IS APPROPRIATE**

25 California Rule of Court 3.769(d) provides that the Court may make an order approving
26 certification of a provisional settlement class at the preliminary approval stage. It is well-established that
27 trial courts should use a "lesser standard of scrutiny" for determining the propriety of certifying a
28 settlement class, as opposed to a litigation class. *Dunk*, 48 Cal. App. 4th at 1807 n.19. The reasons

1 include that no trial is anticipated in a settlement class, so the case management issues inherent in
2 determining if the class should be certified need not be confronted; and the trial court's fairness review
3 of the settlement protects the interests of the non-representative class members. (*Id.*); *see also Officers*
4 *for Justice*, 690 F.2d at 633 ("Th[e] relationship between the certification determination and the merits
5 of the case is further attenuated within the context of the settlement evaluation process
6 [C]ertification issues raised by class action litigation that is resolved short of a decision on the merits
7 must be viewed in a different light."); *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1987)
8 ("Confronted with a request for settlement-only class certification, a district court need not inquire
9 whether the case, if tried, would present intractable management problems . . . for the proposal is that
10 there be no trial."). As discussed below, for the purposes of this settlement only, the parties ask this
11 Court to provisionally certify the Class, as defined above, under Cal. Civ. Proc. Code § 382.

12 **A. NUMEROSITY AND ASCERTAINABILITY.**

13 Numerosity is met if a proposed class is so large that joinder of all members would be
14 impracticable. *See*, Cal. Code Civ. Proc. § 382. A proposed settlement class is ascertainable if the class
15 members can be objectively identified and given notice of the litigation without unreasonable time or
16 expense. *See Medrazo v. Honda of N. Hollywood*, 166 Cal. App. 4th 89, 101 (2008); *see also, Sevidal*
17 *v. Target Corp.*, 189 Cal.App.4th 905 (2010). Here, Defendant has informed Plaintiffs' Counsel that the
18 Class consists of approximately 10,491 non-exempt hourly workers who have been identified through
19 Defendant's records. *See*, CJA Decl., ¶37.

20 **B. WELL-DEFINED COMMUNITY OF INTEREST.**

21 The community of interest requirement has three essential elements: "(1) predominant questions
22 of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class
23 representatives who can adequately represent the class." *Linder v. Thrifty Oil Co.*, 23 Cal.App.4th 429,
24 435 (2000).

25 **1. Commonality**

26 To justify certification, the class proponent must show that questions of law or fact common to
27 the class predominate over the questions affecting the individual members. *See Arenas v. El Torito*
28 *Rests., Inc.*, 183 Cal. App. 4th 723, 732 (2010) (citing *Washington Mut. Bank v. Superior Court*, 24 Cal.

1 4th 906, 913 (2001). While the Parties dispute whether a class would be appropriate if the litigation were
2 to continue, they agree, for the purposes of this settlement only, that arguably the Class may be subject
3 to common minimum wage, overtime, meal period, rest period¹³, wage statement, reimbursement, and
4 final pay policies. CJA Decl., ¶38.

5 2. Typicality

6 Typicality “focuses on whether there exists a relationship between the plaintiff’s claims and the
7 claims alleged on behalf of the class.” *Newberg*, § 3:13. Again, the Parties dispute whether Plaintiffs’
8 claims are typical of the Class for the purposes of any continued litigation of the Action, but agree for
9 the purposes of this settlement only, that Plaintiffs assert claims regarding Defendant’s compensation,
10 break, reimbursement, final pay, and wage statement policies that are at the core of the lawsuit. *See*,
11 CJA Decl. ¶38.

12 3. Adequacy of Representation

13 The proposed class representative must establish that he or she will adequately represent the
14 proposed class. *See, Barboza v. West Coast Digital GSM, Inc.*, 179 Cal. App. 4th 540, 546 (2009).
15 Specifically, Plaintiffs are adequate to represent the class because they were employed by Defendant
16 during the Class Period, experienced the same wage and hour practices as the rest of the class,
17 understood their duties as class representatives, have been willing to undergo the risk of litigation, and
18 have no conflicts of interest with the other Class Members. *See, Benson Decl.*, ¶¶3-6; *Fowler Decl.*,
19 ¶¶3-6.

20 Adequacy may be established by the fact that counsel are experienced practitioners. *See Local*
21 *Joint Exec. Bd. of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.*, 244 F.3d 1152, 1162 (9th
22 Cir. 2001). Here, Plaintiffs allege, and Defendant does not dispute, for purposes of this settlement, that
23 Plaintiffs and the Class are represented by counsel with extensive experience in wage-and-hour
24 litigation, including class actions. CJA Decl. ¶¶39, 51-60; Melmed Decl. ¶¶7-11; Hawkins Decl. ¶¶21-
25 31; Lucio Decl. ¶¶8-15.

26
27
28 ¹³ *See e.g., Cahilig v. IKEA U.S. Retail LLC*, Case No. 2:19-cv-01182-CJS-AS, Dkt. No., 48, at pp. 4-5 (finding commonality
for settlement purposes in class action lawsuit challenge an on-premises rest break policy)

1 4. Superiority

2 Plaintiffs assert that certification of the Class for settlement purposes is superior here because
3 there will be a global resolution of all claims at once, which fosters judicial economy. Class certification
4 is also vastly superior to litigation of numerous individual claims because most of the claims are too
5 small to litigate outside of the class context. CJA Decl. ¶40.

6 **VI. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT, WHICH**
7 **IS FAIR, ADEQUATE, AND REASONABLE**

8 **A. CLASS ACTION SETTLEMENTS ARE SUBJECT TO JUDICIAL REVIEW AND APPROVAL**
9 **UNDER THE CALIFORNIA RULES OF COURT.**

10 The law favors settlements. *Bush v. Superior Court*, 10 Cal. App. 4th 1374, 1382 (1992). This is
11 particularly true in class actions where substantial resources can be conserved by avoiding the time, cost,
12 and rigors of litigation. However, a class action may not be settled without the Court’s approval. Cal.
13 R. Ct. 3.769(a). The California Rules of Court set forth the procedures for court approval of a class
14 action settlement: (1) the Court preliminarily approves the settlement; (2) class members receive notice
15 as directed by the Court; and (3) the Court conducts a final approval hearing to inquire into the fairness
16 of the proposed settlement. See Cal. R. Ct. 3.769(c), (e)-(g).

17 The decision to approve or reject a proposed settlement lies within the Court’s sound discretion.
18 See, *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 234-35 (2001). Nevertheless, in
19 considering a potential settlement for approval, a court is not to turn the approval hearing “into a trial or
20 rehearsal for trial on the merits. . . . [or] to reach any ultimate conclusions on the contested issues of fact
21 and law which underlie the merits of the dispute.” *Officers for Justice v. Civil Serv. Comm’n*, 690 F.2d
22 615, 625 (9th Cir. 1982).

23 The Court’s ultimate duty is to determine whether the settlement is fair, adequate, and
24 reasonable. See *Dunk v. Ford Motor Co.* 9 (“*Dunk*”), 48 Cal. App. 4th 1794, 1801 (1996) (setting forth
25 the “fair, adequate, and reasonable” standard) (citing *Officers for Justice*, 690 F.2d at 625); *Cho v.*
26 *Seagate Tech. Holdings, Inc.*, 177 Cal. App. 4th 734, 742 43 (2009) (a trial court must approve a class
27 action settlement agreement, but only after determining that it is ““fair, adequate and reasonable,””
28 considering factors such as the ““risk, expense, [and] complexity”” of continued litigation) (citations

omitted). The Court enjoys broad discretion in making its fairness determination, and should consider factors including, but not limited to:

[T]he strength of plaintiffs’ case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel . . . and the reaction of the class members to the proposed settlement.

Dunk, 48 Cal. App. 4th at 1801 (setting forth a non-exhaustive list of factors for the court’s consideration at final approval).

The above factors are not exclusive, “. . . and the court is free to engage in a balancing and weighing of factors depending on the circumstances of each case.” *Wershba*, 91 Cal. App. 4th at 245. However, in doing so, the Court must give “[due] regard to what is otherwise a private consensual agreement between the parties.” *Id.* The inquiry must be limited “to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties.” *Id.* (citation and internal quotation marks omitted).

At the preliminary approval stage, the Court need only determine that the settlement falls within the “range of possible judicial approval,” so that notice to the class and the scheduling of the fairness hearing are worthwhile. *See* Herbert B. Newberg & Alba Conte, *Newberg on Class Actions* (“*Newberg*”) § 11:25 (4th ed. 2002). Indeed, the Court should grant preliminary approval if there are no “grounds to doubt its fairness or other obvious deficiencies . . . and [the settlement] appears to fall within the range of possible approval.” *Manual For Complex Litigation* (Third) § 30.41 (1995); *see Dunk*, 48 Cal. App. 4th at 1802. A “presumption of fairness exists where: (1) the settlement is reached through arm’s-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small.” *Dunk*, 48 Cal. App. 4th at 1802 (citing *Newberg* § 11:41). As shown below, the settlement falls well within the range of approval because there are no grounds to doubt its fairness.

B. THE SETTLEMENT IS THE RESULT OF SERIOUS, INFORMED, NON-COLLUSIVE NEGOTIATIONS AND REFLECTS A FAIR COMPROMISE OF CLAIMS AND RISK FACTORS.

The settlement was the product of extensive arm’s length, intensive, negotiations at a full-day mediation with Michael Dickstein serving as the neutral, followed by additional negotiations aided by

1 the neutral culminating in a Mediator’s proposal accepted by the Parties. CJA Decl. ¶41. Though cordial
2 and professional, the settlement negotiation was adversarial and non-collusive in nature. *Id.* The
3 settlement reached is the product of substantial effort by the parties and their counsel. *Id.*

4 Although Plaintiffs and their counsel believed that there was a strong possibility of certifying
5 the claims, they recognized the potential risk, expense, and complexity posed by litigation, such as
6 unfavorable decisions on class certification, summary judgment, at trial and/or on the damages awarded,
7 and/or on an appeal that can take several more years to litigate. *Id.* The resulting Settlement was based
8 on calculations, risk assessment, and non-collusive negotiation; it takes the risks identified above and
9 others into account in arriving at the settlement amount of \$4,700,000.00. *See Id.*

10 **C. THE EXTENT OF THE PRE-LITIGATION DISCOVERY AND INVESTIGATION WAS MORE**
11 **THAN SUFFICIENT TO PERMIT PRELIMINARY APPROVAL OF THE SETTLEMENT.**

12 The parties thoroughly investigated and evaluated the factual and legal strengths and weaknesses
13 of this case before reaching the settlement. *See* CJA Decl., ¶44. As described above, the settlement was
14 reached after extensive discovery, investigation and research, thorough calculations and risk evaluation,
15 substantial exchanges of documents, a thorough evaluation of payroll records, and an exchange of other
16 information required to evaluate the claims at issue. *Id.* The settlement came only after the case was
17 thoroughly investigated by Plaintiffs’ Counsel. *Id.*

18 **D. THE RISKS INHERENT IN CONTINUED LITIGATION ARE GREAT.**

19 To assess the fairness, adequacy, and reasonableness of a class action settlement, the Court also
20 should consider “[t]he strength of plaintiff’s case, the risk, expense, complexity and likely duration of
21 further litigation, [and] the risk of maintaining class action status.” *See Dunk*, 48 Cal. App. 4th at 1801.
22 As described above, Defendant has strong defenses to Plaintiffs’ claims, which create a real possibility
23 that the claims might not be certified and/or might fail on the merits. *See* CJA Decl., ¶¶27-36.
24 Proceeding with litigation would impose a significant risk of no recovery as well as ongoing, substantial
25 additional expenditures of time and resources. *See* CJA Decl., ¶45. If settlement were not achieved,
26 continued litigation of the claims would take a substantial amount time and possibly confer no benefit
27 on Class Members. *Id.* By contrast, the settlement will yield a prompt, certain, and substantial recovery
28 for the Class, which also benefits the parties and the Court. *Id.* In considering these risks, the choice

1 was overwhelmingly in favor of settlement. *Id.*

2 **E. PLAINTIFFS' COUNSEL IS EXPERIENCED IN WAGE-AND-HOUR LITIGATION.**

3 Plaintiffs' Counsel are experienced in wage-and-hour class actions. CJA Decl., ¶¶51-60;
4 Melmed Decl. ¶¶7-11; Hawkins Decl. ¶¶21-31; Lucio Decl. ¶¶8-15. The Parties' counsel agree that this
5 settlement is fair and reasonable in light of the nature of the claims, realistic risk adjusted value of
6 damages, complexities of the case, the state of the law, and uncertainties of class certification and
7 litigation. *See* CJA Decl., ¶43; Melmed Decl. ¶¶15; Hawkins Decl. ¶31; Lucio Decl. ¶15. Given the risks
8 inherent in litigation and the defenses asserted, this settlement is fair, adequate, and reasonable and in
9 the best interests of Class Members, and should be preliminarily approved. *See Id.*

10 Experienced counsel, operating at arm's length, have weighed the strengths and risks of the case,
11 and endorse the proposed settlement. *See Id.* The view of the attorneys actively conducting the litigation
12 is entitled to significant weight in deciding whether to approve the settlement. *Ellis v. Naval Air Rework*
13 *Facility*, 87 F.R.D. 15, 18 (N.D. Cal. 1980), *aff'd*, 661 F.2d 939 (9th Cir. 1981); *Kullar v. Foot Locker*
14 *Retail, Inc.*, 168 Cal. App. 4th 116, 128 (2008) (court must take into account "the experience and view
15 of counsel").

16 **F. THE SETTLEMENT IS WITHIN THE RANGE OF REASONABLENESS**

17 In order to determine whether a class settlement is fair, adequate, and reasonable, courts must be
18 provided with "basic information about the nature and magnitude of the claims in question and the basis
19 for concluding that the consideration being paid for the release of those claims represents a reasonable
20 compromise." *Kullar, supra*, 168 Cal.App.4th at 133. A settlement is not judged against what might
21 have been recovered had a plaintiff prevailed at trial, nor does the settlement have to provide 100% of
22 the damages sought to be fair and reasonable. *Wershba, supra*, 91 Cal.App.4th at pp. 246, 250. Here,
23 the proposed \$4,700,000 settlement is an excellent result and achieves a substantial benefit to Class
24 Members. Plaintiffs' counsel reached the proposed Settlement Agreement only after carefully
25 considering the case's strengths, weaknesses, expense, and complexity. CJA Decl., ¶¶14-36.

26 In light of the claims and defenses, the Parties faced uncertainty that had to be taken into
27 consideration when weighing potential settlement of the claims. Where both sides face significant
28 uncertainty, the attendant risks favor settlement. *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d

1 1011, 1026. Even if “the relief afforded by the proposed settlement is substantially narrower than it
2 would be if the suits were to be successfully litigated,” that is no bar to settlement because “the public
3 interest may indeed be served by a voluntary settlement in which each side gives ground in the interest
4 of avoiding litigation.” *Id.* at p. 250 (quoting *Air Line Stewards, Local 550 v. American Airlines, Inc.*
5 (7th Cir. 1972) 455 F.2d 101, 109.)

6 As set forth in the accompanying declaration of Craig J. Ackermann, Plaintiffs’ counsel has
7 satisfied the so-called “*Kullar* standard” by providing the Court with a detailed evaluation of the
8 settlement value of the claims that were alleged in this lawsuit. See CJA Decl., ¶42.

9 **G. THE CLASS NOTICE PLAN CONFORMS TO ALL APPLICABLE STATUTES AND RULES**

10 The proposed Class Notice should be approved, as it fully informs the Class Members and PAGA
11 Employees of the nature of the lawsuit and each Class Member’s and PAGA Employee’s rights under
12 the terms of the Settlement Agreement and applicable law. The manner in which the Class Notice shall
13 be disseminated, as outlined above, will ensure that all of the Class Members and PAGA Employees
14 will be properly notified of the proposed settlement. The Court has wide discretion in approving the
15 means of providing notice, so long as the class representative “provide(s) meaningful notice in a form
16 that should have a reasonable chance of reaching a substantial percentage of class members.” *Archibald*
17 *v. Cinerama Hotels*, 15 Cal. 3d 853, 861 (1976). Here, the Parties’ notice plan is that notice of the
18 Settlement will be disseminated directly to the Class Members and PAGA Employees by first class mail
19 by the Settlement Administrator within 51 days after the Preliminary Approval date. See S.A. at ¶¶5.3-
20 5.4.

21 The notice plan and the Class Notice satisfy the requirements of Rule of Court 3.766 and afford
22 Class Members and PAGA Employees with all due process protections required by the United States
23 Constitution. Moreover, the contents of the Class Notice are in compliance with Cal. R. Ct. 3.766(d),
24 because the Class Notice includes, without limitation (1) a detailed explanation of the case, including
25 the basic contentions or denials of the parties, and the basic terms of the Settlement; (2) a statement that
26 the Court will exclude the member from the Class if the member so requests by a specified date; (3) a
27 procedure for the Class Member to follow in requesting exclusion from the Class and Released Class
28 Claims, and statement that the individual will still be bound by the release of the Released PAGA

1 Claims, and will receive an Individual PAGA Payment from the PAGA Fund; (4) an explanation that
2 members of the Class can participate in the Settlement by doing nothing; (5) a statement that the
3 judgment, whether favorable or not, will bind all members who do not request exclusion; and (6) a
4 statement that any member who does not request exclusion may, if the member so desires, object to the
5 settlement either in writing or by court appearance. *See* Settlement Agreement, **Exhibit A**. In addition,
6 the manner of giving notice is in compliance with Cal. R. Ct. 3.766(e) because the Class Notice, without
7 limitation (1) is likely to reach a majority of the Class Members and PAGA Employees; (2) contains the
8 type of relief requested by the Class and PAGA Employees; (3) details the Individual Settlement
9 Payments for each Participating Class Member's and PAGA Employee's respective Individual Class
10 Payment and Individual PAGA Payment; (4) is the most cost efficient way of providing notice to a Class
11 of this size; and (5) has no prejudice to the Class because if a Class Member does not receive the Class
12 Notice he/she will still receive his/her Individual Settlement Payment.

13 **H. THE ATTORNEYS' FEES UNDER THE SETTLEMENT AGREEMENT ARE FAIR**

14 Under the terms of the Settlement Agreement, Class Counsel is requesting one third of the Gross
15 Settlement Amount in attorneys' fees. *See*, CJA Decl. ¶48. This amount is estimated to be
16 \$1,566,666.66. *See, Id.*

17 As the California Supreme Court has very reasonably made clear, fees of up to 1/3 (33.33%) of
18 the common fund are a reasonable percentage for a trial court to award as attorney fees in a class action
19 where a common fund was generated as a result of the case. *See Laffitte v. Robert Half Int'l Inc.*, 1 Cal.
20 5th 480, 506 (2016) ("We therefore agree with the Court of Appeal below that 'the percentage of fund
21 method survives in California class action cases, and the trial court did not abuse its discretion in using
22 it, in part, to approve the fee request [of 1/3 of the common fund] in this class action"). The California
23 Supreme Court further clarified that trial courts "have discretion to conduct a lode-star cross check on a
24 percentage fee, as the court did here; they also retain the discretion to forgo a lodestar cross check and
25 use other means to evaluate the reasonableness of a requested percentage fee."). In other class action
26 cases, numerous California courts have approved fees at 1/3 of the common fund. *See e.g., Martin v.*
27 *FedEx Ground Package System, Inc.*, 2008 WL 5478576, at *8 (N.D. Cal. Dec. 31, 2008) (federal district
28 court approved attorneys' fees of 1/3 of common fund); *Stuart v. RadioShack Corp.*, No. C-07-4499

1 EMC, 2010 WL 3155645 (N.D. Cal. Aug. 9, 2010) (approving fee award of 1/3 of the total maximum
2 settlement and noting that the fee award of 1/3 of the total settlement was “well within the range of
3 percentages which courts have upheld as reasonable in other class action lawsuits”); *Wilson v. Kiewit*
4 *Pacific Co.*, No. 09-cv-03630, ECF No. 119 (N.D. Cal. 2012) (approving fee award of 1/3 of the
5 common fund and noting that such award is fair, reasonable and appropriate); *Romero v. Producers*
6 *Dairy Foods, Inc.*, No. 1:05cv0484 DLB, 2007 WL 3492841, at *4 (E.D. Cal. Nov. 14, 2007) (awarding
7 fees of 1/3 of common fund in a wage and hour class action, noting: “[f]ee awards in class actions
8 average around one-third of the recovery.”); Accordingly, preliminary approval of attorneys’ fees of up
9 to 33% of the common fund is reasonable and should be conditionally approved here.

10 If the court finally approves the settlement, the requested attorneys’ fees will be split among the
11 firms constituting Plaintiffs’ Counsel as follows: 50% to James Hawkins, APLC, 25% to Ackermann &
12 Tilajef, P.C., and 25% to Melmed Law Group P.C. The Plaintiffs have given written approval to the
13 aforementioned fee splitting arrangement. CJA Decl. ¶50. Prior to final approval, Plaintiffs’ counsel
14 will submit a fully-briefed fees motion.

15 **I. THE CLASS REPRESENTATIVES’ SERVICE AWARDS ARE FAIR AND APPROPRIATE**

16 The Settlement Agreement provides service awards totaling \$20,000 to the Class Representatives
17 (\$10,000 to each of the Class Representatives). CJA Decl., ¶61. The proposed service awards are
18 reasonable compensation given the time and effort that the named Plaintiffs devoted to this case and the
19 valuable assistance to Class Counsel in this case, including factual background for the mediation and
20 Complaints; speaking with other potential class members about their experiences working for
21 Defendant; reviewing the Complaint; providing documents about Defendant’s compensation plan,
22 policies and practices; participating in phone calls to discuss litigation and settlement strategy; making
23 themselves available for the all-day mediation; and reviewing the settlement documents. *Id.* At no time
24 did the Class Representatives ever have a guarantee of any personal benefit as a result of this case. *Id.*
25 On the contrary, they assumed significant risk in bringing this litigation — namely, had they lost, they
26 would have been ordered to pay Defendant’s costs. *Id.*

27 The service awards also fall within the range of service awards typically awarded to class
28 representatives in similar class actions. See *e.g. Cellphone Termination Fee Cases*, 186 Cal.App.4th

1 1380, 1381 (Cal.App. June 28, 2010) (affirming \$10,000 incentive awards to each plaintiff in class
2 action where average recovery per class member was only \$81); *Bond v. Ferguson Ent., Inc.*, No. 1:09–
3 cv–1662 OWW MJS, 2011 WL 2648879 (E.D. Cal. June 30, 2011) (approving \$11,250 service award
4 to each of the two class representatives in a meal break class action; *Ross v. US Bank Nat’l Ass’n*, No.
5 C 07-02951 SI, 2010 WL 3833922, at *2 (N.D. Cal. Sept. 29, 2010) (approving \$20,000 enhancement
6 award to Class Representative in California wage-and-hour class action settlement); *Vasquez v. Coast*
7 *Valley Roofing, Inc.*, 266 F.R.D. 482, 493 (E.D. Cal. 2010) (approving service awards in the amount of
8 \$12,000 each from a \$300,000 settlement fund in a wage/hour class action); *West v. Circle K Stores,*
9 *Inc.*, NO. CIV. S-04-0438 WBS GGH, 2006 U.S. Dist. LEXIS 76558, at *28 (E.D. Cal. Oct. 19, 2006)
10 (“the court finds plaintiffs’ enhancement payments of \$15,000 each to be reasonable.”); *Glass v. UBS*
11 *Fin. Servs.*, No. C-06-4068 MMC, 2007 U.S. Dist. LEXIS 8476, at *52 (N.D. Cal. Jan. 26, 2007)
12 (finding “requested payment of \$25,000 to each of the named plaintiffs is appropriate” in wage and hour
13 settlement); *Louie v. Kaiser Found. Health Plan, Inc.*, CASE NO. 08cv0795 IEG RBB, 2008 U.S. Dist.
14 LEXIS 78314, at *18 (S.D. Cal. Oct. 6, 2008) (approving “\$25,000 incentive award for each Class
15 Representative” in wage an hour settlement); *Garner v. State Farm Mut. Auto. Ins. Co.*, No. CV 08 1365
16 CW (EMC), 2010 WL 1687832, at *17 n.8 (N.D. Cal. Apr. 22, 2010) (“Numerous courts in the Ninth
17 Circuit and elsewhere have approved incentive awards of \$20,000 or more where, as here, the class
18 representative has demonstrated a strong commitment to the class”).

19 **VII. THE COURT SHOULD APPROVE THE PAGA SETTLEMENT AMOUNT**

20 As set forth above, the Settlement Agreement requires Defendant to pay a Gross Settlement
21 Amount of \$4,700,000.00. S.A. ¶2.20. The PAGA Settlement Amount is the sum equal to exactly ten
22 percent (10%) of the Net Settlement Amount, which is the sum that the Parties have agreed to pay to the
23 LWDA and PAGA Employees in settlement of the PAGA claim (estimated to be approximately
24 \$302,833.33, 75% of which will be paid to the LWDA [\$227,125.00], and 25% of which will be paid to
25 PAGA Employees using a distribution formula based on the total number of pay periods PAGA
26 Employees were employed during the PAGA Period as set forth above [\$75,708.33 for the PAGA
27 Employees]). S.A. ¶¶ 2.32, 4.2, 4.3.2.

28 The PAGA Employees are defined as all individuals who are or were employed as hourly, non-

1 exempt employees by Defendant F21 OpCo, LLC in California at any time during the period from
2 February 29, 2020 to September 16, 2022 (“PAGA Period”). S.A. ¶¶ 2.28, 2.31.

3 Labor Code section 2699 require that the Court “review and approve any settlement of any civil
4 [PAGA] action filed pursuant to this part. The proposed settlement shall be submitted to the agency at
5 the same time that it is submitted to the court.” The proposed PAGA settlement has been submitted to
6 the LWDA. [Decl.] Moreover, for the reasons stated herein, Plaintiffs respectfully request that the Court
7 approve the PAGA Settlement.

8 The Parties believe that the \$302,833.33 amount for the PAGA Settlement Amount is fair and
9 and within the range of reasonable PAGA settlement amounts approved by courts in California, and
10 therefore should be approved. Where “there is no indication that [the amount attributed to civil
11 penalties] was the result of self-interest at the expense of class members,” such amounts are generally
12 considered reasonable. *Hopson v. Hanesbrands Inc.*, No. CV-08-0844 EDL, 2009 WL 928133, at *9
13 (N.D. Cal. Apr. 3, 2009). Courts routinely approve lower PAGA payments, or PAGA payments
14 representing a lower percentage of the overall settlement. *See id.* at *1 (granting motion for preliminary
15 approval of class action settlement of \$408,420.32 where the parties’ settlement did not allocate sums
16 among the categories of non-civil penalties and instead negotiated a good faith amount of .3% or \$1,500
17 for LWDA).

18 Moreover, given Defendant’s significant defenses that could make recovery uncertain, as
19 discussed in greater detail above, including: (1) the impact of the Viking River and *Cf. Adolph v. Uber*
20 *Technologies* decisions with respect to the many PAGA Employees that signed individual arbitration
21 agreements; (2) that Court’s routinely reduce civil penalties under PAGA¹⁴; (3) that the Labor Code Fair
22 Pay and Accountability (which will be on the ballot in 2024) may effectively repeal PAGA; (4) that
23 Plaintiffs’ PAGA claim is unmanageable; and (5) the risks associated with Plaintiffs’ underlying claims
24

25
26 ¹⁴ See e.g., *Kileigh Carrington v. Starbucks Corporation, et al.*, San Diego Superior Court Case No. 37-2014-00018637-
27 CU- OE-CTL (Apr. 3, 2017) (holding that the plaintiff was only entitled to collect the reduced penalty amount of \$5.00 for
28 each pay period in which a meal period violation occurred or 5% of the PAGA penalties at issue); *Fleming v. Covidien, Inc.*
(C.D.Cal. Aug. 12, 2011) 2011 WL 7563047, at *4 (reducing PAGA penalties by 82%)’ see also, Cal. Lab. Code § 2699(e)(2)
(court may award lesser amount than maximum civil penalty in PAGA action if it otherwise would result in award that is
unjust, arbitrary and oppressive, or confiscatory).

1 on the merits, including that PAGA penalties are only accessible as “initial violations” because
2 Defendant has not been formally notified that it is in violation of the law¹⁵. CJA Decl., ¶¶27-36.

3 Moreover, civil penalties recoverable through PAGA are meant to “promote PAGA’s
4 compliance and deterrence goals.”¹⁶ Indeed, the California Supreme Court has observed that “courts
5 refuse to impose civil penalties against a party who acted with a good faith and reasonable belief in the
6 legality of his or her actions.” *Lusardi Constr. Co. v. Aubry*, 1 Cal. 4th 976, 996-97 (1992). Here,
7 Defendant had strong arguments on the merits that there wage and hour policies were compliant. CJA
8 Decl., ¶¶31-36.

9 In order to recover any civil penalties, Plaintiffs would be required at trial to prove each of the
10 underlying Labor Code violations. (*Cardenas v. McLane Foodservice, Inc.*, 2011 U.S. Dist. LEXIS
11 13126, *10 (C.D. Cal. 2011) [“Given the statutory language [of PAGA], a plaintiff cannot recover on
12 behalf of individuals whom the plaintiff has not proven suffered a violation of the Labor Code by the
13 defendant.”].) Here, Plaintiffs would need to prove that the PAGA Members were not provided all wages
14 owed, compliant meal and rest periods, reimbursement for business expenses, and compliant wage
15 statements. This would be very hard to prove given Defendant’s defenses on the merits and the
16 differences at Defendant’s different locations.

17 Given Defendant’s potential defenses to the claimed Labor Code violations at issue, including
18 the significant risks posed by *Viking River*, and the risks and costs of continued litigation, Plaintiffs and
19 their attorneys believe that the PAGA Settlement Amount is fair and reasonable. CJA Decl., ¶¶42-43.
20 Notably, this settlement was negotiated by experienced counsel at arm's length during an all-day, face-
21 to-face settlement negotiation. CJA Decl., ¶10. The LWDA has been provided notice of this motion and
22 the PAGA settlement, and the decision of LWDA to accept the PAGA settlement and not oppose this
23 motion and not to intervene in this litigation should be given considerable weight. This is not a situation
24

25
26
27 ¹⁵ See e.g., *Amaral v. Cintas Corp. No. 2*, 163 Cal. App. 4th 1157 (2007) (holding that \$100 PAGA penalties for “initial
28 violations” are assessed until such time as a defendant has been put on notice that it is violating the law, at which point \$200
penalties for “subsequent violations” apply).

¹⁶ Amicus Curiae Brief Submitted by the State Labor Commissioner, *Price v. Uber Technologies*, June 16, 2017, Case No.
BC544512 (Los Angeles County Superior Court).

1 where the Court needs to be concerned about the rights of absent employees as in a class settlement,
2 since the PAGA portion of the Settlement does not release the individual claims of absent employees
3 other than the Plaintiffs. Moreover, the LWDA is a sophisticated government entity that is capable of
4 asserting, and preserving, its own rights, yet it has not indicated any opposition to the Settlement. If the
5 PAGA Settlement is approved by the Court, the LWDA, who is the real party in interest, will receive
6 \$227,125.00, and the average penalty payment for each PAGA Employee will be approximately \$7.22.
7 CJA Decl., ¶46. Additionally, each PAGA Member will receive a letter that will be included in the
8 mailing of each PAGA Member check and is submitted concurrently to the Court for its review and
9 approval. S.A., Exhibit A. As noted, the PAGA Members here are not waiving any potential underlying
10 Labor Code claims (unless they are also Class Members and choose to participate in the class
11 settlement). Accordingly, since the payment in settlement of the PAGA claim here is fair and reasonable,
12 the Court should approve it.

13 The LWDA was provided with a copy of the settlement documents concurrently with the filing
14 as required by PAGA. CJA Decl., ¶63, Exhibit 3.

15 **VIII. THE COURT SHOULD APPOINT CPT GROUP, INC. AS SETTLEMENT**
16 **ADMINISTRATOR**

17 The parties propose that the Court appoint CPT Group, Inc. to serve as the Settlement
18 Administrator. See CJA Decl. ¶62. CPT is experienced in administering class action settlements, and
19 has estimated its fees for this settlement, not to exceed \$55,000. *Id.* If settlement administration expenses
20 come in under \$55,000, the difference will be added to the Net Settlement Amount and distributed to
21 the Class Participants.

22 **IX. THE COURT SHOULD SCHEDULE A FINAL APPROVAL HEARING**

23 The last step in the approval process is the formal hearing, whereby proponents of the settlement
24 may explain and describe its terms and conditions and offer argument in support of approval, and Class
25 Members or their counsel may be heard in support of or in opposition to the settlement. The parties
26 propose that the Court schedule a hearing for final approval of the settlement, including Plaintiffs'
27 request for attorneys' fees, costs and the service award, at the earliest available date at least 150 days
28 after preliminary approval.

1 **X. CONCLUSION**

2 For all of the foregoing reasons, Plaintiffs respectfully request that the Court grant their motion
3 for preliminary approval of their class action settlement.

4
5 **JAMES HAWKINS APLC**
6 **MELMED LAW GROUP P.C.**
7 **ACKERMANN & TILAJEF, P.C.**

8 Dated: March 10, 2023

By:

9 

James R. Hawkins, Esq.

Christina Lucio, Esq.

Jonathan Melmed, Esq.

Laura Supanich, Esq.

Maria Burciaga, Esq.

Craig J. Ackermann, Esq.

Avi Kreitenberg, Esq.

Attorneys for Plaintiffs and the Putative Class

EXHIBIT 4

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Clerk of the Superior Court
By: H. Chavarin, Deputy

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **FOR THE COUNTY OF SAN DIEGO – CENTRAL DIVISION – HALL OF JUSTICE**

10 GIANA BENSON, and on behalf of all others
11 similarly situated, MONICA FOWLER, an
individual, on behalf of herself and all others
12 similarly situated,

13 Plaintiffs,

14 v.

15
16 F21 OPCO, LLC dba FOREVER 21, a
Delaware Corporation; and DOES 1-10,
17 inclusive,

18 Defendants.

19
20 GIANA BENSON, and on behalf of the
general public as private attorneys general,

21 Plaintiffs,

22 v.

23 F21 OPCO, LLC dba FOREVER 21, a
24 Delaware Corporation; and DOES 1-10,
25 inclusive,

26 Defendants.

Lead Case No.:

37-2021-00024619-CU-OE-CTL

Consolidated with:

Benson v. F21 OPCO, LLC, San Diego County,
37-2021-00037256-CU-OE-CTL

Assigned for All Purposes To:

Judge: Eddie C. Sturgeon

Dept.: C-67

**[PROPOSED] PRELIMINARY APPROVAL
ORDER**

Date: April 21, 2023

Time: 9:00 a.m.

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F21 OPCO, LLC dba FOREVER 21
23
24
25
26
27
28

1 This matter, having come before the Honorable Eddie C. Sturgeon of the Superior Court of the
2 State of California, in and for the County of San Diego, on April 21, 2023 for the motion by Plaintiffs
3 Giana Benson and Monica Fowler ("Plaintiffs") for preliminary approval of a global class and
4 representative action settlement that resolves all claims alleged by Plaintiffs and the Class against
5 Defendant F21 OpCo, LLC dba Forever 21 ("Defendant") (collectively referred to herein as "Parties").
6 The Court, having considered the briefs, argument of counsel and all matters presented to the Court,
7 and good cause appearing, hereby GRANTS Plaintiffs' Motion for Preliminary Approval of Class
8 Action and PAGA Settlement.

9 IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

10 1. The Court preliminarily approves of the class action and representative action
11 settlement upon the terms and conditions set forth in the Class Action and PAGA Settlement
12 Agreement ("Agreement"), which is attached as Exhibit 1 to the Declaration of Craig J. Ackermann
13 in Support of Plaintiffs' Motion for Preliminary Approval of Class and Representative Action
14 Settlement. This is based on the Court's determination that the Settlement set forth in the Agreement
15 is within the range of possible final approval, pursuant to the provisions of Section 382 of the
16 California Code of Civil Procedure and California Rules of Court, rule 3.769.

17 2. For purposes of this Preliminary Approval Order ("Order"), the Court hereby adopts
18 and incorporates all definitions set forth in the Agreement.

19 3. The Court preliminarily finds that the Settlement is the product of informed, non-
20 collusive negotiations conducted at arms' length by the Parties. The Court has considered the alleged
21 merit of Plaintiffs' claims, Defendant's potential liability, the allocation of Settlement proceeds among
22 Class Members and PAGA Employees, and the fact that the Settlement represents a compromise of
23 the Parties' respective positions. The Court therefore preliminarily finds that the Settlement is fair,
24 adequate, and reasonable when balanced against the probable outcome of further litigation and the
25 significant risks related to certification, liability, and damages issues, subject to further consideration
26 at the Final Fairness and Approval Hearing described below.

27 4. Solely for the purpose of settlement in accordance with the Agreement, the Court finds
28 that the requirements for certification under section 382 of the California Code of Civil Procedure and

1 other laws applicable to preliminary settlement approval of class actions have been satisfied, and the
2 Court hereby certifies, for settlement purposes only, the following Class (the "Class"): all individuals
3 who are or were employed as hourly, non-exempt employees by Defendant F21 OpCo, LLC in
4 California at any time during the Class Period. The Class Period shall be the period from February
5 29, 2020 to September 16, 2022.

6 5. Pursuant to the Agreement, and for settlement purposes only, the Court further finds as
7 to the Class that:

- 8 a. The Class is so numerous that joinder of all members is impracticable;
- 9 b. There are questions of law or fact common to the Class which predominate over
10 the questions affecting only individual members;
- 11 c. The claims of the Class Representatives are typical of the claims of the Class
12 that the Class Representatives seek to certify;
- 13 d. The Class Representatives, Plaintiffs Giana Benson and Monica Fowler, will
14 fairly and adequately protect the interests of the Class and are, therefore,
15 appointed as the representatives of the Class;
- 16 e. Class Counsel, James R. Hawkins and Christina M. Lucio of James Hawkins
17 APLC; Jonathan Melmed and Laura Supanich of Melmed Law Group; and
18 Craig Ackermann and Avi Kreitenberg of Ackermann & Tilajef, P.C., will
19 fairly and adequately protect the interests of the Class and are qualified to
20 represent the Class and are, therefore, appointed as attorneys for the Class for
21 purposes of settlement only; and
- 22 f. Certification of the Class is superior to other available methods for fair and
23 efficient adjudication of the controversy.

24 6. PAGA Employees is defined as all individuals who are or were employed as hourly,
25 non-exempt employees by Defendant F21 OpCo, LLC in California at any time during the PAGA
26 Period. The PAGA Period shall be the period from February 29, 2020, to September 16, 2022.

27 7. CPT Group, Inc. is hereby appointed to serve as the Settlement Administrator. The
28 Settlement Administrator will administer the applicable provisions of the Settlement Agreement, will

1 include, *inter alia*: (i) printing and mailing and re-mailing (if necessary) of Notices of Class Action
2 and PAGA Settlement to Class Members and PAGA Employees and receiving Requests for Exclusion
3 and Objections from Class Members; (ii) preparing and submitting to Settlement Class Members,
4 PAGA Employees, and government entities all appropriate tax filings and forms; (iii) computing the
5 amount of and distributing Individual Settlement Payments, Class Representative Service Payments,
6 and Class Counsel Attorneys' Fees, Costs and Expenses; (iv) processing and validating disputes
7 concerning the calculation of Individual Settlement Payments; (v) establishing a Qualified Settlement
8 Fund, as defined by the Internal Revenue Code; and (vi) calculating and remitting to the appropriate
9 government agencies all employer and employee payroll tax obligations arising from the Settlement
10 and preparing and submitting filings required by law in connection with the payments required by the
11 Settlement; (vii) performing a National Change of Address (NCOA) search and a skip trace in order
12 to obtain the best possible address for Class Members and PAGA Employees; and (viii) providing
13 necessary reports and declarations, as requested by the Parties.

14 8. Pursuant to the terms of the Agreement, Defendant is hereby directed to prepare and
15 provide the Class and PAGA Data to the Settlement Administrator within twenty-one (21) days of
16 entry of this Order.

17 9. Pursuant to the terms of the Settlement Agreement, CPT Group, Inc. is hereby directed
18 to mail the Notice of Class Action and PAGA Settlement ("Notice") to all Class Members and PAGA
19 Employees via first-class regular U.S. Mail within fifty-one (51) days of entry of this Order.

20 10. The Court approves as to form and content the Notice attached as Exhibit A to the
21 Agreement, and attached hereto as **Exhibit 1**. The Court finds that the Notice appears to fully and
22 accurately inform the Class and PAGA Employees of all material elements of the proposed Settlement,
23 of the Class Members' right to be excluded from the Class by submitting a written Opt Out request,
24 and of each Class Member's right and opportunity to object to the Settlement. The Court further finds
25 that the distribution of the Notice in the manner and form set forth in the Agreement and this Order
26 meets the requirements of due process, is the best notice practicable under the circumstances, and
27 constitutes valid, due and sufficient notice to all members of the Class and PAGA Employees entitled
28 thereto. The Court orders the mailing of the Notice by first class mail, pursuant to the terms set forth

1 in the Agreement.

2 11. The Court hereby preliminarily approves the proposed procedure for exclusion from
3 the Settlement. Any Class Member may request to be excluded from the Class and the release of
4 Released Class Claims by submitting a written Request for Exclusion in accordance with Paragraphs
5 2.4.2 and 5.6 in the Agreement. Any such Request for Exclusion will be timely only if postmarked,
6 emailed, or faxed to the Settlement Administrator within the Response Deadline. Any Class Member,
7 who submits a completed, signed and timely written Request for Exclusion shall no longer be a
8 member of the Class, shall be barred from participating in this Settlement, shall be barred from
9 objecting to this Settlement, and shall receive no benefit from this Settlement, except that Class
10 Members who are PAGA Employees will still receive their Individual PAGA Payments and will
11 release the Released PAGA Claims. Class Members shall be bound by this Agreement and shall
12 release all Released Class Claims unless they submit a completed, signed, and timely Request for
13 Exclusion. If they submit a valid Request for Exclusion, they will still be bound by the release of the
14 Released PAGA Claims.

15 12. Any Class Member wishing to object to this Settlement may submit a written objection
16 or appear at the Final Fairness and Approval Hearing in person or through counsel of their choice
17 following the procedure set forth in the Notice and prescribed by Paragraph 5.7 of the Agreement.
18 Any Class Member who wishes to submit a written Objection to the Agreement must submit their
19 objection on or before the Response Deadline.

20 13. Any Class Member who has submitted such written objections may, but is not required
21 to, appear in person, or through counsel, at the Final Fairness and Approval Hearing and object to the
22 approval of the Settlement or the award of attorneys' fees and reimbursement of expenses to counsel.
23 Any written objections submitted by Class Members shall be turned over to Class Counsel, who shall
24 then file the objections and any response thereto with the Court. The Parties may file any response to
25 the objections submitted by objecting Class Members, if any,
26 no later than three (3) Court days prior to the Final Fairness and Approval Hearing, or on another date
27 set by the Court. Any Class Member who has not opted out may appear at the final approval hearing
28 and may object or express the Class Member's views regarding the Settlement, and may present

1 evidence and file briefs or other papers that may be proper and relevant to the issues to be heard and
2 determined by the Court as provided in the Notice.

3 14. Any Class Member who does not make their objection(s) in the manner so provided
4 herein and in the Notice shall be deemed to have waived such objection(s) and shall forever be
5 foreclosed from making any objection(s) to the fairness or adequacy of the proposed Settlement as
6 incorporated in the Agreement and the award of attorneys' fees and reimbursement of expenses to
7 counsel and the right to appeal any orders that are entered relating thereto, unless otherwise ordered
8 by the Court.

9 15. The Final Fairness and Approval Hearing shall be held on Oct 6, 2023
10 at 9 a.m./~~p.m.~~, before the Honorable Eddie C. Sturgeon, in Courtroom 67 in the Superior Court
11 of California in San Diego, located at 330 W. Broadway, San Diego, California 92101. At that time,
12 the Court shall determine: (a) whether the proposed settlement of the Action on the terms and
13 conditions provided for in the Settlement Agreement is fair, just, reasonable and adequate and should
14 be finally approved; (b) whether judgment as provided in the Settlement Agreement should be entered
15 herein; (c) whether to approve Class Counsel's application for an award of attorneys' fees and costs,
16 and any Class Representative Service Payments to Plaintiffs; and (d) to hear any timely objections to
17 the Settlement.

18 16. The Motion for Final Approval, and any motion or application for an award of
19 attorney's fees, costs, and any Class Representative Service Payments to Plaintiffs must be filed and
20 served by 57-26-23.

21 17. The Court reserves the right to adjourn the date of the Final Fairness and Approval
22 Hearing and any adjournment thereof without further notice to the Class Members and PAGA
23 Employees, and retains jurisdiction to consider all further applications arising out of or connected with
24 the Settlement. The Court may approve the Settlement, with such modifications as may be agreed to
25 by the Parties to the Settlement, if appropriate, without further notice to the Class or PAGA
26 Employees.

27 18. Pending further order of this Court, all proceedings in this matter except those
28 contemplated herein and in the Agreement are stayed and suspended until further order of this Court.

1 19. The Court recognizes that certification under this Order is for settlement purposes
2 only, and shall not constitute or be construed as a finding by the Court, or an admission on the part of
3 Defendant or any of the Released Parties, of any fault or omission with respect to any claim or that
4 this action is appropriate for class or representative treatment for litigation purposes. Entry of this
5 Order is without prejudice to the rights of Defendant or any of the Released Parties to oppose class
6 certification in this action should the proposed Settlement not be granted final approval.

7 20. If for any reason the Court does not execute and file an Final Order and Judgment, or
8 if the Effective Date of the settlement, as defined in the Agreement, does not occur for any reason
9 whatsoever, the Agreement and the proposed settlement that is the subject of this Order, and all
10 evidence and proceedings had in connections therewith, shall be without prejudice to the *status quo*
11 *ante* rights of the Parties to the litigation, as more specifically set forth in the Agreement.

12
13 **IT IS SO ORDERED.**

14
15 DATED: April 21 2023



HON. EDDIE C. STURGEON
JUDGE OF THE SUPERIOR COURT

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On April 25, 2023, I served the following document(s) described as:

on the interested parties in this action.

PLEASE SEE ATTACHED SERVICE LIST

Executed on April 25, 2023, at Irvine, California

PROOF OF SERVICE

SERVICE LIST

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EXHIBIT 5

Exhibit 1



2011 NLJ Billing Survey

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Firm Name	Principal Location	Average FTE Attorneys	Firmwide Billing Rate Average	Firmwide Billing Rate Med	Partner Billing Rate High	Partner Billing Rate Low	Partner Billing Rate Average	Partner Billing Rate Med	Assoc. Billing Rate High	Assoc. Billing Rate Low	Assoc. Billing Rate Average	Assoc. Billing Rate Med
Andrews Kurth	Houston	355										
Baker, Donelson, Bearman, Caldwell & Berkowitz	Memphis	527	\$311	\$310	\$595	\$250	\$357	\$345	\$315	\$160	\$228	\$225
BestBest & Krieger	Riverside, CA	195	\$358	\$360	\$575	\$275	\$417	\$420	\$375	\$205	\$265	\$240
Bingham McCutchen	Boston	901										
Briggs and Morgan	Minneapolis	185			\$625	\$325			\$305	\$230		
Broad and Cassel	Orlando	160	\$377	\$350	\$575	\$295	\$435	\$395	\$350	\$180	\$265	\$265
Bryan Cave	St. Louis	908	\$475	\$460	\$795	\$375	\$565	\$553	\$540	\$200	\$356	\$360
Butzel Long	Detroit	176			\$700	\$325	\$440		\$425	\$225	\$274	
Cadwalader, Wickersham & Taft	New York	481										
Carlton Fields	Tampa	270	\$397	\$400	\$815	\$320	\$470	\$470	\$380	\$195	\$262	\$265
Cozen O'Connor	Philadelphia	504	\$439	\$410	\$900	\$305	\$510	\$490	\$550	\$225	\$330	\$330
Day Pitney	Parsippany	324	\$447	\$450	\$960	\$380	\$537	\$525	\$470	\$235	\$317	\$315
Dickinson Wright	Detroit	229			\$600	\$325			\$320	\$200		
Dickstein Shapiro	Washington	335	\$560	\$550	\$1,000	\$540	\$680	\$670	\$545	\$225	\$435	\$465
Dinsmore &	Cincinnati		\$308	\$295	\$630	\$150	\$373	\$370	\$310	\$130	\$217	\$220



2011 NLJ Billing Survey

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Firm Name	Principal Location	Average FTE Attorneys	Firmwide Billing Rate Average	Firmwide Billing Rate Med	Partner Billing Rate High	Partner Billing Rate Low	Partner Billing Rate Average	Partner Billing Rate Med	Assoc. Billing Rate High	Assoc. Billing Rate Low	Assoc. Billing Rate Average	Assoc. Billing Rate Med
Shohl		407										
DLA Piper	New York	3,348	\$585	\$615	\$1,120	\$530	\$747	\$730	\$730	\$320	\$508	\$510
Dorsey & Whitney	Minneapolis	567	\$426	\$405	\$810	\$295	\$526	\$525	\$465	\$190	\$297	\$275
Duane Morris	Philadelphia	629	\$503	\$500	\$875	\$375	\$575	\$570	\$530	\$225	\$365	\$365
Dykema Gossett	Detroit	333	\$406	\$400	\$665	\$310	\$482	\$485	\$395	\$260	\$309	\$305
Epstein Becker & Green	New York	300	\$428	\$425	\$850	\$350	\$519	\$500	\$550	\$195	\$341	\$325
Fitzpatrick, Cella, Harper & Scinto	New York	168			\$730	\$460		\$525	\$440	\$275		\$325
Ford & Harrison	Atlanta	173										
Fox Rothschild	Philadelphia	450	\$413	\$420	\$725	\$325	\$486	\$483	\$455	\$190	\$297	\$295
Frost Brown Todd	Cincinnati	401	\$296	\$295	\$515	\$205	\$340	\$340	\$265	\$150	\$200	\$200
Gardere Wynne Sewell	Dallas	265	\$435	\$450	\$815	\$380	\$550	\$550	\$500	\$225	\$325	\$320
Gibbons	Newark	199	\$505	\$450	\$725	\$400	\$563	\$505	\$475	\$285	\$380	\$320
Harris Beach	Rochester	176			\$390	\$275			\$260	\$160		
Hiscock & Barclay	Syracuse	174	\$269	\$240	\$750	\$195	\$304	\$265	\$350	\$150	\$207	\$195
Hodgson Russ	Buffalo	199			\$685	\$240	\$378	\$360	\$420	\$180	\$234	\$225
Holland & Knight	Washington	910	\$445	\$455	\$895	\$300	\$530	\$520	\$495	\$175	\$295	\$290



2011 NLJ Billing Survey

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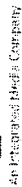
Firm Name	Principal Location	Average FTE Attorneys	Firmwide Billing Rate Average	Firmwide Billing Rate Med	Partner Billing Rate High	Partner Billing Rate Low	Partner Billing Rate Average	Partner Billing Rate Med	Assoc. Billing Rate High	Assoc. Billing Rate Low	Assoc. Billing Rate Average	Assoc. Billing Rate Med
Hughes Hubbard & Reed	New York	300	\$633	\$615	\$990	\$625	\$828	\$800	\$695	\$270	\$536	\$520
Hunton & Williams	Richmond	855										
Husch Blackwell	St. Louis	551	\$341	\$340	\$850	\$225	\$395	\$390	\$425	\$175	\$226	\$210
Jackson Kelly	Charleston, WV	170	\$275	\$275	\$505	\$255	\$319	\$325	\$260	\$155	\$208	\$205
Jackson Lewis	White Plains	614										
Kaye Scholer	New York	425	\$661	\$665	\$1,080	\$685	\$831	\$835	\$705	\$310	\$519	\$525
Kelley Dyer & Warren	New York	321	\$474	\$400	\$925	\$480	\$634	\$645	\$595	\$275	\$425	\$420
Knobbe Martens Olson & Bear	Irvine	268	\$439	\$415	\$735	\$415	\$525	\$500	\$495	\$295	\$346	\$345
Lane Powell	Seattle	180	\$405	\$425	\$645	\$340	\$460	\$450	\$360	\$225	\$295	\$285
Latham & Watkins	New York	1,931										
Lathrop & Gage	Kansas City, MO	281	\$337	\$340	\$735	\$275	\$390	\$390	\$410	\$205	\$246	\$245
Lewis, Rice & Fingersh	St. Louis	162	\$275		\$470	\$270			\$320	\$150		
Lowenstein Sandler	Roseland, NJ	249	\$478	\$480	\$895	\$435	\$613	\$595	\$660	\$250	\$400	\$390
Manatt, Phelps & Phillips	Los Angeles	322	\$602	\$620	\$850	\$540	\$676	\$670	\$550	\$215	\$464	\$500
McElroy, Deutsch,	Morristown, NJ	272	\$245	\$275	\$575	\$295	\$350	\$375	\$325	\$185	\$250	\$235



2011 NLJ Billing Survey

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Firm Name	Principal Location	Average FTE Attorneys	Firmwide Billing Rate Average	Firmwide Billing Rate Med	Partner Billing Rate High	Partner Billing Rate Low	Partner Billing Rate Average	Partner Billing Rate Med	Assoc. Billing Rate High	Assoc. Billing Rate Low	Assoc. Billing Rate Average	Assoc. Billing Rate Med
Mulvaney & Carpenter												
McKenna Long & Aldridge	Atlanta	425	\$472	\$455	\$800	\$405	\$562	\$540	\$510	\$215	\$374	\$375
Michael Best & Friedrich	Milwaukee	208	\$321	\$310	\$650	\$245	\$413		\$310	\$205	\$241	
Miller & Martin	Chattanooga	184	\$313	\$325	\$610	\$240	\$369	\$375	\$275	\$185	\$215	\$215
Nelson Mullins Riley & Scarborough	Columbia, SC	399	\$318	\$310	\$850	\$220	\$412	\$400	\$350	\$170	\$255	\$250
Nexsen Pruet	Columbia, SC	178			\$550	\$235			\$265	\$170		
Orrick, Herrington & Sutcliffe	San Francisco	1,022										
Patton Boggs	Washington	512	\$546	\$540	\$990	\$410	\$659	\$645	\$570	\$240	\$410	\$415
Pepper Hamilton	Philadelphia	459			\$825	\$380	\$557		\$460	\$235	\$344	
Perkins Cole	Seattle	693	\$462		\$875	\$285	\$550	\$545	\$590	\$215	\$368	
Phelps Dunbar	New Orleans	280	\$236	\$225	\$465	\$190	\$281	\$275	\$245	\$150	\$189	\$190
Poliselli Shughart	Kansas City, MO	466			\$630	\$275			\$335	\$205		
Reed Smith	Pittsburgh	1,449										
Saul Ewing	Philadelphia	220	\$431	\$450	\$750	\$350	\$502	\$490	\$495	\$245	\$326	\$300
Schulte Roth	New York		\$615	\$630	\$935	\$770	\$846	\$840	\$675	\$285	\$608	\$580



2011 NLJ Billing Survey

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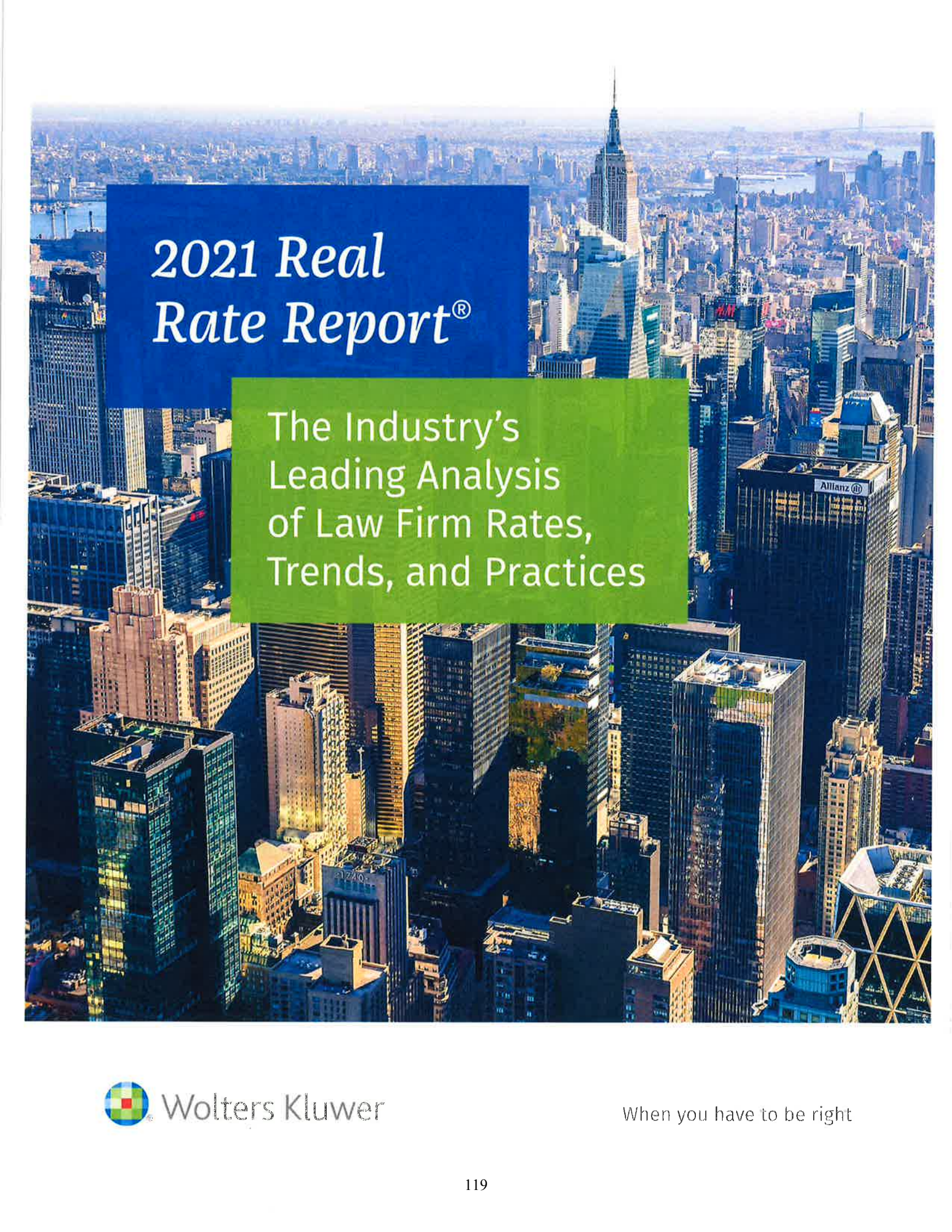


2011 NLJ Billing Survey

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Firm Name	Principal Location	Average FTE Attorneys	Firmwide Billing Rate Average	Firmwide Billing Rate Med	Partner Billing Rate High	Partner Billing Rate Low	Partner Billing Rate Average	Partner Billing Rate Med	Assoc. Billing Rate High	Assoc. Billing Rate Low	Assoc. Billing Rate Average	Assoc. Billing Rate Med
Winstead	Dallas	265	\$406		\$680	\$365	\$477		\$410	\$215	\$301	
Winston & Strawn	Chicago	868	\$557	\$550	\$1,130	\$580	\$713	\$700	\$600	\$350	\$434	\$413
Wyatt, Tarrant & Combs	Louisville	181	\$312	\$350	\$500	\$240	\$325	\$375	\$275	\$180	\$220	\$235

EXHIBIT 6



2021 Real Rate Report®

The Industry's
Leading Analysis
of Law Firm Rates,
Trends, and Practices



Wolters Kluwer

When you have to be right

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A Letter to Our Readers

Welcome to the Wolters Kluwer's ELM Solutions Real Rate Report®, the industry's leading data-driven benchmark report for lawyer rates.

Our Real Rate Report has been a relied upon data analytics resource to the legal industry since its inception in 2010 and continues to evolve. The Real Rate Report is powered by Wolters Kluwer's ELM Solutions LegalVIEW® data warehouse, the world's largest source of legal performance benchmark data, which has grown to include over \$150 billion in anonymized legal data.

This year, we launched our LegalVIEW Insights Report series, which explores the emerging trends behind the overall legal spend volatility seen in corporate legal departments. The insights reports coupled with the Real Rate Report are great tools to drive actionable decisions.

The legal services industry relies on internal analytics and the use of external data resources, such as the LegalVIEW® data warehouse, to support legal management strategies. The depth and details of the data in the Real Rate Report enable you to better benchmark and make more informed investment and resourcing decisions for your organization.

As with past Real Rate Reports, all of the data analyzed are from corporations' and law firms' e-billing and time management solutions. We have included lawyer and paralegal rate data filtered by specific practice and sub-practice areas, metropolitan areas, and types of matters to give legal departments and law firms greater ability to pinpoint areas of opportunity. We strive to make the Real Rate Report a valuable and actionable reference tool for legal departments and law firms.

As always, we welcome your comments and suggestions on what information would make this publication more valuable to you. We thank our data contributors for participating in this program. And we thank you for making Wolters Kluwer's ELM Solutions your trusted partner for legal industry domain expertise, data, and analytics and look forward to continuing to provide market-leading, expert solutions that deliver the best business outcomes for collaboration among legal departments and law firms.

Sincerely,



Barry Ader

Vice President, Product Management and Marketing
Wolters Kluwer's ELM Solutions

Report Use Considerations

2021 Real Rate Report

- Examines law firm rates over time
- Identifies rates by location, experience, firm size, areas of expertise, industry, and timekeeper role (i.e., partner, associate, and paralegal)
- Itemizes variables that drive rates up or down

All the analyses included in the report derive from the actual rates charged by law firm professionals as recorded on invoices submitted and approved for payment.

Examining real, approved rate information, along with the ranges of those rates and their changes over time, highlights the role these variables play in driving aggregate legal cost and income. The analyses can energize questions for both corporate clients and law firm principals.

Clients might ask whether they are paying the right amount for different types of legal services, while law firm principals might ask whether they are charging the right amount for legal services and whether to modify their pricing approach.

Some key factors¹ that drive rates²:

Attorney location - Lawyers in urban and major metropolitan areas tend to charge more when compared with lawyers in rural areas or small towns.

Litigation complexity - The cost of representation will be higher if the case is particularly complex or time-consuming; for example, if there are a large number of documents to review, many witnesses to depose, and numerous procedural steps, the case is likely to cost more (regardless of other factors like the lawyer's level of experience).

Years of experience and reputation - A more experienced, higher-profile lawyer is often going to charge more, but absorbing this higher cost at the outset may make more sense than hiring a less expensive lawyer who will likely take time and billable hours to come up to speed on unfamiliar legal and procedural issues.

Overhead - The costs associated with the firm's support network (paralegals, clerks, and assistants), document preparation, consultants, research, and other expenses.

Firm size - The rates can increase if the firm is large and has various timekeeper roles at the firm. For example, the cost to work with an associate or partner at a larger firm will be higher compared to a firm that has one to two associates and a paralegal.

Rates increase in geographic areas with growing population

Additional analysis was performed to examine the impact of geographic location on law firm hourly rates. This report, like previous ones, shows that large, cosmopolitan legal services markets like New York City, San Francisco, and Los Angeles are associated with higher hourly rates. In addition, our analysis reveals a significant spike in hourly rates in areas of the country

¹ David Goguen, J.D., University of San Francisco School of Law (2020) Guide to Legal Services Billing Retrieved from: <https://www.lawyers.com/legal-info/research/guide-to-legal-services-billing-rates.html>

² Source: 2018 RRR. Factor order validated in multiple analyses since 2010

Report Use Considerations

that are currently experiencing high population growth. Significant average rate increases occurred from 2020 to 2021 in many areas, but especially Fresno, California (~15% average rate increase), Greenville, SC (~18%), Miami, FL (~9%), Nashville, TN (~11%), Oklahoma City (~13%), Phoenix, AZ (~10%), and Seattle, WA (~11%) -- all of which have experienced much higher than average population growth in recent years.

The correlation between hourly rates and population growth makes sense. When people and businesses move into an area, it creates a spike in demand for all sorts of goods and services, including legal services. However, it is hard for the supply of legal services to move as quickly as demand because attorneys looking to move into a new geographic area face high switching costs that most will refuse to pay unless they absolutely have to.

First, attorneys looking to take work in a new state have to get licensed there, which takes time and effort and is a distraction that can reduce their current income in the form of the number of hours they are able to bill to clients. Second, despite the rise in remote working, many attorneys looking to establish practices in a new geographic location may have to establish at least some physical presence there, find a new office, new lodging, and potentially uproot their entire family. Third, even if the switching costs of licensure, physically moving, etc. are paid, attorneys may fear yet another switching cost in the form of attrition of their existing clients from their original geographic locale, who may view them as no longer investing in their knowledge of the legal problems and legal solutions that are specific to the original locale.

³ Source: 2020 RRR. Factor order validated in multiple analyses since 2010

Section I: High-Level Data Cuts

Cities

By Matter Type

2021 - Real Rates for Associate and Partner

Trend Analysis - Mean

City	Matter Type	Role	n	First Quartile	Median	Third Quartile	2021	2020	2019
Kansas City MO	Non-Litigation	Associate	95	\$250	\$320	\$385	\$323	\$288	\$278
		Partner	14	\$285	\$350	\$484	\$402	\$445	\$413
Las Vegas NV	Non-Litigation	Partner	19	\$250	\$300	\$445	\$375	\$421	\$480
		Associate	12	\$238	\$323	\$377	\$320	\$282	\$280
Little Rock AR	Non-Litigation	Partner	12	\$215	\$215	\$300	\$267	\$290	\$274
Los Angeles CA	Litigation	Partner	342	\$475	\$715	\$1,042	\$759	\$708	\$694
		Associate	433	\$402	\$602	\$806	\$610	\$583	\$535
Los Angeles CA	Non-Litigation	Partner	559	\$600	\$880	\$1,160	\$894	\$872	\$816
		Associate	761	\$480	\$685	\$895	\$696	\$665	\$620
Louisville KY	Litigation	Partner	18	\$265	\$356	\$405	\$344	\$353	\$338
		Associate	16	\$178	\$200	\$278	\$225	\$227	\$214
Louisville KY	Non-Litigation	Associate	12	\$208	\$215	\$249	\$224	\$230	\$197
		Partner	15	\$244	\$389	\$529	\$421	\$424	\$430
Madison WI	Non-Litigation	Partner	15	\$244	\$389	\$529	\$421	\$424	\$430
Memphis TN	Litigation	Partner	16	\$290	\$415	\$425	\$364	\$355	\$347
		Associate	20	\$298	\$340	\$369	\$345	\$346	\$334
Miami FL	Litigation	Partner	100	\$282	\$475	\$614	\$465	\$473	\$453
		Associate	100	\$282	\$475	\$614	\$465	\$473	\$453

Section I: High-Level Data Cuts

Cities

By Years of Experience

2021 - Real Rates for Associate

Trend Analysis - Mean

City	Years of Experience	n	First Quartile	Median	Third Quartile	2021	2020	2019
Jackson MS	7 or More Years	22	\$55	\$55	\$183	\$124	\$125	\$183
Kansas City MO	3 to Fewer Than 7 Years	26	\$252	\$310	\$349	\$306	\$294	\$292
	7 or More Years	28	\$295	\$325	\$370	\$325	\$283	\$282
Los Angeles CA	Fewer Than 3 Years	70	\$494	\$533	\$622	\$543	\$511	\$413
	3 to Fewer Than 7 Years	128	\$533	\$709	\$821	\$673	\$582	\$510
	7 or More Years	164	\$412	\$565	\$841	\$629	\$604	\$576
Miami FL	3 to Fewer Than 7 Years	14	\$277	\$340	\$408	\$364	\$323	\$323
	7 or More Years	30	\$310	\$475	\$540	\$431	\$429	\$374
Minneapolis MN	3 to Fewer Than 7 Years	23	\$330	\$351	\$462	\$394	\$388	\$355
	7 or More Years	26	\$326	\$448	\$580	\$441	\$397	\$384
Nashville TN	7 or More Years	13	\$245	\$283	\$325	\$287	\$271	\$253
New Orleans LA	3 to Fewer Than 7 Years	13	\$235	\$238	\$280	\$251	\$260	\$248
	7 or More Years	13	\$260	\$340	\$364	\$324	\$326	\$276
New York NY	Fewer Than 3 Years	160	\$440	\$590	\$775	\$629	\$560	\$513
	3 to Fewer Than 7 Years	237	\$412	\$670	\$875	\$681	\$625	\$559

Section I: High-Level Data Cuts

Cities

By Years of Experience

2021 - Real Rates for Partner

Trend Analysis - Mean

City	Years of Experience	n	First Quartile	Median	Third Quartile	2021	2020	2019
Los Angeles CA	Fewer Than 21 Years	173	\$550	\$855	\$1,065	\$815	\$724	\$703
	21 or More Years	332	\$527	\$725	\$1,145	\$844	\$818	\$758
Memphis TN	Fewer Than 21 Years	11	\$283	\$300	\$340	\$317	\$324	\$309
	21 or More Years	17	\$365	\$415	\$425	\$391	\$379	\$370
Miami FL	Fewer Than 21 Years	44	\$408	\$540	\$583	\$503	\$484	\$485
	21 or More Years	99	\$414	\$550	\$750	\$569	\$564	\$532
Milwaukee WI	Fewer Than 21 Years	14	\$306	\$358	\$433	\$373	\$355	\$323
	21 or More Years	26	\$375	\$470	\$545	\$535	\$530	\$431
Minneapolis MN	Fewer Than 21 Years	41	\$400	\$520	\$604	\$513	\$515	\$478
	21 or More Years	82	\$450	\$659	\$789	\$619	\$591	\$579
Nashville TN	Fewer Than 21 Years	27	\$375	\$464	\$495	\$436	\$413	\$374
	21 or More Years	49	\$420	\$470	\$536	\$481	\$472	\$433
New Orleans LA	Fewer Than 21 Years	24	\$275	\$305	\$390	\$346	\$361	\$337
	21 or More Years	40	\$295	\$332	\$412	\$352	\$373	\$369
New York NY	Fewer Than 21 Years	456	\$656	\$1,044	\$1,407	\$1,033	\$987	\$938

Section I: High-Level Data Cuts

Cities

By Role

2021 - Real Rates for Associate and Partner

Trend Analysis - Mean

City	Role	n	First Quartile	Median	Third Quartile	2021	2020	2019
Little Rock AR	Partner	16	\$215	\$250	\$300	\$272	\$287	\$282
Los Angeles CA	Partner	786	\$536	\$822	\$1,101	\$843	\$808	\$766
	Associate	1,110	\$450	\$653	\$860	\$664	\$636	\$587
Louisville KY	Partner	25	\$278	\$355	\$400	\$348	\$363	\$348
	Associate	25	\$180	\$210	\$264	\$224	\$228	\$210
Madison WI	Partner	15	\$241	\$389	\$536	\$419	\$435	\$440
Memphis TN	Partner	30	\$290	\$351	\$415	\$354	\$351	\$342
Miami FL	Partner	226	\$360	\$530	\$675	\$525	\$524	\$516
	Associate	149	\$265	\$361	\$475	\$375	\$381	\$365
Milwaukee WI	Partner	52	\$316	\$390	\$476	\$452	\$450	\$387
	Associate	36	\$270	\$305	\$358	\$316	\$305	\$269
Minneapolis MN	Partner	175	\$419	\$595	\$711	\$578	\$544	\$531
	Associate	137	\$295	\$406	\$521	\$405	\$377	\$376
Nashville TN	Partner	108	\$375	\$468	\$535	\$463	\$457	\$414
	Associate	73	\$252	\$311	\$338	\$305	\$283	\$257

EXHIBIT 7

LAFFEY MATRIX

History

Case Law

See the Matrix

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			Years Out of Law School *				
Year	Adjustmt Factor**	Paralegal/ Law Clerk	1-3	4-7	8-10	11-19	20 +
6/01/22- 5/31/23	1.085091	\$225	\$413	\$508	\$733	\$829	\$997
6/01/21- 5/31/22	1.006053	\$208	\$381	\$468	\$676	\$764	\$919
6/01/20- 5/31/21	1.015894	\$206	\$378	\$465	\$672	\$759	\$914
6/01/19- 5/31/20	1.0049	\$203	\$372	\$458	\$661	\$747	\$899
6/01/18- 5/31/19	1.0350	\$202	\$371	\$455	\$658	\$742	\$894
6/01/17- 5/31/18	1.0463	\$196	\$359	\$440	\$636	\$717	\$864
6/01/16- 5/31/17	1.0369	\$187	\$343	\$421	\$608	\$685	\$826
6/01/15- 5/31/16	1.0089	\$180	\$331	\$406	\$586	\$661	\$796
6/01/14- 5/31/15	1.0235	\$179	\$328	\$402	\$581	\$655	\$789
6/01/13- 5/31/14	1.0244	\$175	\$320	\$393	\$567	\$640	\$771
6/01/12- 5/31/13	1.0258	\$170	\$312	\$383	\$554	\$625	\$753
6/01/11- 5/31/12	1.0352	\$166	\$305	\$374	\$540	\$609	\$734
6/01/10- 5/31/11	1.0337	\$161	\$294	\$361	\$522	\$589	\$709
6/01/09- 5/31/10	1.0220	\$155	\$285	\$349	\$505	\$569	\$686
6/01/08- 5/31/09	1.0399	\$152	\$279	\$342	\$494	\$557	\$671
6/01/07-5/31/08	1.0516	\$146	\$268	\$329	\$475	\$536	\$645
6/01/06-5/31/07	1.0256	\$139	\$255	\$313	\$452	\$509	\$614
6/1/05-5/31/06	1.0427	\$136	\$249	\$305	\$441	\$497	\$598
6/1/04-5/31/05	1.0455	\$130	\$239	\$293	\$423	\$476	\$574
6/1/03-6/1/04	1.0507	\$124	\$228	\$280	\$405	\$456	\$549
6/1/02-5/31/03	1.0727	\$118	\$217	\$267	\$385	\$434	\$522
6/1/01-5/31/02	1.0407	\$110	\$203	\$249	\$359	\$404	\$487
6/1/00-5/31/01	1.0529	\$106	\$195	\$239	\$345	\$388	\$468
6/1/99-5/31/00	1.0491	\$101	\$185	\$227	\$328	\$369	\$444
6/1/98-5/31/99	1.0439	\$96	\$176	\$216	\$312	\$352	\$424
6/1/97-5/31/98	1.0419	\$92	\$169	\$207	\$299	\$337	\$406
6/1/96-5/31/97	1.0396	\$88	\$162	\$198	\$287	\$323	\$389
6/1/95-5/31/96	1.032	\$85	\$155	\$191	\$276	\$311	\$375

6/1/94-5/31/95	1.0237	\$82	\$151	\$185	\$267	\$301	\$363
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The methodology of calculation and benchmarking for this Updated Laffey Matrix has been approved in a number of cases. See, e.g., *DL v. District of Columbia*, 267 F.Supp.3d 55, 69 (D.D.C. 2017)

* $\frac{1}{2}$ Years Out of Law School $\frac{1}{2}$ is calculated from June 1 of each year, when most law students graduate. $\frac{1}{2}$ 1-3" includes an attorney in his 1st, 2nd and 3rd years of practice, measured from date of graduation (June 1). $\frac{1}{2}$ 4-7" applies to attorneys in their 4th, 5th, 6th and 7th years of practice. An attorney who graduated in May 1996 would be in tier $\frac{1}{2}$ 1-3" from June 1, 1996 until May 31, 1999, would move into tier $\frac{1}{2}$ 4-7" on June 1, 1999, and tier $\frac{1}{2}$ 8-10" on June 1, 2003.

** The Adjustment Factor refers to the nation-wide Legal Services Component of the Consumer Price Index produced by the Bureau of Labor Statistics of the United States Department of Labor.

EXHIBIT 8

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

GIANA BENSON, and on behalf of all others
similarly situated, MONICA FOWLER, an
individual, on behalf of herself and all others
similarly situated,

Plaintiffs,

v.

F21 OPCO, LLC dba FOREVER 21, a
Delaware Corporation; and DOES 1-10,
inclusive,

Defendants.

Case No. 37-2021-00024619-CU-OE-CTL

Assigned for All Purposes to Hon. Eddie C.
Sturgeon, Dept. 67

**DECLARATION OF CRAIG J. ACKERMANN
IN SUPPORT OF PLAINTIFFS' MOTION
FOR:**

**(1) PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT;**

**(2) APPROVAL OF NOTICE TO CLASS
MEMBERS AND RELATED MATERIALS;**

**(3) APPROVAL OF SETTLEMENT
ADMINISTRATOR; AND**

**(4) SETTING HEARING FOR FINAL
APPROVAL OF SETTLEMENT**

Date: April 21, 2023

Time: 9:00 a.m.

1 **MELMED LAW GROUP P.C.**

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19 Attorneys for Plaintiffs, the Putative Class, and the Aggrieved Employees

1 I, Craig J. Ackermann, Esq., declare as follows:

2 1. I am an attorney licensed to practice law before this Court and the federal and state courts
3 of California, Washington State, and Texas. I am over 18 years of age. I have personal knowledge of
4 the facts set forth in this declaration and could and would testify competently to them.

5 2. I am a founding shareholder in the law firm of Ackermann & Tilajef, P.C., attorneys of
6 record (along with James R. Hawkins and Christina Lucio of James Hawkins APLC and Jonathan
7 Melmed, Laura Supanich, and Maria Burciaga of Melmed Law Group P.C.) for Plaintiffs Giana Benson
8 and Monica Fowler (“Plaintiffs” or “Class Representatives”) and the proposed settlement class (the
9 “Class”) and/or Aggrieved Employees in the above-captioned matter.

10 3. Plaintiffs and Defendant F21 OpCo, LLC dba Forever 21 (“Defendant” or “Forever 21”)
11 (collectively, the “Parties”) have entered into a Class Action and PAGA Settlement Agreement (the
12 “Settlement Agreement”). The Settlement Agreement seeks to fully release and discharge Defendant
13 from the claims brought against it in this matter. In exchange, Defendant will pay the Class Members
14 the gross settlement amount of \$4,700,000.00. Plaintiffs seek to represent a settlement class of
15 approximately 10,491 current and former non-exempt hourly employees of Defendant in California
16 based on allegations that they were not provided compliant rest and meal periods, rest and meal period
17 premiums, all minimum and overtime wages owed, compliant wage statements, reimbursement for
18 business expenses, final pay at termination of employment, vested vacation pay, and other statutory
19 penalties. Under the terms of the Settlement Agreement, Defendant will not oppose Plaintiffs’
20 Attorneys’ application for a reasonable award of Plaintiffs’ Attorneys’ Fees not to exceed one-third of
21 \$4,700,000.00 (estimated to be \$1,566,666.66), Plaintiffs’ Attorneys’ actual litigation expenses not to
22 exceed \$30,000.00, settlement administrator payment not to exceed \$55,000.00, service awards to the
23 Plaintiffs in an amount totaling \$20,000.00 (\$10,000.00 to each of the Plaintiffs), and a payment to the
24 LWDA in an amount of \$227,125.00 (representing 75% of the PAGA Settlement Amount—the PAGA
25 Settlement Amount is calculated as 10% of the Net Settlement Amount). The Net Settlement Amount
26 available to be distributed to Class Members will be distributed on a checks-cashed basis (i.e. Class
27 Members are not required to submit a Claim to receive their settlement share) and is non-reversionary.
28 A true and correct copy of the Settlement Agreement is attached hereto as **Exhibit 1** and is incorporated

herein by reference. The Notice of Class Action and PAGA Settlement (the “Class Notice”) is attached as **Exhibit A** to the Settlement Agreement.

4. Defendant does business as the Forever 21 retail establishments. Defendant employed Plaintiffs and Class Members within the state of California during the Class Period.

5. Class Members are defined as all individuals who are or were employed as hourly, non-exempt employees by Defendant in California at any time during the Class Period. The Class Period is defined as the period from February 29, 2020 to September 16, 2022. The Class Members are co-extensive with the PAGA Employees. According to information produced by Defendant, the Settlement Class consists of approximately 10,491 non-exempt hourly employees.

Procedural History

6. On December 7, 2020, Plaintiff Fowler filed a representative action Complaint in the Los Angeles County Superior Court against Defendant titled *Monica Fowler v. F21 OpCo, LLC*, Case No. 20STCV46857, wherein she alleged a single cause of action under the Labor Code Private Attorneys General Act of 2004, Lab. Code § 2698, et seq. (“PAGA”) seeking civil penalties for various alleged underlying Labor Code violations based on Defendant’s alleged failure to pay all wages for hours worked (including overtime and minimum wages), failure to provide rest periods, failure to provide meal periods, failure to provide accurate itemized wage statements, failure to maintain payroll records, failure to reimburse business expenses, failure to timely pay wages during employment, and failure to pay wages at termination. (the “Fowler PAGA Action”).

7. Plaintiff Benson filed two separate lawsuits against Defendant: a putative class action and a PAGA action. Plaintiff Benson’s putative class action was filed on June 24, 2021 in the San Diego Superior Court against F21 OpCo, LLC, titled *Giana Benson v. F21 OPCO, LLC dba Forever 21*, Case No. 37-2021-00024619-CU-OE-CTL. Plaintiff Benson alleges wage and hour claims for: (1) failure to pay wages (including minimum wages and overtime wages); (2) failure to provide meal periods; (3) failure to provide duty-free, off-premises rest periods; (4) failure to reimburse business expenses; (5) failure to pay vested vacation pay at termination; (6) failure to timely pay wages during employment and at termination; (7) failure to provide accurate itemized wage statements; and (8) violations of the unfair competition law, BPC §17200 et seq. (the “Benson Class Action”).

1 8. Plaintiff Benson’s PAGA action was filed on August 31, 2021 in San Diego Superior
2 Court titled *Giana Benson v. F21 OpCo, LLC dba Forever 21*, Case No. 37-2021-000372560-CU-OE-
3 CTL, predicated upon the same underlying claims as the Benson Class Action (the “Benson PAGA
4 Action”). On or about December 16, 2021, the Court granted the parties’ stipulation and ordered the
5 Benson Class Action and Benson PAGA Action consolidated for all purposes.

6 9. The Parties then agreed to participate in a global mediation in order to resolve all of the
7 Actions and all of the claims set forth therein. In connection with the anticipated mediation, the Parties
8 exchanged extensive informal discovery, including production of time and pay records for a sizable
9 sample of Defendant’s non-exempt California employees. In advance of mediation, Defendant provided
10 class-wide redacted time and payroll data for non-exempt California employees since February 29, 2020
11 and relevant policy documents.

12 10. On April 19, 2022, the Parties participated in an all-day mediation session with
13 experienced employment law mediator Michael Dickstein. The Parties did not reach an agreement at
14 mediation. After the mediation, however, the Parties continued negotiations with the assistance of the
15 mediator and a global resolution of the Actions in their entirety was reached when all Parties accepted
16 the Mediator’s proposal on May 4, 2022. The Mediator’s proposal was memorialized in a Memorandum
17 of Understanding (“MOU”), which was executed on September 16, 2022.

18 11. Pursuant to the Parties’ agreement, for the sole purpose of effectuating Settlement,
19 Plaintiff Benson filed her Consolidated First Amended Complaint in this Court on or about January 23,
20 2023, which alleges all of the claims in the foregoing Actions as a class action for the Class Members,
21 added a PAGA cause of action asserting all of the claims asserted in the Fowler PAGA Notice and the
22 Benson PAGA notice on behalf of all PAGA Employees during the PAGA Period, and naming Plaintiff
23 Fowler as an additional Plaintiff. Thereafter, the Parties drafted, finalized and executed the Settlement
24 Agreement, now conditioned on court approval.

25 12. The discussions between counsel at the mediation and thereafter with the mediator’s
26 assistance, and the extensive informal discovery conducted in this matter, have been adequate to give
27 the Class Representatives and Class Counsel a sound understanding of the merits of their position,
28 Defendant’s defenses, and to evaluate the worth of the claims of the Class Members. The informal

discovery conducted in this Action, and the information exchanged through the Parties' negotiations, were sufficient to assess reliably the merits of the respective Parties' positions and to compromise the issues on a fair and equitable basis. Based on their own independent investigation and evaluation, Class Counsel has determined that the settlement terms and conditions set forth below are in the best interests of Plaintiff and, Class Members.

Summary of Plaintiffs' Claims

13. In the Consolidated First Amended Complaint, Plaintiffs, individually and on behalf of all others similarly situated, allege nine causes of actions for: (1) failure to provide duty-free, off-premises rest periods; (2) failure to provide meal periods; (3) failure to pay wages; (4) failure to reimburse business expenses; (5) failure to pay vested vacation pay upon termination; (6) failure to pay final wages; (7) failure to provide accurate itemized wage statements; (8) UCL violations; and (9) penalties pursuant to PAGA.

Defendant Failed to Provide Off-Duty Rest Periods

14. Plaintiffs alleged that Defendant failed to authorize or permit Plaintiffs and Class Members to take duty-free rest periods of not less than 10 minutes for every major fraction of four hours worked. Specifically, Plaintiffs alleged that Defendant failed to have a lawful rest period policy in place that informed Plaintiffs and Class Members of their right to take off-duty rest periods for shifts that were a major fraction of a four hour work period and to make rest periods available to these employees. Specifically, Plaintiff alleged that Defendant's employee handbook states that "Employees may not leave the premises during their rest break." Additionally, Plaintiffs alleged that when they and Class Members were not provided compliant rest periods, Defendant failed to rest period premiums.

Defendant Failed to Provide Compliant Meal Periods

15. Plaintiffs alleged that Defendant failed to provide compliant meal periods to Plaintiffs and Class Members because Plaintiffs and Class Members were not relieved of all duties during their meal periods. Plaintiffs alleged that Defendant created a work environment in which Plaintiffs and Class Members were not provided all of their meal periods due to shift scheduling and/or work-related demands placed upon them by Defendants as well as lack of sufficient staffing to meet the needs of Defendant's business. Plaintiffs further alleged that Class Members were required by supervisors to

1 work through meal periods to make sure that orders are filed, shelves are stocked, and that the store is
2 cleaned. Accordingly, Plaintiff alleged that meal periods taken by Plaintiffs and Class Members are all
3 on-duty.

4 16. Further, Defendant's employee handbook expressly states that the "Manager will
5 schedule rest breaks and meal breaks according to workload and applicable law." Notably, Plaintiffs
6 alleged that Defendant's meal period policy in the employee handbook was silent on the timing and
7 quantity of meal periods. As such, Plaintiffs alleged that first meal periods were frequently short or late
8 when provided and second meal periods were not provided on shifts over ten hours and alleged that
9 Class Members were not paid a meal period premium as required by law for such violations. Data
10 analysis revealed, however, that the violation rate was only 10.8% on this claim.

11 *Defendant Failed to Pay All Minimum and Overtime Wages Owed*

12 17. Plaintiffs alleged that Plaintiffs and Class Members were not paid all minimum and
13 overtime wages due because Defendant regularly alters Class Member time punches to reflect scheduled
14 hours rather than actual time worked. Further, Plaintiffs alleged that Class Members were required to
15 complete opening duties prior to clock in for their shift, including turning off the alarm system and
16 opening every door to the store, as well as closing duties after clocking out, including locking down the
17 store and setting the alarm system. Plaintiffs allege that Class Members were not paid for any of this
18 mandatory pre- and post-shift work.

19 18. Further, Plaintiffs allege that Class Members were required to go through a security
20 and/or bag check at the end of their shifts. Specifically, Plaintiffs alleged that after clocking out, Class
21 Members had to wait for a manager and/or lead to inspect their bag prior to leaving the premises. Thus,
22 Plaintiffs contend that the security and/or bag checks were performed off-the-clock and Class Members
23 were not paid for this time.

24 *Defendant Failed to Reimburse for Necessary Business Expenses*

25 19. Plaintiffs alleged Defendant required Class Members to use their personal cell phones
26 for work purposes. Specifically, Plaintiffs alleged that Defendant required Class Members to download
27 various cell phone applications to their personal cell phones for work-related purposes, including the
28 Crew app to communicate with other employees, and the Afterpay App. Further, Plaintiffs alleged that

1 Defendant required Class Members to shoulder the cost associated with business use of their personal
2 cell phones.

3 Defendant Failed to Pay Vested Vacation Pay Upon Termination

4 20. Plaintiffs alleged that Defendant failed to pay Plaintiff and Class Members all earned and
5 vested vacation/PTO wages upon termination. Defendant's employee handbook states, "The company
6 provides all active full time employees with a paid time off benefit each year as a way of expressing its
7 appreciation to provide employees with means to refresh and renew their energy. PTO hours are to be
8 used for sick days, vacation and other personal time away from work." The employee handbook also
9 provides, "Upon termination of employment or change of employment status from full time to part time,
10 all accrued but unused PTO benefits will be forfeited unless prohibited by law." Plaintiffs alleged that
11 Defendant's forfeiture provision is unlawful.

12 Defendant Failed to Pay All Wages Due at Separation

13 21. As described above, Defendant allegedly failed to pay Plaintiffs and the Subclass of
14 former employees of Defendant whose employment has ended during the relevant time period, rest
15 period premiums, meal period premiums, and all minimum wages and overtime wages owed within the
16 time constraints proscribed in Labor Code §§ 201-202 at the time of their termination/separation. Thus,
17 as result of Defendant's alleged faulty policies described above, Plaintiffs and the Class Members whose
18 employment has ended during the relevant time period left their employment with Defendant without
19 being compensated for each and every hour worked at the appropriate rate.

20 Defendant Failed to Provide Compliant Wage Statements

21 22. Plaintiffs alleged that Defendant intentionally and knowingly has failed to provide
22 Plaintiffs and employees with accurate itemized wage statements as required by Labor Code section
23 226, as Plaintiffs and other have allegedly not been properly compensated by Defendant for all hours
24 worked and have not been paid all compensation due and owing, including all minimum and overtime
25 wages, and meal and rest period premiums. Accordingly, the wage statements issued by Defendant do
26 not include the correct amount of gross and net wages earned, total hours worked by the employee, and
27 all applicable hourly rates in effect during the pay period and the corresponding number of hours worked
28 at each hourly rate by the employee as required under Labor Code section 226.

1 Defendant's UCL Violations

2 23. In California, wage and hour claims may be brought under the Unfair Competition Law
3 ("UCL" – Cal. Bus. & Prof. Code §§17200-17210). Unfair competition includes "any unlawful, unfair
4 or fraudulent business act or practice," which courts have held includes Labor Code violations.¹ A
5 remedy under the UCL does not preclude any other available remedies under state law.² Plaintiffs'
6 operative Complaint alleged that by failing to provide compliant rest and meal periods, rest and meal
7 period premiums, minimum wages, overtime wages, accurate itemized wage statements, reimbursement
8 for business expenses, final pay, vested vacation pay, and other statutory penalties to Class Members,
9 and committing the above-described Labor Code violations, Defendant engaged in unlawful, unfair,
10 and/or fraudulent business practices and is liable for restitution to the Class Members. Moreover, this
11 cause of action lengthens the statute of limitation of the class claims to 4 years.

12 PAGA Penalties

13 24. Plaintiffs further argued that they and the other PAGA Employees were entitled to
14 penalties under the Private Attorneys General Act of 2004 ("PAGA" – Labor Code §§ 2699-2699.5).
15 The PAGA allows an aggrieved employee to bring suit against an employer for violations of most Labor
16 Code provisions. Suits brought under PAGA do not affect the employee's right to recover other remedies
17 under state or federal law.³ The statute of limitations for PAGA suits is one year. An employee who
18 prevails in an action brought under PAGA is entitled to an award of reasonable attorney's fees and costs.

19 25. The penalties available under PAGA are those provided in the underlying Labor Code
20 provision that is violated or, if no penalty is listed, those provided by PAGA itself. Where the Labor
21 Code does not provide for a penalty, PAGA establishes a discretionary civil penalty of \$100 for each
22 aggrieved employee per pay period for the initial violation and \$200 for each aggrieved employee per
23 pay period for each subsequent violation.⁴ For any civil penalties collected under PAGA, seventy-five
24

25
26 ¹ *Cortez v. Purolator Air Filtration Prods. Co.*, 23 Cal. 4th 163, 178 (2000).

27 ² § 17205.

³ § 2699(g); *Caliber Bodyworks, Inc. v. Superior Court*, 134 Cal. App. 4th 365, 375 (2005).

28 ⁴ § 2699(f). Wherever the Labor Code gives the Labor and Workforce Development Agency discretion to assess a civil penalty, a court is authorized to exercise the same discretion. § 2699(e)(1).

1 percent of the penalties are distributed to the LWDA for enforcement and education, and twenty-five
2 percent is distributed to the aggrieved employees.

3 26. Plaintiffs alleged that by virtue of each of Defendant's foregoing Labor Code violations,
4 Plaintiffs and the other PAGA Employees are, in addition to other remedies, entitled to civil penalties
5 under PAGA.

6 Summary of Defendant's Defenses

7 27. Defendant denied and continues to deny each, and all of the allegations, claims, and
8 contentions alleged by Plaintiffs.

9 28. First, Defendant contended that with respect to Plaintiffs' class claims, many Class
10 Members signed individual arbitration agreements with enforceable class action waivers (specifically,
11 Plaintiffs signed arbitration agreements). If enforced by the Court, these arbitration agreements would
12 eliminate all of their claims at issue in Court other than those employees' PAGA penalty claims, as all
13 other claims would be compelled to individual arbitration. This risk has only become more significant
14 after the issuance of *Epic Systems Corp. v. Lewis*, 138 S. Ct. 1612 (May 21, 2018), where the United
15 States Supreme Court ruled that arbitration agreements requiring individual arbitration are enforceable
16 under the Federal Arbitration Act, regardless of allowances set out within the National Labor Relations
17 Act, and since *Viking River Cruises v. Moriana*, 142 S. Ct. 1906 (2022) ("*Viking River*") where the
18 Court held that PAGA claims would also be subject to individual arbitration. The arbitration agreements
19 for those Class Members thus posed a very serious risk of zero recovery and could have (and potentially
20 would have) wiped out all claims. *Cf. Adolph v. Uber Technologies*, Cal. Ct. App. Case No. 6059860
21 (writ submitted July 20, 2022) (California Supreme Court has agreed to examine if SCOTUS relied on
22 an incorrect understanding of California state law in *Viking River*. Therefore, Plaintiffs discounted their
23 claims to account for the risk of Defendant compelling those employees' cases to individual arbitration.
24 Moreover, the arbitration agreements signed by Class Members pose a risk on class certification for
25 Plaintiffs. *See, Campanelli v. Image First Healthcare Laundry Specialists, Inc.*, 2018 WL 6727825, at
26 *7 (N.D. Cal. Dec. 21, 2018) (concluding that a plaintiff who was not subject to an arbitration clause
27 or class action waiver was "not an adequate representative and his claims lack typicality with respect
28 to putative Rule 23 plaintiffs who have signed [these agreements]"); *Tan v. GrubHub, Inc.*, 2016 WL

4721439, at *3 (N.D. Cal. July 19, 2016) (concluding that the named plaintiff, who opted out of a class action waiver, lacked adequacy and typicality because he “would be unable to credibly make several procedural unconscionability arguments on behalf of unnamed class members[.]”). Therefore, Plaintiffs discounted their claims to account for the risk of Defendant compelling many employees’ cases to individual arbitration and for certification risks associated therewith. Alternatively, the discount can be thought of as zeroing out the claims for those Class Members with arbitration agreements and another discount for those Class Members based on certification risk and issues on the merits associated with arbitration agreements.

29. Second, Defendant contended that under Labor Code section 2699(e)(2) courts routinely significantly reduce the civil penalty specified under PAGA, if based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive or confiscatory. Courts often exercise their discretion to reduce the amount of PAGA penalties awarded to as little as \$5.00 per pay period or 18% of the available PAGA penalties.⁵ Furthermore, in *Gola v. University of San Francisco*, San Francisco Superior Court Case No. CGC-18-5655018, Proposed Statement of Decision, dated July 21, 2020, Judge Curtis A. Karnow of San Francisco Complex concluded (after a full-blown bench trial) that a penalty of 15% of the maximum PAGA penalties was the appropriate penalty. Lastly, a proposed initiative, the Labor Code Fair Pay and Accountability will be on the ballot in November 2024 which may effectively repeal PAGA by taking away the ability to pursue civil penalties via a representative action. If this proposed initiative were to pass, coupled with the *Viking River* decision and arbitration agreements in play, Plaintiffs may not be able to proceed with their PAGA claims at all. Plaintiffs view this initiative as a significant additional risk.

30. Third, Defendant contended that Plaintiffs’ PAGA claim is unmanageable. *See, Wesson v. Staples the Office Superstore, LLC* (2021) 68 Cal.App5th 746, 765; *see also, Ortiz v. CVS Caremark Corp.* (N.D. Cal. 2014) 2014 U.S. Dist. LEXIS 36833 (dismissing PAGA claim as unmanageable

⁵ *See e.g., Kileigh Carrington v. Starbucks Corporation, et al.*, San Diego Superior Court Case No. 37-2014-00018637-CU-OE-CTL (Apr. 3, 2017) (holding that the plaintiff was only entitled to collect the reduced penalty amount of \$5.00 for each pay period in which a meal period violation occurred or 5% of the PAGA penalties at issue); *Fleming v. Covidien, Inc.* (C.D. Cal. Aug. 12, 2011) 2011 WL 7563047, at *4 (reducing PAGA penalties by 82%)

1 because “a multitude of individualized assessments would be necessary”); *Lifty v. Merrill Lynch & Co.*
2 (C.D. Cal. 2014) 2014 U.S. Dist. LEXIS 160448 (striking PAGA claim as unmanageable because
3 “individualized issues predominate in this action” and a “multitude of individualized assessments would
4 be necessary”); *Amiri v. Cox Communs. Cal., LLC* (C.D. Cal.) 272 F.Supp.3d 1187, 1194 (striking
5 PAGA claim as unmanageable); *cf. Estrada v., Royalty Carpet Mills*, (4th Dist. 3123122) (disagreeing
6 with *Wesson*). Specifically, Defendant contended that Plaintiffs’ claims include significant
7 manageability concerns given the need for individualized proof and the massive size of the PAGA
8 Employee group covering thousands of workers at dozens of locations.

9 31. Fourth, with respect to Plaintiffs’ claims that Defendant promulgated an unlawful on-
10 premises rest period policy, prior to 2022, Courts were split as to the lawfulness of on-premises rest
11 period policies. See, *Ritenour v. Carrington Mortg. Servs., LLC*, No. SACV1602011CJCDFMX, 2018
12 WL 5858658, at *7 (C.D. Cal. Sept. 12, 2018) (“The California Supreme Court never stated that an
13 employer cannot require an employee to remain on the premises during a rest period”); *Hubbs v. Big*
14 *Lots Stores, Inc.*, No. LACV1501601JAKASX, 2018 WL 5264141, at *4-5 (C.D. Cal. Mar. 16, 2018)
15 (“*Augustus* nevertheless recognized that an employer may require an employee to remain "on premises"
16 during such rest periods. . . For these reasons, requiring that an employee remain on premises during a
17 ten-minute rest period does not create a claim under PAGA.”); and *Bell v. Home Depot U.S.A., Inc.*, No.
18 212CV02499JAMCKD, 2017 WL 1353779, at *1-2 (E.D. Cal. Apr. 11, 2017) (“a policy requiring
19 employees to remain on the premises during their rest breaks does not violate the applicable California
20 wage order and statute.”); *cf. Diaz v. Medline Industries, Inc.*, San Joaquin County Superior Court, Case
21 No. STK-CV-UOE-2019-5651, Order Denying in Part and Granting in Part Defendant’s Motion for
22 Judgment on the Pleadings. Further, Courts were also split on whether on-premises rest period cases can
23 be certified. See, *Cacho v. Eurostar, Inc.*, 2019 Cal. App. Unpub. LEXIS 8085 (December 4, 2019)
24 (certification denied where the Defendant promulgated a facially invalid meal and rest break policy
25 where, in practice, many employees actually took their meal and rest breaks in compliance with
26 California law); *see also, Davidson v. O’Reilly Auto Enterprises, LLC*, No. 18-56188 (9th Cir. August 3,
27 2020) (certification denied where Defendant promulgated a facially invalid rest break policy where,
28 Plaintiff failed to show the facially invalid rest break policy was used in practiced); *cf. El Pollo Loco*

1 *Wage and Hour Cases*, JCCP Case No. 4957, Orange County Complex Superior Court, Minute Order,
2 dated July 30, 2018, from the Hon. William Claster (certifying on premises rest break policy challenge);
3 and *Frlekin v. Apple, Inc.*, 2020 Cal. LEXIS 547 (February 13, 2020) (hours worked is defined as the
4 time during which an employee is subject to the control of an employer, and includes all the time the
5 employee is suffered or permitted to work, whether or not required to do so). However, most recently,
6 in *Estrada v. Royalty Carpet Mills, Inc.*, 76, Cal.App.5th 685, 706 (2022) the California Court of Appeals
7 appears to have said on-premises rest periods are legal when it stated in dicta, “there are material
8 differences between rest breaks and meal breaks, their length. ‘Because rest periods are 10 minutes in
9 length, they imposed practical limitations on an employee’s movement. That is, during a rest period an
10 employee generally can travel at most five minutes from a work post before returning to make it back
11 on time. Thus, one would expect that employees will ordinarily have to remain on site or nearby. This
12 constraint, which is of course common to all rest periods, is not sufficient to establish employer
13 control.’” This dicta strongly suggests that that on-premises rest periods are legal, an argument that
14 would kill Plaintiffs’ on-premises rest period theory entirely. Moreover, Defendant also contended that
15 Plaintiffs would be unable to certify their rest period claims because Defendant’s different retail store
16 locations had different practices resulting in individualized issues

17 32. Fifth, with respect to Plaintiffs’ claims for meal period violations, Defendant argued that
18 there is no common policy or practice to deprive employees of meal periods and that Defendant’s meal
19 period policies comply with California law. Specifically, Defendant cited *Brinker*, which states that an
20 employer is required only to “provide” employees with an opportunity to take uninterrupted breaks, but
21 is not required to ensure that they are taken. Defendant further argued that Plaintiffs would be unable to
22 certify their meal period claim because meal period practices were highly individualized because each
23 of Defendant’s stores had different practices.

24 33. Sixth, with respect to Plaintiff’s claims for unpaid minimum and overtime wages,
25 Defendant argued that they would defeat certification on Plaintiffs’ claims for unpaid security and/or
26 bag check time, and contended that such security and/or bag check time are conducted on the clock after
27 employees clocked in for their shift. *See, Armendariz v. Kinkisharyo Intl.*, 2022 U.S. Dist. LEXIS
28 191137 (C.D. Cal. October 19, 2022) (“Plaintiff has not shown that common questions will predominate

1 over individual ones with respect to claims based on a failure to compensate putative class members for
2 time spent at security and bag checks . . . Plaintiff has not presented substantial evidence as to a uniform
3 policy or practice requiring off-the-clock security and bag checks. In the absence of a uniform policy or
4 practice, certification is not appropriate.”); *see also, Nevarez v. Costco Wholesale Corp.*, 2019 U.S. Dist.
5 LEXIS 223881, 2019 WL 7421960, at *6 (C.D. Cal. Dec. 26, 2019) (“[W]here no substantial evidence
6 points to a uniform , companywide policy, and proof of off-the-clock liability would have had to
7 continue in an employee-by-employee fashion, class certification is inappropriate.”); *Hubbs v. Big Lots*
8 *Stores, Inc.*, 2017 U.S. Dist. LEXIS 85280, 2017 WL 2304754, at *9 (C.D. Cal. May 23, 2017) (class
9 certification denied where plaintiffs failed to provide “sufficient evidence to show that there was a
10 common and consistent policy among [d]efendants to subject all employees of their stores to off-the-
11 clock bag checks” and plaintiffs “only presented limited evidence that supports the position that
12 managers at certain store may have required off-the-clock bag checks”); *Christensen v. Carter's Retail,*
13 *Inc.*, 2021 U.S. Dist. LEXIS 204050, 2021 WL 4932244, at *10 (C.D. Cal. Oct. 21, 2021) (denied
14 certification of a proposed security check class where “the evidence upon which Plaintiff relies indicates
15 a lack of commonality across Defendant's stores in California.”).

16 34. Seventh, at the time of mediation and settlement, Defendant contended that Plaintiffs’
17 wage statement claim was meritless because it is derivative of Plaintiffs’ underlying claims. *See Naranjo*
18 *v. Spectrum Sec. Servs., Inc.*, 40 Cal. App. 5th 444, 474 (2019) (“we hold that section 226.7 actions do
19 not entitle employees to pursue the derivative penalties in sections 203 and 226”); *see also Maldonado*
20 *v. Epsilon Plastics, Inc.* (2018) 22 Cal.App.5th 1308 (the class alleged they were not paid overtime owed,
21 and as a result, their wage statements were inaccurate. The court held that the wage statement claim was
22 not viable as a separate claim from the overtime claim and that “the absence of accurate wages earned
23 will be remedied by the violated wage and hour law itself”); *Bentancourt v. OS Restaurant Services,*
24 *LLC*, 49 Cal. Ap. 5th 240, 247-48 (2020) (Actions for nonprovision of meal or rest periods do not entitle
25 employees to pursue the derivative penalties in Labor Code section 226 wage statement violations). The
26 California Supreme Court has since overturned the appellate decision in *Naranjo* but this was a risk that
27 was present at the time of mediation and settlement. *See, Naranjo v. Spectrum Security Services, Inc.*,
28 2022 Cal. LEXIS 2878 (Cal. May 23, 2022). Additionally, Defendant contended that the Class suffered

1 no actual “injury” as required under Labor Code section 226(e) and that any violation of the Labor Code
2 was not “knowing and intentional”.

3 35. Eighth, Defendant contended that Plaintiffs and the Class were not entitled to waiting
4 time penalties under Labor Code section 203. First, Defendant contended that any Labor Code violations
5 were not intentional and as a result Plaintiffs would have difficulty proving the requisite willfulness
6 required under Labor Code sections 201-203. *See, Barnhill v. Robert Saunders & Co.*, 125 Cal. App. 3d
7 1, 8-9 (1981) (employer's good-faith belief negated a finding his nonpayment of wages was willful).
8 Second, in late 2019, the California Court of Appeals held that there are no derivative section 203
9 penalties based on an underlying claim that meal or rest break premiums were not timely paid (*see*
10 *Naranjo*, 40 Cal. App. 5th 444, 474 (2019) (“we hold that section 226.7 actions do not entitle employees
11 to pursue the derivative penalties in sections 203 and 226”)). As stated earlier, *Naranjo* has since been
12 overturned by the California Supreme Court, but this risk was significant at the time of mediation and
13 settlement.

14 36. Ninth, Defendant contended that Plaintiffs would be unable to certify their expense
15 reimbursement claims since it will involve an individual inquiry as to each specific situation during
16 which the employee used his or her personal cell phone. Additionally, Defendant contended that there
17 was no uniform policy or practice requiring or expecting Class Members to download or use cell phone
18 applications. *See, Carlos v. Wal-Mart Assocs., Inc.*, U.S. Dist. LEXIS 231841 (C.D. Cal. September 6,
19 2022) (“Plaintiff has not demonstrated that there is a uniform policy or practice of requiring or expecting
20 the putative class members to download or use any of the three mobile applications during the new-hire
21 orientation.”).

22 *Provisional Certification of the Settlement Class is Appropriate*

23 37. Defendant has informed Plaintiffs’ counsel that the proposed class consists of
24 approximately 10,491 non-exempt hourly workers who can be readily identified through Defendant’s
25 records.

26 38. While the parties dispute whether a class would be appropriate if litigation were to
27 continue, they agree, for the purposes of this settlement only, that the Class is subject to common
28 minimum wage, overtime, meal period, rest period, wage statement, reimbursement, and final pay

1 policies. Additionally, the parties dispute whether Plaintiffs' claims are typical of the Class for the
2 purposes of any continued litigation of the Action, but agree for the purposes of this settlement only,
3 that Plaintiffs assert claims regarding Defendant's compensation, break, reimbursement, final pay, and
4 wage statements policies that are at the core of this lawsuit.

5 39. Plaintiffs allege, and Defendant does not dispute for the purposes of this settlement, that
6 Plaintiffs and the Class are represented by counsel with extensive experience in wage-and-hour
7 litigation, including class actions.

8 40. Plaintiffs allege, and Defendant does not dispute for the purposes of this settlement, that
9 class certification is also vastly superior to litigation of numerous individual claims because most of the
10 claims are too small to litigate outside of the class context.

11 *Fairness, Adequacy, and Reasonableness of the Settlement*

12 41. The settlement was the product of extensive arm's length, intensive, negotiations at a
13 mediation with Michael Dickstein serving as the neutral, followed by subsequent negotiations aided by
14 the neutral. Though cordial and professional, the settlement negotiation was adversarial and non-
15 collusive in nature. The settlement reached is the product of substantial effort by the parties and their
16 counsel. Although Plaintiffs and their counsel believed that there was a strong possibility of certifying
17 the claims, they recognized the potential risk, expense, and complexity posed by litigation, such as
18 unfavorable decisions on class certification, summary judgment, at trial and/or on the damages awarded,
19 and/or on an appeal that can take several more years to litigate. The resulting Settlement was based on
20 calculations, risk assessment, and non-collusive negotiation; it takes the risks identified above and others
21 into account in arriving at the settlement amount of \$4,700,000.00.

22 42. Plaintiffs' counsel calculated Defendant's realistic, risk-adjusted exposure using the
23 following figures and data points:

- 24 • According to Defendant, there are approximately 10,491 Class Members, of which
25 approximately 6,454 are former employees.
- 26 • According to Defendant, there are approximately 105,153 pay periods during the period from
27 February 29, 2020 through March 1, 2022 and 195,438 workweeks during the period from
28 February 29, 2020 through March 1, 2022. Extrapolating out these figures through the end of the

Class Period, September 16, 2022, there are approximately 133,636 pay periods⁶ and 248,374 workweeks.⁷

- According to Defendant, many Class Members, including Plaintiffs Benson and Fowler, signed enforceable arbitration agreements with class action waivers. Therefore, a large portion of the Class Members' class claims would have had to be brought individually in arbitration and Defendant's exposure was discounted accordingly.
- Plaintiff hired a data analyst to analyze Defendant's meal period records for Plaintiff Fowler and determined the violation rate at approximately 10.8%.
- The average hourly rate among the Class is approximately \$16.35 per hour.

Using the figures stated above, Plaintiffs calculated Defendant's realistic, risk-adjusted exposure on a claim-by-claim basis as follows:

- **Rest Period Premiums: \$2,030,457.45**

- 248,374 workweeks * 5 shifts per week * \$16.35 rest period premium = \$20,304,574.50 * 80% discount for risk of compelling Plaintiffs' claims to individual arbitration or Plaintiffs being atypical of the Class precluding class certification * 50% risk of losing on the merits based on the dicta in *Estrada* or at certification the Court follows the Courts in *Ritenour*, *Hubbs*, and *Bell* = \$2,030,457.45

- **Meal Period Premiums: \$438,578.80**

- 248,374 workweeks * 5 shifts per week * \$16.35 rest period premium * 10.8% violation rate = \$2,192,894.04 * 80% discount for risk of compelling Plaintiffs' claims to individual arbitration or Plaintiffs being atypical of the Class precluding class certification = \$438,578.80

- **Minimum and Overtime Wages: \$253,807.18**

- 248,374 workweeks * 5 shifts per week * \$16.35 average hourly rate * ~5 minutes per

⁶ 105,153 pay periods between February 29, 2020 and March 1, 2022 / 24 months = 4,382 pay periods per month. 105,153 pay periods + (4,382 pay periods per month * 6.5 additional months) = 133,636 pay periods.

⁷ 195,438 workweeks between February 29, 2020 and March 1, 2022 / 24 months = 8,144 workweeks per month. 195,438 workweeks + (8,144 workweeks per month * 6.5 additional months) = 248,374 workweeks.

day * 1.5 overtime rate = \$2,538,071.81 * 80% discount for risk of compelling Plaintiffs' claims to individual arbitration or Plaintiffs being atypical of the Class precluding class certification * 50% discount for risk of losing class certification due to a lack of a uniform policy = \$253,807.18

• **Wage Statement Penalties: \$641,952.50**

- 10,491 initial violations * \$50 initial penalty = \$524,550
- 123,145 subsequent violations * \$100 subsequent penalty = \$12,314,500
- $\$426,050 + \$12,314,500 = \$12,839,050$ * 80% discount for risk of compelling Plaintiffs' claims to individual arbitration or Plaintiffs being atypical of the Class precluding class certification * 50% discount because Defendant's conduct was not "knowing and intentional" and the Class suffered no "actual" injury * 50% discount for Defendant's arguments on the merits for the underlying wage and premiums claim = \$641,952.50

• **Waiting Time Penalties: \$506,509.92**

- 6,454 former employees * 30 days * 8 hours per day * \$16.35 average hourly rate = \$25,325,496 * 80% discount for risk of compelling Plaintiffs' claims to individual arbitration or Plaintiffs being atypical of the Class precluding class certification * 80% discount that Plaintiffs may not be able to prove willfulness * 50% discount for Defendant's arguments on the merits for the underlying wage and premiums claim = \$506,509.92

• **Unreimbursed Business Expenses: \$11,454.96**

- 248,374 workweeks / 4.33 weeks per month * \$5 per month in cell phone expenses⁸ = \$286,806 * 80% discount for risk of compelling Plaintiffs' claims to individual arbitration or Plaintiffs being atypical of the Class precluding class certification * 80% discount for risk of losing certification due to individualized issues of which Class Members actually incurred expenses and the lack of a uniform policy requiring

⁸ Many Class Members incurred no expenses whatsoever so this is an estimate based on Plaintiffs' information and belief.

1 downloading the apps = \$11,454.96

2 • **Vested Vacation Pay: \$422,091.60**

- 3 ○ 6,454 former employees * ~5 days of PTO per former employee * \$16.35 average hourly
4 rate * 8 hours per day = \$4,220,916 * 80% discount for risk of compelling Plaintiffs'
5 claims to individual arbitration or Plaintiffs being atypical of the Class precluding class
6 certification * 50% discount for risk of individual issues predominating as to which Class
7 Members had unpaid vested PTO = \$422,091.60

8 • **PAGA Penalties: \$501,135.00**

- 9 ○ Assuming *arguendo* that all of the PAGA pay periods are “initial”, then Defendant’s
10 exposure for PAGA penalties is at least \$100 * 133,636 which results in a PAGA
11 exposure of \$13,363,600 * 85% reduction of PAGA penalties in light of Judge Karnow’s
12 reasoning in *Gola* * 50% risk of Plaintiffs’ losing on the underlying rest period claims if
13 the Court were to follow the reasoning in *Bell*, *Ritenour*, *Hubbs*, or the dicta in *Estrada*
14 * 50% discount in light of Defendant’s manageability argument = \$501,135.00

15 Therefore, Defendant’s total realistic, risk-adjusted exposure is **\$4,805,987.41** for Plaintiffs’ claims.
16 Considering the listed risk factors, the non-reversionary Gross Settlement Amount of \$4,700,000.00 is
17 a fair, reasonable and adequate compromise of the Class Members claims.

18 43. Moreover, the settlement amount is fair and reasonable because many Class Members
19 signed arbitration agreements with Defendant that included class action waivers. In light of the current
20 legal landscape, including the *Viking River* and *Wesson* decisions, many of the claims at issue were
21 potentially worthless even before considering the likelihood that a Court would award as little as \$5 per
22 PAGA pay period, instead of the \$15 per pay period as calculated in Plaintiffs’ exposure analysis.

23 44. The parties thoroughly investigated and evaluated the factual and legal strengths and
24 weaknesses of this case before reaching the settlement. As described above, the settlement was reached
25 after extensive discovery, investigation and research, thorough calculations and risk evaluation,
26 substantial exchanges of documents, a thorough evaluation of payroll records, and an exchange of other
27 information required to evaluate the claims at issue. The settlement came only after the case was
28 thoroughly investigated by Plaintiffs’ Counsel.

45. As stated, Defendant has strong defenses to Plaintiffs' claims, which create a real possibility that the claims might not be certified and/or might fail on the merits. Proceeding with litigation would impose a significant risk of no recovery as well as ongoing, substantial additional expenditures of time and resources. If settlement were not achieved, continued litigation of the claims would take a substantial amount time and possibly confer no benefit on Class Members. By contrast, the settlement will yield a prompt, certain, and substantial recovery for the Class, which also benefits the parties and the Court. In considering these risks, the choice was overwhelmingly in favor of settlement.

46. The Parties agreed the Net Settlement Amount, which will be used to fund individual settlement payments to all Class Members who do not affirmatively request exclusion from the settlement, will be divided between all Class Members who do not timely and validly affirmatively request exclusion from the settlement based on the number of pay periods worked for Defendant during the Class Period (i.e., the pro rata / proportional amounts of pay periods worked to each settlement class member during the Class Member out of all pay periods worked by all Class Members during the Class Period). If the settlement is finally approved the average individual class settlement payment per Class Member will be 288.66⁹ on a net basis and \$448¹⁰ per Class Member on a gross basis. the average penalty payment for each PAGA Employee will be approximately \$7.22.¹¹ The amount obtained per Class Member compares favorably to other class action settlements where the primary claim resolved was a challenge to employers' on-premises rest period policies, including the following cases:

a. *El Pollo Loco Wage and Hour Cases*, Case No. JCCP 4957 (Orange County Superior Court) – \$16 million class action settlement for 31,667 Class Members (between the two consolidated classes in the global settlement) where the average gross net settlement payment per class member was \$505;

b. *Westbrook v. Winco Holdings, Inc.*, Riverside County Superior Court, Case No.

⁹ \$3,028,333.34 Net Settlement Amount / 10,491 Class Members = \$288.66.

¹⁰ \$4,700,000 Gross Settlement Amount / 10,491 Class Members = \$448.

¹¹ \$75,708.33 portion of PAGA payment to the PAGA Employees / 10,491 PAGA Employees = \$7.22.

RIC1710168, final approval granted January 17, 2019 by the Honorable Raquel A. Marquez – \$3 million settlement for 13,382 Class Members where the average gross payment was \$137.39¹²; and

c. *Liggins v. ESA Management, LLC*, Case No. 30-2018-01005614-CU-OE-CXC (Orange County Superior Court) - \$4.45 million settlement for 5,473 Class Members where the average gross net settlement payment per class member was \$500.94.

47. Notice of final judgment shall be given to the Class by way of a posting on the settlement administrator’s website. The Class Notice provides the web address for class members to access the final judgment.

Reasonableness of Attorneys’ Fees and Costs

48. Under the terms of the Settlement Agreement, Class Counsel is requesting one third of the Gross Settlement in attorneys’ fees. This amount is estimated to be \$1,566,666.66.

49. As the California Supreme Court has made clear, 1/3 (33.33%) of the common fund is a reasonable percentage for a trial court to award as attorney fees in a class action where a common fund was generated as a result of the case. See *Laffitte v. Robert Half Int’l Inc.*, 1 Cal. 5th 480, 506 (2016) (“We therefore agree with the Court of Appeal below that ‘the percentage of fund method survives in California class action cases, and the trial court did not abuse its discretion in using it, in part, to approve the fee request [of 1/3 of the common fund] in this class action”). The California Supreme Court further clarified that trial courts “have discretion to conduct a lode-star cross check on a percentage fee, as the court did here; they also retain the discretion to forgo a lodestar cross check and use other means to evaluate the reasonableness of a requested percentage fee.”). In other class action cases, numerous California courts have approved fees at 1/3 of the common fund. See e.g., *Martin v. FedEx Ground Package System, Inc.*, 2008 WL 5478576, at *8 (N.D. Cal. Dec. 31, 2008) (federal district court approved attorneys’ fees of 1/3 of common fund); *Stuart v. RadioShack Corp.*, No. C-07-4499 EMC, 2010 WL 3155645 (N.D. Cal. Aug. 9, 2010) (approving fee award of 1/3 of the total maximum

¹² Notably, in *Winco*, all Class Members had signed arbitration agreements.

settlement and noting that the fee award of 1/3 of the total settlement was “well within the range of percentages which courts have upheld as reasonable in other class action lawsuits”); *Wilson v. Kiewit Pacific Co.*, No. 09-cv-03630, ECF No. 119 (N.D. Cal. 2012) (approving fee award of 1/3 of the common fund and noting that such award is fair, reasonable and appropriate); *Romero v. Producers Dairy Foods, Inc.*, No. 1:05cv0484 DLB, 2007 WL 3492841, at *4 (E.D. Cal. Nov. 14, 2007) (awarding fees of 1/3 of common fund in a wage and hour class action, noting: “[f]ee awards in class actions average around one-third of the recovery.”).

50. If the court finally approves the settlement, the requested attorneys' fees will be split among the firms constituting Plaintiffs' Counsel as follows: 50% to James Hawkins, APLC, 25% to Ackermann & Tilajef, P.C., and 25% to Melmed Law Group P.C. The Plaintiffs have given written approval to the aforementioned fee splitting arrangement.

Attorney Experience

51. In 1994, I received a B.A. with honors and graduated Phi Beta Kappa from the University of Texas at Austin. In 1997, I received a J.D. from the University of Texas, School of Law. I became a member of the Bar of the State of Texas in 1997. I became a member of the Bar of the State of California in 2004. I became a member of the State of Washington Bar. In 2018, I was also honored to become a member of the U.S. Supreme Court Bar when we filed an amicus brief for the drivers in the important trucker misclassification arbitration decision of *Olivera v. New Prime, Inc. New Prime, Inc. v. Olivera*, Case No. 17-340 (Jan. 19, 2019).

52. Since 1997, I have exclusively practiced employment law and have amassed a significant amount of experience in complex employment litigation. From 1997 through 2000, I was an associate in the labor and employment law group for Jenkins & Gilchrist, P.C. (“J&G”), in the firm’s Dallas, Texas office, where I represented Fortune 1000 companies, including Hartford Insurance, Belo Corporation, and Alcatel, as second-chair in various employment-related matters, including several class action cases. While employed by J&G, I drafted a number of summary judgment motions in cases where we obtained summary judgment for the defendants, including several that were reported on Westlaw. See *Wayne v. The Dallas Morning News, Inc.*, CIV.A.No.3-98-CV-0711-L, 1999 WL 1146840 (N.D. Tex. Nov. 24, 1999) (with lead counsel, Robert E. Sheeder, Esq.); *Mieritz v. Hartford Fire Insurance*

Co., No. Civ.A.3:99-CV-121-R, 2000 WL 422909 (N.D. Tex. April 17, 2000) (with lead counsel Steve Fox, Esq.).

53. From 2000 through mid-2003, I worked in New York City for a plaintiffs' side employment law firm, Arenson, Ditmar & Karban, where I was involved for several years, pro hac vice, in a second-chair capacity representing 150 individually-named plaintiffs in a large sexual harassment case against a major Wall Street bank that was eventually resolved for \$23.5 million. In terms of the number of plaintiffs and the size of the ultimate settlement, this sexual harassment case was the second largest sexual harassment case in U.S. history. There were over 60 depositions taken and defended in that case prior to trial.

54. In mid- and late-2003, I worked as an associate in the Labor and Employment Law Section of Mitchell, Silberberg & Knupp, LLP in Los Angeles, where we represented large entertainment companies in various employment-related litigations, including several class actions.

55. From January 2004 through the present, I have been a founding and managing shareholder in the firm of Ackermann & Tilajef, P.C. where we have represented thousands of employees in wage and hour class actions, and other employment-related matters. In addition to the instant case, we have served as class counsel in over other 250 wage and hour class actions, the vast majority of which have been resolved, and others of which are currently pending in federal and state courts. For example, we have successfully obtained class certification and been appointed as adequate class counsel in numerous cases where contested class certification motions were filed and fully briefed. *See, e.g.,* (1) *Martinez v. Knight Transportation*, Case No. 1:16-cv-01730-DAD (order granting Plaintiff's Motion for Class Certification, dated December 3, 2018) (certifying Class of over 4,000 non-resident drivers with claims of unpaid rest breaks and non-productive time on California routes); (2) *Moss v. USF Reddaway, Inc.*, No. 5:15-CV-01541-JAK-FFM, (C.D. Cal June 30, 2017) (Hon. Judge John A. Kronstadt) Order Granting Plaintiff's Motion for Class Certification (Dkt. No. 80); (3) *Jack Morrison v. Knight Transportation, Inc.*, Tulare County Superior Court, Case No. 228016, Nov. 13, 2009 Order Granting Plaintiff's Motion for Class Certification (Hon. Lloyd Hicks) (granting certification of class of over 2,000 truck drivers, which later grew to 4,111 drivers, with claims for, inter alia, failing to provide duty-free meal breaks); (4) Order Adopting Findings and Recommendations,

1 *Clayton v. Knight Transportation, Inc.*, No. 1:11cv0735 LJO DLB, 2012 WL 3638026 (E.D. Cal. Aug.
2 21, 2012) (Hon. Lawrence O’Neil); Findings and Recommendations Regarding Plaintiff’s Motion for
3 Class Certification, *Clayton v. Knight Transportation, Inc.*, No. 1:11cv0735 LJO DLB, 2012 WL
4 2912395 (E.D. Cal. July 16, 2012) (U.S. Magistrate Judge Dennis L. Beck) (recommending certification
5 of class action for 2,000 truck drivers alleging claims for unpaid orientation time); (5) *Anderson v.*
6 *Andrus Transportation*, San Bernardino County Superior Court, Case No. CIV DS 915878, August 16,
7 2011 Order Granting In Part Plaintiff’s Motion for Class Certification (class certification granted to class
8 of over 550 truck drivers with claims for unpaid minimum wages and derivative claims); and (6) *Trujillo*
9 *v. WinCo Foods, LLC*, Stanislaus County Superior Court, Case No. 622364, March 16, 2011 Order
10 Granting Plaintiff’s Motion for Class Certification (granting class certification of missed meal and rest
11 break claims and derivative claims to class of 150 truck drivers). In each of these cases, the trial court
12 judges determined that my firm and I were competent and adequate class counsel, or co-class counsel,
13 following a contested motion for class certification

14 56. In addition to being found adequate on numerous contested class certification motions
15 from 2007 through as recently as December 3, 2018, my firm and I have been appointed class counsel
16 or co-class counsel numerous wage and hour class actions involving truck drivers, which obtained final
17 approval, including dozens of cases that were resolved for more than \$1 million. *See e.g.*, Order Granting
18 Final Approval of Class Action Settlement, *Hugues v. The Morning Star Trucking Company, LLC*, et al.
19 Yolo County Case No. CV16-1215 (August 3, 2017) (granting final approval to \$1.95 million Class
20 Action Settlement for unpaid rest breaks for 1,405 truck seasonal truck drivers, with an additional
21 \$500,000 in debt relief on the plaintiffs’ trucking school over-charging claims and agreement that the
22 defendant would lower the cost of trucking school in its training agreement going forward);
23 Supplemental Order Granting Final Approval to Class Action Settlement, *Powers v. Estensen Logistics,*
24 *LLC*, Case No. CIVDS 1602295, San Bernardino Superior Court (July 12, 2017) (approving \$1.98
25 million settlement for 1,600 drivers with unpaid rest break and derivative claims and appointing A&T
26 as co-class counsel); Order Finally Approving Class Action Settlement, *Plimpton v. Gordon Trucking,*
27 *Inc.*, Case No. CIV-DS-1511918, San Bernardino Superior Court (January 26, 2017) (approving \$3.7
28 million non-reversionary settlement for 1,800 drivers with meal and rest break claims and appointing

A&T as co-counsel for the Class); *Downs v. U.S. Foodservice, Inc.*, Case No. 3:10-cv-02163-EMC (N.D. Cal. Sept. 11, 2012), ECF No. 84 (granting approval to class action settlement for \$3 million for 1,100 truck drivers with meal and rest break claims; Memorandum Decision Re Unopposed Motion for Final Approval of Class Action Settlement (Doc. 41) and For Attorneys' Fees and Costs (Doc. 48), *Bond v. Ferguson Enterprises, Inc.*, NO. 1:09-cv-1662 OWW MJS, 2011 WL 2648879 (E.D. June 30, 2011) (granting approval to \$2.25 million class settlement for 553 truck drivers); Order Re Final Approval of Class Action Settlement, *Padilla v. Young's Market Company, LLC*, Case No. 2:09-CV-08730 DMG (RCx) (C.D. Cal. Aug. 23, 2010), ECF No. 53 (approving settlement of \$1 million for meal and rest break claims of 310 truck drivers); Order Granting Plaintiffs' Motion for Final Approval of Class Action Settlement, Approving Service Awards to the Class Representatives, and Granting Plaintiffs' Motion for Attorneys' Fees and Costs, *Jape v. Southern Wine and Spirits of America, Inc.*, Case No. CV09-2599 SJO (FMOx) (C.D. Cal. July 19, 2010), ECF No. 50 (granting final approval to \$1 million settlement for 301 truck drivers); Order Granting Plaintiffs' Motions for: (1) Final Approval of Class Action Settlement and Award of Service Fee to Class Representative; and (2) Reasonable Attorneys' Fees and Reimbursement of Litigation Expenses and Costs to Class Counsel, *Valladares v. The SYGMA Network, Inc.*, Los Angeles County Case No. BC 406053 (April 6, 2010) (granting final approval to \$1.95 million wage and hour settlement for class of 515 truck drivers); Order Granting Plaintiffs' Motion for Final Approval of Class Action Settlement, *Valdez v. Sysco Food Services of Los Angeles, Inc.*, Los Angeles County Case No. BC396372 (Feb. 1, 2010) (granting final approval to \$1.4 million missed meal break settlement for class of 480 truck drivers); Order (1) Granting Final Approval of Class Action Settlement; (2) Awarding Payment of Class Counsel's Attorneys' Fees, Expenses, and Costs; and (3) Awarding Participation, Service, and Incentive Payment to Class Representative From Settlement Fund, *Murray v. United Natural Foods, Inc.*, Placer County Sup. Court Case No. SCV21938 (Jan. 6, 2009) (granting final approval to \$1.5 million missed meal break settlement for 335 truck drivers); Order Granting Final Approval of Class Action Settlement.

57. Notably, on January 27, 2016, after 7 years of hotly contested litigation, including class certification, multiple summary judgment motions, attempted decertification, and preparation for the phase 1 liability trial, the case of *Jack Morrison v. Knight Transportation, Inc.*, Tulare County Superior

1 Court, Case No. 228016, was resolved for an amount of \$2.25 million to the class of 4,100 drivers, and
2 attorney's fees were then decided on a contested motion. On a contested fees motion, the Tulare County
3 Superior Court awarded our firm an additional \$1,125,000 in fees for our work on that case.

4 58. Since 2004, our firm has also represented more than 500 individual employees in cases
5 brought under various state and federal statutes, including the California Labor Code, and we have
6 obtained favorable results in numerous cases. In December 2012, for example, we obtained a Final
7 Judgment in the amount of \$318,913.09 in a Title VII and FEHA retaliation case after a general jury
8 verdict for the Plaintiff and a successful appeal to the Ninth Circuit from the district court's denial of
9 Plaintiff's motion for attorneys' fees. *See* Final Judgment, *Barrios v. Diamond Contract Services, Inc.*,
10 Case No. 2:07-cv-03500-CBM-FMO (C.D. Cal. Dec. 20, 2012), ECF No. 138 (final judgment entered
11 for Plaintiff in the amount of \$318,913.09); *see also Barrios v. Diamond Contract Services, Inc.*, 461 F.
12 App'x 571 (9th Cir. Dec. 13, 2011) (reversing original district court judge's denial of motion for
13 attorneys' fees).

14 59. Our firm currently has over 150 additional pending class actions where we are lead
15 counsel for putative classes under both the laws of California and Washington state. In 2017, we
16 represented more than 60,000 workers in wage and hour cases recovering more than \$24 million for our
17 clients. In 2018, we recovered more than \$30 million for more than 69,000 Class Members. In 2019, we
18 recovered over \$35 million for more than 50,000 workers. In 2020, we recovered \$3 million for more
19 than 70,000 workers. Our 2021 results mirrored those of 2019.

20 60. Notably, our firms 2021 and yearly rates for me and my associates and staff have been
21 approved recently by several federal judges in recent cases. *See, e.g., Pagh v. Wyndham Vacation*
22 *Ownership, Inc.*, Case No. 8:19-cv-00812-JWH-ADSx, Docket No. 52 (Order Granting Plaintiffs'
23 Motion for Attorneys' Fees and Costs [ECF No. 46], dated March 23 2021), the Honorable John W.
24 Holcomb, p. 6 (noting Mr. Ackermann's "extensive experience in labor and employment litigation" and
25 finding that "Mr. Ackermann's hourly rate of \$800 is reasonable"); *Moss v. USF Reddaway, Inc.*, Case
26 No. 5:15-cv-01541-JAK-FFM, Docket No. (Order Granting Final Approval, dated July 25, 2018), the
27 Hon. Judge John Krondstadt, 124 at p. 13 of 15 (noting that "The attorneys and paralegals who worked
28 on this matter have substantial experience in complex employment litigation ... For example, Craig

Ackermann has served as lead counsel or co-lead counsel in more than 200 class actions during his 21-year career, and the court approved my hourly rates of \$660 to \$715 for each respective year of the litigation, including \$715 for work in 2018, as “within the range of reasonableness” for the “hourly rates charged in this District”) (trucker piece-rate class action); *Santamour v. UPS Freight, Inc.*, Case No. 2:17-cv-00196, ECF No. 33 (Order Granting Final Approval, dated June 26, 2018) (the Hon. Chief Judge Thomas Rice of the Eastern District of Washington) (“The Court, based on its independent review as well as its review of the supporting documents submitted by Plaintiffs, finds the rates billed by Plaintiffs’ counsel and paralegals are commensurate with the prevailing rates for similar representation in the relevant market”, and approving my rate at \$717 per hour) (trucker piece-rate class action); *Hollis v. Union Pacific Railroad Co.*, Case No. 5:17-cv-02449-JGB-SHK, Docket No. 28 (Order Granting Final Approval and Attorneys’ Fees dated September 19, 2018), the Hon. Jesus G. Bernal, at pp. 12-13 of 14 (noting that “Here, Plaintiff’s counsel billed at hourly rates ranging from \$200-\$890 for attorney timekeepers. Craig Ackerman billed \$717/hour. Avi Kreitenberg billed \$500/hour. Sam Vahedi billed \$440/hour. Non-attorney staff including paralegals and legal assistants billed between \$125/hour and \$195/hour. The Court reviewed the experience of the respective attorneys and finds the amount billed per hour to be reasonable ... For instance, Craig Ackerman has been an employment attorney since 1997 and has handled numerous federal and state employment class action cases) (railroad employee wage statement class action); *Bykov v. DC Transportation Services, Inc.*, Case No. 2:18-cv-1691 DB, Docket No. 29 (Order dated March 3, 2020), (the Hon. Deborah Barnes, at pp. 7 and 11 noted that “plaintiff’s counsel are experienced litigators of class actions involving the precise claims here, i.e., wage and hour disputes involving truck drivers” and “[p]laintiff’s counsel has collectively represented hundreds of truck drivers in similar wage and hour cases”).

Class Representatives’ Service Awards

61. The Settlement Agreement provides a service award payment not to exceed \$10,000 to each of the Class Representatives. The proposed service awards are reasonable compensation given the time and effort that the named Plaintiffs, devoted to this case and the valuable assistance to Class Counsel in this case, including factual background for the mediation and Complaints; speaking with other potential class members about their experiences working for Defendant; reviewing the Complaints;

1 providing documents about Defendant's compensation plan and break policies; participating in phone
2 calls to discuss litigation and settlement strategy; making themselves available for the all-day mediation;
3 and reviewing the settlement documents. At no time did the Class Representatives ever have a guarantee
4 of any personal benefit as a result of this case. On the contrary, they assumed significant risk in bringing
5 this litigation — namely, had they lost, they would have been ordered to pay Defendant's costs.

6 *The Settlement Administrator*

7 62. The parties propose that the Court appoint CPT Group, Inc. ("CPT") to serve as the
8 Settlement Administrator. CPT is experienced in administering class action settlements, and has
9 estimated its fees for this settlement, not to exceed \$55,000. CPT's bid for settlement administration is
10 attached hereto as **Exhibit 2**. If administration costs are below \$55,000, the difference will be added to
11 the Net Settlement Amount to be distributed to Class Participants.

12 *LWDA*

13 63. The LWDA was provided with a copy of the settlement documents concurrently with
14 this filing as required by PAGA. A copy of the email confirmation is attached hereto as **Exhibit 3**.

15 I declare under penalty of perjury under the laws of the United States of America and the State
16 of California that the foregoing is true and correct.

17 Executed on March 10, 2023 in Beverly Hills, California.

18
19 By:

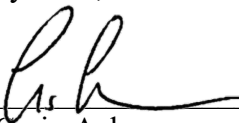

Craig Ackermann

EXHIBIT 9

Matter Billing Detail

Report Date: 8/28/2023
Report Time: 12:38PM
Page: 1 of 2
User ID: Mateo

JAMES HAWKINS APLC

Date Range: 01/01/1900 to 08/28/2023
Client: FOREVER002 - Giana Benson
Matter: FOREVER001 - Forever 21-F21 OPCO LLC -Giana Benson

Date	Expense Code	Description	Debit	Credit	Billing Status	On Hold	Invoice Number	Check Number	Payee
		Balance Forward:	\$0.00						
06/04/2021	POS	Postage - LWDA CERT MAIL X1	\$8.99		Unbilled				
06/07/2021	ONE	One Legal Services-Complaint,Civil Case Cover Sheet,Original Summons-In#03331701	\$1,489.69		Unbilled				
06/09/2021	FIL	Filing Fee - 06.04.2021 LWDA Filing Fee	\$75.00		Unbilled				
08/05/2021	FST	First Legal Network- SERVED- Complaint and Initial Docs IN#30169470	\$175.85		Unbilled				
08/09/2021	ONE	One Legal Services- Proof of Service-In#03462182	\$12.35		Unbilled				
01/31/2022	ONE	One Legal Services- Additional Declaration of Christina Fowler re disbursement-In#03820918	\$39.38		Unbilled				
02/11/2022	MED	Mediation Services - CK#9782	\$4,333.33		Unbilled				
05/06/2022	ONE	One Legal Services- Case management Statement- In# 04056798	\$12.87		Unbilled				
06/07/2022	EXA	Expert Analysis BCG IN#5901 CK#10017	\$1,400.00		Unbilled				
11/21/2022	ONE	One Legal Services - Stipulation and Proposed Order- in#04545736	\$12.87		Unbilled				
11/21/2022	ONE	One Legal Services - Notice of Remote Appearance- in#04546213	\$12.87		Unbilled				
12/05/2022	CRT	Court Documents - Minute Order	\$1.00		Unbilled				
12/07/2022	ONE	One Legal Services- Stipulation and proposed order- In#04582097	\$33.46		Unbilled				
01/03/2023	CRT	Court Documents - 01.03.23 pulling court docs off docket	\$5.80		Unbilled				
01/17/2023	ONE	One Legal Services - Stipulation and proposed order- In#04675496	\$33.46		Unbilled				
01/19/2023	CRT	Court Documents- Order	\$28.80		Unbilled				
01/24/2023	ONE	One Legal Services - Amended Complaint-In#04695554	\$13.33		Unbilled				
01/25/2023	ONE	One Legal Services - Stipulation and proposed order- in#04697721	\$33.46		Unbilled				
03/16/2023	ONE	One Legal Services - Amended Complaint-In#04832664	\$13.33		Unbilled				

Matter Billing Detail

JAMES HAWKINS APLC

Date	Expense Code	Description	Debit	Credit	Billing Status	On Hold	Invoice Number	Check Number	Payee
04/24/2023	CRT	Court Documents	\$6.60		Unbilled				
05/03/2023	ONE	One Legal Services - Notice of Entry of Order- in#04961117	\$13.33		Unbilled				
05/09/2023	ONE	One Legal Services - Notice of Entry of Order - In#04975403	\$13.33		Unbilled				

Matter Billing Detail

JAMES HAWKINS APLC

Date Range: 01/01/1900 to 08/28/2023
Client: FOREVER002 - Giana Benson
Matter: FOREVER003 - Forever 21-F21 -PAGA -Giana Benson

Date	Expense Code	Description	Debit	Credit	Billing Status	On Hold	Invoice Number	Check Number	Payee
		Balance Forward:	\$0.00						
09/01/2021	ONE	One Legal Services-Complaint,Civil Case Cover Sheet,Original Summons-In#03510712	\$1,489.69		Unbilled				
10/29/2021	FST	First Legal Network - Process: Complaint, Intial Docs, Ntc IN: 30175944	\$191.46		Unbilled				
11/04/2021	ONE	One Legal Services- proof of Service-in#03645681	\$12.35		Unbilled				
11/15/2021	FST	First Legal Network - E-file: Notice - IN #30179004	\$35.00		Unbilled				
11/16/2022	ONE	One Legal Services - Notice of Remote Appearance- In# 04535767	\$12.87		Unbilled				
		Total:	\$1,741.37	\$0.00					
		Balance:	\$1,741.37						

Matter Billing Detail

JAMES HAWKINS APLC

Date	Expense Code	Description	Debit	Credit	Billing Status	On Hold	Invoice Number	Check Number	Payee
Total Fees Billed- - - - -			\$0.00						
Total Fees Unbilled : - - - - -			\$0.00						
Total Fees Received : - - - - -			\$0.00						
Total Soft Cost Billed : - - - - -			\$0.00						
Total Soft Cost Unbilled : - - - - -			\$0.00						
Total Soft Cost Received : - - - - -			\$0.00						
Total Hard Cost Billed : - - - - -			\$0.00						
Total Hard Cost Unbilled : - - - - -			\$1,741.37						
Total Hard Cost Received : - - - - -			\$0.00						
Total Taxes Billed : - - - - -			\$0.00						
Total Taxes Unbilled : - - - - -			\$0.00						
Total Taxes Received : - - - - -			\$0.00						
Total Late Charges Billed : - - - - -			\$0.00						
Total Late Charges Unbilled: - - - - -			\$0.00						
Total Late Charges Received : - - - - -			\$0.00						
Trust Balance: - - - - -			\$0.00						