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

COORDINATION PROCEEDING
SPECIAL TITLE [RULE 3.550]

SUPER DUPER BURGERS WAGE AND
HOUR CASES

Included actions:

Martinez v. Back of the House, Inc., et al.,
No. RG21113642 (Alameda County Super.
Ct.)

Martinez v. Back of the House, Inc., et al.,
No. CGC-21-594380 (San Francisco County
Super. Ct.)

Lopez v. Back of the House, Inc., et al.,
No. CGC-19-579624 (San Francisco County
Super. Ct.)

Judicial Council Coordination Proceeding No.:
CJC-22-005249

Honorable Ethan P. Schulman
Department 304

CLASS ACTION

**SUPPLEMENTAL DECLARATION OF
TARA ZABEHI IN SUPPORT OF
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Date: May 13, 2025
Time: 11:00 a.m.
Department: 304

SUPPLEMENTAL DECLARATION OF TARA ZABEHI

I, **Tara Zabehe**, hereby declare as follows:

1. I am an attorney licensed to practice law in the State of California. I am a member of Lawyers for Justice, PC, attorneys of record for Plaintiff Erickson Martinez (“Plaintiff” or “Class Representative”) in the cases entitled *Erickson Martinez v. Back of the House, Inc., et al.*, San Francisco County Superior Court, Case No. Case No. CGC-21-594380, and *Erickson Martinez v. Back of the House, Inc., et al.*, Alameda County Superior Court, Case No. Case No. RG21113642, which were coordinated into the *Super Duper Burger Wage and Hour Cases*, San Francisco County Superior Court, Case No. CJC-22-005249. The facts set forth in this declaration are within my personal knowledge or based on information and belief, and if called as a witness, I could and would competently testify thereto.

2. On January 31, 2025, Plaintiff filed a Motion for Preliminary Approval of Class Action Settlement (“Motion for Preliminary Approval”) and supporting documents seeking approval of the settlement reached by Plaintiff Martinez and Defendants Back of the House, Inc.; EBurger, LLC; JBurger, LLC; Mission 98 Super, LLC; MBurger, LLC; 2355 Telegraph Ave, LLC; The Veranda Super, LLC; 5399 Prospect Road, LLC; Super Emeryville, LLC; DBurger, LLC; MetBurger, LLC; Super Novato, LLC; Super Los Gatos, LLC; KBurger, LLC; Adriano Paganini; and Edmondo Sarti (together, “Defendants”) (together, the “Parties”).

3. On February 28, 2025, the Court issued a Tentative Ruling continuing the hearing on Plaintiff’s Motion for Preliminary Approval and raising points of inquiry with regards to the Motion for Preliminary Approval (“February 28, 2025 Tentative Ruling”). The tentative ruling was adopted and a true and correct copy of the March 4, 2025 Minute Order is attached hereto as “**EXHIBIT A**”.

4. On March 4, 2025, the Court held a hearing on Plaintiff’s Motion for Preliminary Approval and at the hearing requested additional information in support of the Motion for Preliminary Approval (“March 4, 2025 Hearing”). Among other things, the Court requested additional factual details in support of a finding that the typicality requirement for class certification is satisfied and regarding the value of the claims being resolved. To address the

1 issue of typicality, the Court is concurrently being provided with the Supplemental Declaration
2 of Plaintiff Erickson Martinez in Support of Plaintiff's Motion for Preliminary Approval.
3 Additional details regarding the value of the claims are provided herein, immediately below.
4 For the convenience of the Court and to provide necessary context, Class Counsel's valuation
5 of claims is largely repeated in this declaration (in order to eliminate the necessity of the Court
6 to consult and cross-check multiple separate declarations), while also providing additional
7 factual details that informed Class Counsel's valuation of the claims.

8 ESTIMATE OF THE VALUE OF THE CLAIMS

9 5. Plaintiff's core allegation is that Defendants have violated the California Labor
10 Code by engaging in a uniform practice and procedure, with respect to Plaintiff and the
11 Settlement Class Members, of, *inter alia*, failing to pay all overtime and minimum wages,
12 failing to provide compliant meal and rest periods and associated premium pay, failing to timely
13 pay wages during employment and upon termination of employment, failing to provide
14 compliant wage statements, failing to maintain requisite payroll records, and failing to
15 reimburse necessary business expenses, and thereby engaged in unfair business practices in
16 violation of California Business and Professions Code section 17200, *et seq.* and conduct that
17 gives rise to penalties pursuant to PAGA.

18 6. Based on data provided by Defendants, the total number of putative class
19 members during the period from September 16, 2015 to September 9, 2024 ("relevant time
20 period") is estimated to be approximately one thousand four hundred and twenty-five (1,425)
21 individuals who worked a total 98,555 workweeks with an average hourly rate of pay of
22 approximately \$16.64.¹

23 7. As set forth in the Declaration of Tara Zabehi in Support of Plaintiff's Motion for
24 Preliminary Approval of Class Action Settlement filed on January 31, 2025 ("Declaration of
25 Tara Zabehi") and discussed in the Motion for Preliminary Approval, both sides had the
26 opportunity to interview witnesses, conducted significant formal and informal discovery and
27

28 ¹ This figure was calculated based on the average hourly pay from three separate periods of time provided by
Defendants using a weighted average calculation.

1 investigations into the facts of the cases, including and not limited to, the exchange, review,
2 and analysis of thousands of pages of information, documents, and data produced by
3 Defendants and obtained from Plaintiff and other sources. Class Counsel propounded multiple
4 sets of formal written discovery requests on Defendants (consisting of Form Interrogatories-
5 General, Special Interrogatories, and Requests for Production of Documents), and reviewed
6 Defendants' responses and supplemental responses thereto. Class Counsel also noticed two (2)
7 Person Most Knowledgeable depositions for three of the named defendants on approximately
8 thirty (30) topics regarding Defendants' organizational structure, document retention,
9 compensation, and wage and hour practices in March 2022 (noticed to take place on dates in
10 July 2022), and each deposition notice was accompanied with extensive Requests for
11 Production of Documents. Defendants produced over approximately 6,000 pages of documents
12 in advance of mediation. Class Counsel prepared for and took the deposition of Edmundo Onas
13 ("Onas"), Vice President of Operations for Back of the House, who was produced as
14 Defendants' Person Most Knowledgeable witness for many of the topics regarding wage and
15 hour practices on August 7, 2023. Defendants produced a second Person Most Knowledgeable
16 witness for deposition, Jessica Spencer ("Spencer"), Human Resources Manager for Back of
17 the House, for the topics that largely focused on Defendants' organizational structure, which
18 was conducted on August 7, 2023. True and correct copies of excerpts of the Onas deposition
19 transcript are attached hereto as "**EXHIBIT B**" and true and correct copies of excerpts of the
20 Spencer deposition transcript are attached hereto as "**EXHIBIT C**".

21 8. The volume of information, data, and documents that Class Counsel reviewed
22 and analyzed included, but was not limited to, a sampling of putative class members' time and
23 pay data and records produced by Defendants ("Class Member Data"), employment records of
24 Plaintiff and other Class Members, wage statements, Defendants' Employee Handbook, Meal
25 Break Policy documents, Meal Break Waiver Form(s), Rest Break Policy documents, company
26 policy acknowledgements, internal memoranda, job descriptions and job titles, new hire
27 orientation checklists, training checklists, operations and employment policies, practices,
28 forms, and procedures (including, but not limited to, Complaint Procedure, Meal Period and

Rest Break Policy, and Cellphone Usage Policy).

a. Failure to Pay Overtime and Minimum Wages

i. Plaintiff alleged that Defendants failed to pay overtime and minimum wages. Plaintiff contended that Defendants' uniform policies, practices, and procedures required putative class members to perform work during meal periods, before clocking-in to their scheduled shifts, and after clocking-out from their scheduled shifts. For example, Defendants allegedly assigned unreasonable workloads and discouraged employees from working overtime hours, resulting in uncompensated off-the-clock work. As a consequence, Defendants failed to properly pay all wages due to the putative class members (including overtime and minimum wages). Plaintiff contended that Defendants exerted class-wide pressure on Plaintiff and putative class members to reduce the amount of overtime recorded by requiring preauthorization for all overtime work and subjecting those who logged overtime hours without preauthorization to discipline. California Labor Code section 510 provides that when an employee works more than eight (8) hours in any workday, more than forty (40) hours in any workweek and/or more than six (6) days in a workweek, the employer must pay the employee at least one and one-half times the employee's regular rate of pay for all overtime hours worked. The employer must pay the employee no less than twice his or her regular rate of pay for hours worked in excess of twelve (12) hours in one day or in excess of eight (8) hours on the seventh consecutive day of work. California Labor Code section 1198 and the applicable Industrial Welfare Commission ("IWC") Wage Order(s) provide that it is unlawful to employ persons without compensating them at a rate of pay either time-and-one-half or two-times that person's regular rate of pay, depending on the number of hours worked by the person on a daily or weekly basis.

ii. California Labor Code section 1197 provides that it is unlawful to pay employees at a rate less than the minimum wage. California Labor Code sections 1194, 1194.2, 1197, and 1197.1 provide that an employee may seek to recover unlawfully unpaid wages by court action, as well as liquidated damages in an amount equal to the wages unlawfully not paid and interest thereon. California Labor Code section 1197.1 provides for civil penalties, which,

1 arguably, may only be recovered by the Labor Commissioner during a one-year statute of
2 limitations period.

3 iii. Defendants contended, *inter alia*, that their overtime policies and
4 practices comply with the law and that they paid putative class members over the minimum
5 wage for all hours worked. Defendants also produced wage records reflecting overtime
6 compensation paid to many of the putative class members (including, and not limited to,
7 Plaintiff). Defendants further contended that all employees were required to record all time
8 worked and were given the opportunity to, and did, make any necessary changes, and that
9 Defendants were not aware that any work had been performed off-the-clock. Defendants'
10 Person Most Knowledgeable testified that employees were not allowed to do work before or
11 after their shifts and that bonuses or incentive pay was rarely awarded to employees (See, Exh.
12 B, 56:13-57:2, 81:18-83:13, 84:10-86:4; Exh. C, 114:12-25, 116: 8-14 & 102: 10-18).
13 Defendants also argued that individual liability issues predominate, including: (a) whether each
14 employee worked off-the-clock; (b) whether Defendants knew or should have known about
15 each employee's off-the-clock work; (c) whether each employee worked overtime; and (d)
16 whether Defendants knew or should have known that each putative class member performed
17 overtime work. Defendants also contended that the putative class members held different
18 positions, had different job duties, worked at different locations, and that many of them worked
19 part time and thus were not eligible for overtime. Defendants contend these circumstances raise
20 highly individualized questions of fact and would pose challenges to certification and the merits
21 of the claims for overtime and minimum wages.

22 iv. Based on Class Counsel's investigations and analysis, this claim centered
23 on the following: Defendants required putative class members to be work-ready at the
24 beginning of the scheduled shift and putative class members were required to don and doff their
25 uniforms and related paraphernalia, help guests, and clean, off-the-clock, before clocking in for
26 their scheduled shifts, after clocking out of their scheduled shifts, and during what should have
27 been their duty-free meal periods. However, there was variability regarding this claim,
28 especially when it came down to the length of the shifts worked (and whether or not overtime

1 was worked or whether the shift was long enough to trigger a meal period), depending on the
2 job position, location (and associated foot traffic and customer demand), and seasonal factors.
3 Some putative class members reported working off-the-clock approximately 10-15 minutes per
4 week, on the low end, while others reported working one (1) to two (2) hours per week, on the
5 high end.

6 v. Class Counsel considered information, data, and documents obtained
7 through investigations and from Plaintiff, Defendants, putative class members, and other
8 sources, and created damages/valuation models prior to mediation. If it could be proven that
9 Defendants failed to pay one hour of overtime wages every workweek during the relevant time
10 period, the potential value of this claim was estimated to be \$2,459,932.80 (98,555 workweeks
11 x 1 hour of unpaid overtime wages x overtime hourly rate of \$24.96, which is based on the
12 average hourly rate of \$16.64). If it could be proven that Defendants failed to pay an hour of
13 minimum wages every workweek during the relevant time period, the potential value of this
14 claim was estimated to be \$1,639,955.20 (98,555 workweeks x 1 hour of unpaid minimum
15 wages x average hourly rate of \$16.64).

16 vi. However, this assumes an exposure based on a class having been certified
17 and Plaintiff having proven all elements of the overtime and minimum wage claims, despite
18 risks associated with obtaining and maintaining certification, risks to establishing liability, and
19 significant additional costs that would have to be incurred in order to certify a class and establish
20 liability. Plaintiff also faced the risk of the Court finding that individualized issues
21 predominate, such that class treatment is not suitable. While Class Counsel disagreed with
22 Defendants' arguments and factual contentions, Class Counsel recognized the circumstances
23 and realities of the case, applicable case law and regulations, the costs and expenses of further
24 litigation and certification, and risks to recovery, and applied appropriate discounts for them.
25 With respect to the overtime claim, and taking in the risks as explained above, at this juncture,
26 a discount of 55% was applied to account for the risks associated with obtaining and
27 maintaining class certification (bringing the value of this claim closer to \$1,106,969.76), a
28 discount of 65% was applied to account for the risks associated with succeeding on the merits

1 and establishing liability (bringing the value of this claim closer to \$387,439.42), and a discount
2 of 85% was applied to account for the risks associated with proving the extent of damages and
3 obtaining an award thereof (bringing the value of this claim closer to \$58,115.91). Also, with
4 respect to the minimum wage claim facing similar risks, at this juncture, a discount of 55% was
5 applied to account for the risks associated with obtaining and maintaining certification (bringing
6 the value of this claim closer to \$737,979.84), a discount of 65% was applied to account of the
7 risks associated with succeeding on the merits and establishing liability (bring the value of this
8 claim closer to \$258,292.94), and a discount of 85% was applied to account for the risks
9 associated with proving the extent of damages and obtaining an award thereof (bringing the
10 value of this claim closer to \$38,743.94).

11 b. Failure to Provide Compliant Meal Periods and Associated Premiums:

12 i. Plaintiff's theory of liability was based on Defendants' failure to provide
13 timely, full, and/or uninterrupted meal periods and meal premiums when due. Plaintiff
14 contended, *inter alia*, that Defendants organized meal periods around business needs and that
15 Defendants' practices, and procedures required employees to perform job duties during their
16 meal periods and prevented them from regularly receiving compliant meal periods and that
17 Defendants did not provide premium payments in lieu thereof. Plaintiff alleged that Defendants
18 failed to provide timely, full, and/or uninterrupted meal periods. For example, Plaintiff
19 contended that he and other putative class members regularly suffered short, late, interrupted,
20 and missed meal periods because they had to perform work during meal periods, as a result of
21 understaffing, heavy workloads and expectations to continue work duties. Plaintiff further
22 contended that Defendants failed to pay meal period premiums for missed, late, short, or
23 interrupted meal periods and did not have a policy or practice of doing so.

24 ii. Under California law, an employer must provide an employee with
25 uninterrupted meal periods of not less than thirty (30) minutes before the employee works more
26 than five (5) hours, except that if the total work period per day of the employee is no more than
27 six (6) hours, the meal period may be waived by mutual consent of both the employer and
28 employee. (Cal. Lab. Code § 512(a)). A second meal period of not less than thirty (30) minutes

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

10 iii. Defendants contended that they had practices, policies, and procedures to
11 provide meal and rest periods every workday to their employees that fully complied with
12 California law. To the extent that putative class members failed to take their meal periods or
13 took a short or late meal or rest period, Defendants contended that they did so voluntarily, and
14 that meal premiums that were required were in fact paid. Defendants also contended that there
15 were multiple individual issues that would pose challenges to certification, including and not
16 limited to, (a) whether any meal periods were non-compliant, (b) why they were non-compliant,
17 (c) that putative class members held different positions and had different job duties, for example
18 managers as well as cooks were non-exempt hourly employees, (d) the existence of meal break
19 waivers, and (e) that there were many different locations with different needs, and that as a
20 result, there was variation to the circumstances that could allegedly cause the employees to be
21 deprived of the opportunity to take legally-compliant, duty-free meal periods, and this variation
22 in circumstances raised highly individualized questions of fact.

23 iv. Based on Class Counsel’s investigations and analysis, this claim centered
24 on the following: The meal periods of Plaintiff and other putative class members were often
25 late, missed, short, and interrupted with work-related inquiries or instructions from supervisors
26 and other employees to return to work and complete tasks and/or assist guests. Plaintiff and
27 other putative class members reported that they could only go on lunch when their supervisor
28 told them they could go, which often meant foregoing a meal break entirely if it was busy.

Putative class members reported experiencing approximately one (1) non-compliant meal period per week, on the low end, and approximately five (5) non-compliant meal periods per week, on the high end. However, Defendants provided thousands of pages of pay stubs, many of which reflected that meal premiums had allegedly been paid. Defendants' Person Most Knowledgeable also testified that meal and rest breaks were strictly scheduled and oversight was maintained to ensure breaks were taken and that employees were paid meal premiums for missed, late, or short meal periods or had signed meal waivers (See Exh. B, 38:2-13, 40:23-41, 67:17-68:6, & 73:15-25; Exh. C, 71:14-72:1 & 121:4-123:4). Furthermore, many putative class members worked part time schedules and were thus not meal period eligible.

v. Class Counsel considered information obtained through investigations and from Plaintiff, as well as class data provided by Defendants, and created damages/valuation model. Based thereon, if it could be proven that one (1) meal period premium was due every workweek during the relevant time period, the potential value of this claim was estimated to be \$1,639,955.20 (98,555 workweeks x 1 meal period premiums x average hourly rate of \$16.64).

vi. Class Counsel considered the risk of further litigating the case, including the significant additional costs that will be incurred by both sides if the case does not settle, as litigating a class action through class certification, trial, and/or appeals is very expensive. Moreover, litigating meal period claims is inherently difficult as an employer's records, as is the case here, do not usually indicate when a meal period is interrupted. While Class Counsel disagreed with Defendants' arguments and factual contentions, Class Counsel recognized the circumstances and realities of the case as discussed above, applicable case law and regulations, costs and expenses of further litigation and certification, and risks to recovery, and applied appropriate discounts for them. At this juncture, a discount of 55% was applied to account for the risks associated with obtaining and maintaining class certification (bringing the value of this claim closer to \$737,979.84), a discount of 65% was applied to account for the risks associated with succeeding on the merits and establishing liability (bringing the value of this claim closer to \$258,292.94), and a discount of 85% was applied to account for the risks associated with proving the extent of damages and obtaining an award thereof (bringing the

1 value of this claim closer to \$38,743.94).

2 c. Failure to Provide Compliant Rest Periods and Associated Premiums:

3 i. Plaintiff's theory of liability was also based on Defendants' failure to
4 provide their employees with timely, full, and/or uninterrupted rest periods and rest premiums
5 when due. Plaintiff contended that Defendants' employment policies, practices, and procedures
6 required employees to perform job duties during their rest periods and prevented them from
7 regularly receiving compliant rest periods. Plaintiff further contended that Plaintiff and other
8 putative class members were often required to complete assigned work tasks prior to taking
9 their rest breaks, without alteration to the end of the break, and therefore their rest breaks were
10 provided late or missed.

11 ii. California law requires an employer to provide rest periods to all
12 employees at the rate of ten (10) minutes for every four hours of work or major fraction thereof.
13 (Cal. Lab Code § 226.7.) When an employer fails to provide a compliant rest period, the
14 employer is required to either (a) provide another rest period or (b) pay one additional hour of
15 pay at the regular rate of pay "for each work day that the meal or rest period is not provided."
16 (*Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, 271-272; Cal. Lab. Code §
17 226.7(b).) However, employees are exempt from the rest break law, if their duties and
18 responsibilities qualify for one or more of the exemptions under California or federal law. (See
19 Cal. Lab. Code § 226.7(e); see e.g., 49 CFR § 395.)

20 iii. Defendants contended that they had methods, policies, and procedures to
21 provide all applicable rest periods every workday to putative class members that fully complied
22 with the law. Defendants argued that the reasons why a putative class member failed to receive
23 a compliant rest period raised individual issues that could not be certified. For example,
24 Defendants contended that there were many different locations with different needs, and that as
25 a result, there was variation in the circumstances that could allegedly cause the employees to
26 be deprived of the opportunity to take legally-compliant, duty-free rest periods, and this
27 variation in circumstances raised highly individualized questions of fact.

28 iv. Based on Class Counsel's investigations and analysis, this claim centered

1 on the following: Plaintiff and other putative class members reported that rest breaks were
2 interrupted often due to questions and instructions from supervisors or other employees as a
3 result of being required to continue helping guests, due to understaffing and heavy workloads.
4 Often times, Plaintiff and other employees were called back from their rest break to assist guests
5 during rush hours. Defendants' Persons Most Knowledgeable testified that employees were
6 not prevented from leaving the premises and paid premiums for any missed, late, or interrupted
7 breaks. (See, Exh. B, 75:15-24; Exh. C, 123:23-124:5; 124:19-125:20.) Furthermore, many
8 putative class members only worked part time shifts and were thus owed one rest break per shift
9 instead of two. Putative class members reported experiencing approximately two (2) to three
10 (3) non-compliant rest breaks per week, on the low end, and approximately five (5) non-
11 compliant rest breaks per week, on the high end.

12 v. Class Counsel considered information obtained through investigations
13 and from Plaintiff and other putative class members, as well as class data provided by
14 Defendants, and created damages/valuation models prior to mediation. Based thereon, if it
15 could be proven three (3) rest period premiums were due every workweek during the relevant
16 time period, the potential value of this claim is estimated to be \$4,919,865.60 (98,555
17 workweeks x 3 rest period premiums x average hourly rate of \$16.64).

18 vi. Class Counsel also considered the risk of further litigating the case, as
19 well as significant additional costs that will be incurred by both sides if the case does not settle,
20 as litigating a class action through class certification, trial, and/or appeals is very expensive.
21 Moreover, litigating rest period claims is inherently difficult as an employer's records, as is the
22 case here, do not usually indicate when a rest period is short, late, interrupted, or missed entirely.
23 While Class Counsel disagreed with Defendants' arguments and factual contentions, Class
24 Counsel recognized the circumstances and realities of the case, applicable case law and
25 regulations, the costs and expenses associated with further litigation and certification, and risks
26 to recovery, and applied appropriate discounts for them. At this juncture, a discount of 55%
27 was applied to account for the risks associated with obtaining and maintaining class certification
28 (bringing the value of this claim closer to \$2,213,939.52), a discount of 70% was applied to

1 account for the risks associated with succeeding on the merits and establishing liability
2 (bringing the value of this claim closer to \$664,181.86), and a discount of 85% was applied to
3 account for the risks associated with proving the extent of damages and obtaining an award
4 thereof (bringing the value of this claim closer to \$99,627.28).

5 d. Failure to Timely Pay Wages:

6 i. Plaintiff alleged that Defendants intentionally and willfully failed to pay
7 Plaintiff and the other putative class members all wages due to them during employment and
8 upon termination, within the time period permissible under California law.

9 ii. California Labor Code section 204 provides that, unless an exemption
10 applies (e.g., under California Labor Code section 204(a)), wages (other than those wages due
11 upon termination of an employee) earned by an employee between the 1st and 15th days,
12 inclusive, of any calendar month, are due and payable between the 16th and the 26th day of the
13 month during which the labor was performed, and wages earned by an employee between the
14 16th and the last day, inclusive, of any calendar month, are due and payable between the 1st
15 and the 10th day of the following month. Under California Labor Code section 210, either a
16 statutory penalty or a civil penalty through PAGA may be recovered for a violation of California
17 Labor Code section 204, but not both. Therefore, the value of this claim is considered as a part
18 of the valuation of the PAGA claim contained *infra*.

19 iii. California Labor Code sections 201 and 202 provide that if an employer
20 discharges an employee, the wages earned and unpaid at the time of discharge are due and
21 payable immediately. If an employee quits his or her employment, his or her wages shall
22 become due and payable not later than seventy-two (72) hours of quitting, unless the employee
23 has given seventy-two (72) hours of notice of his or her intention to quit, in which case the
24 employee is entitled to his or her wages at the time of quitting. Furthermore, California Labor
25 Code section 203 provides that if an employer fails to pay an employee all wages due at
26 termination or within seventy-two (72) hours of resignation, in accordance with sections 201
27 and 202, then that employee's wages shall continue as a penalty until paid for a period of up to
28 thirty (30) days from the date they were due. California Labor Code section 203 further provides

1 that the statute of limitations to recover the penalty is the same as the statute of limitations for
2 recovery of the unpaid wages from which the penalties arise, i.e. three years.

3 iv. Based on Class Counsel's investigations and analysis, this claim centered
4 on the following: Plaintiff alleged that putative class members are entitled to unpaid wages
5 arising from, *inter alia*, off-the-clock work, as well as meal and rest period premiums, and as a
6 result, Defendants failed to timely pay putative class member, thereby triggering waiting-time
7 penalties under California Labor Code section 203. However, as discussed in detail above,
8 investigations and discovery reflected limits on meal period, rest period, and overtime exposure.

9 v. Based on information and data reviewed and analyzed, it was estimated
10 that approximately one thousand and thirty-eight (1,038) putative class members had been
11 terminated during the three-year statute of limitations during the relevant time period (i.e., from
12 September 16, 2016). If it could be proven that these individuals were not timely paid all wages
13 due to them upon termination, the potential value of waiting-time penalties claim was estimated
14 to be \$4,145,356.80 collectively (1,038 individuals x [30 days x hourly rate of \$16.64 x 8
15 hours]), or approximately \$3,993.60 per individual. However, this presumes that Plaintiff
16 would prevail on the underlying California Labor Code claims, which is necessary to show that
17 Defendants failed to timely pay wages that were due to the putative class members upon
18 termination.

19 vi. Defendants were adamant that no waiting-time penalties should be
20 awarded. Defendants pointed out that waiting-time penalties are derivative of each and every
21 other underlying alleged California Labor Code violation and contended that they paid the
22 terminated employees all wages due. Moreover, Defendants emphasized that, under California
23 Labor Code section 203, employers are only obligated to pay waiting-time penalties if they
24 "willfully" fail to pay wages due and owing at the time of termination or resignation. As Title
25 8, California Code of Regulations, section 13520 states,

26 A willful failure to pay wages within the meaning of Labor Code Section
27 203 occurs when an employer intentionally fails to pay wages to an
28 employee when those wages are due. However, a good faith dispute that
any wages are due will preclude imposition of waiting time penalties
under Section 203.

1 A “good faith dispute” that any wages are due occurs when an employer
2 presents a defense, based in law or fact, which, if successful, would
3 preclude any recovery on the part of the employee. The fact that a defense
4 is ultimately unsuccessful will not preclude a finding that a good faith
5 dispute did exist. Defenses presented which, under all the circumstances,
6 are unsupported by any evidence, are unreasonable, or are presented in
7 bad faith, will preclude a finding of a “good faith dispute.”

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vii. Accordingly, to assess the likely recovery of waiting-time penalties, Class Counsel also took into consideration the chances of prevailing on each of the underlying causes of action, as well as the additional hurdles of prevailing on the claim for waiting-time penalties, including the inherent difficulty in proving the “willful” prong of section 203, applicable case law, costs and expenses associated with further litigation and certification, the circumstances and realities of the case, and risks to recovery, and applied appropriate discounts for them. At this juncture, a discount of 55% was applied to account for the risks associated with obtaining and maintaining certification (bringing the value of the claim closer to \$1,865,410.56), a discount of 70% was applied to account for the risks associated with succeeding on the merits and establishing liability (bringing the value of this claim closer to \$559,623.17), and a discount of 85% was applied to account for the risks associated with proving the extent of damages and obtaining an award thereof (bringing the value of this claim closer to \$83,943.48).

18 e. Wage Statement Violations:

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

27 ii. Defendants contended that Plaintiff and putative class members suffered
28 no actual injury from the alleged wage statement violations. Defendants also contended that

1 this alleged violation is entirely derivative of the foregoing allegations. In other words, Plaintiff
2 would have to prove, for example, that off-the-clock work occurred, that overtime was worked,
3 that all hours of work had not been properly recorded and compensated, etc., to demonstrate
4 that the wage statements were inaccurate. Defendants further contended, *inter alia*, that if off-
5 the-clock and/or overtime work occurred and was not reflected in the wage statements, it was
6 because the work was hidden from Defendants. Defendants also contended that no actual injury
7 could be shown.

8 iii. Based on Class Counsel's investigations and analysis, this claim centered
9 on the following: By failing to account for all time worked and pay all wages due, Defendants
10 violated California Labor Code section 226(a). However, as discussed above, investigations
11 and discovery reflected limits on meal period, rest period, and overtime exposure.

12 iv. Based on information and data reviewed and analyzed, it was estimated
13 that approximately one thousand three hundred and fifty-nine (1,359) putative class members
14 worked during the one-year statutory limitations period (i.e., from September 16, 2018). If it
15 could be proven that a wage statement violation occurred for each pay period during the one-
16 year statute of limitations for each of these putative class members, the potential value of this
17 claim was calculated to be \$4,252,050.00 ([\$50.00 initial violation penalty x 1359 initial
18 violations] + [\$100.00 subsequent violation penalty x 41,841 subsequent violations [43,200 Pay
19 periods during one year statutory limitations period – 1359)]).

20 v. When assessing the value of this claim, Class Counsel considered these
21 factors, the derivative nature of this alleged violation, the chances of prevailing on each of the
22 underlying causes of action, applicable case law and regulations, costs and expenses associated
23 with further litigation and certification, realities of the cases, and risks to recovery, and applied
24 appropriate discounts for them. At this juncture, a discount of 55% was applied to account for
25 the risks associated with obtaining and maintaining class certification (bringing the value of
26 this claim closer to \$1,913,422.50), a discount of 65% was applied to account for the risks
27 associated with succeeding on the merits and establishing liability (bringing the value of this
28 claim closer to \$669,697.88), and a discount of 85% was applied to account for the risks

1 associated with proving the extent of damages and obtaining an award thereof (bringing the
2 value of this claim closer to \$100,454.68).

3 f. Failure to Maintain Payroll Records:

4 i. Plaintiff alleged that Defendants had intentionally and willfully failed to
5 keep accurate and complete payroll records showing the hours worked daily by, and the wages
6 paid to, Plaintiff and the putative class members for example, by failing to account for all time
7 worked by and pay all wages due to Plaintiff and putative class members. Plaintiff also alleged
8 that Defendants' intentional and willful failure to keep accurate payroll records violated the
9 statutorily-protected right to accurate and complete payrolls records, and that Plaintiff and
10 putative class members have suffered injury and damage as a result.

11 ii. Pursuant to California Labor Code section 1174(d), an employer shall
12 keep, at a central location in the state or at the plants or establishments at which employees are
13 employed, payroll records showing the hours worked daily by and the wages paid to, and the
14 number of piece-rate units earned by and any applicable piece rate paid to, employees employed
15 at the respective plants or establishments. These records must be kept in accordance with rules
16 established for this purpose by the Labor Commissioner, but in any case, shall be kept on file
17 for not less than three years. Under California Labor Code section 1174.5, a willful violation of
18 the employer's recordkeeping obligations set forth in California Labor Code section 1174(d) is
19 subject to a civil penalty of \$500. Arguably, this civil penalty would only be recoverable by the
20 Labor Commissioner, however, Plaintiff asserts a cause of action under PAGA. Therefore, the
21 value of this claim has been considered as a part of the valuation of the PAGA claim contained
22 *infra*.

23 iii. As discussed above, investigations and discovery reflected limits on meal
24 period, rest period, and overtime exposure. Also, Defendants contended that Plaintiff and
25 putative class members suffered no actual injury or damage from the alleged recordkeeping
26 violations. Moreover, Defendants challenged certification of the recordkeeping issue on the
27 basis that individual liability issues predominated, including (a) whether each putative class
28 member's payroll records were not maintained properly, and (b) whether Defendants' alleged

1 failure to keep requisite payroll records was “willful.” Like the wage statement violations, this
2 cause of action is entirely derivative of the causes of action for failure to pay overtime and
3 minimum wages and failure to provide compliant meal or rest periods.

4 iv. As such, to assess the value of this claim, Class Counsel also took the
5 foregoing factors into account, as well as Defendants’ defenses and contentions, the derivative
6 nature of this cause of action, the chances of prevailing on the other causes of action, the
7 inherent difficulty in proving the “willful” prong of California Labor Code section 1174.5,
8 applicable case law and regulations, costs and expenses of further litigation and certification,
9 the circumstances and realities of the case, and risks to recovery, and applied appropriate
10 discounts for settlement purposes. Notwithstanding, the value of this claim has been considered
11 as a part of the valuation of the PAGA claim contained *infra*.

12 g. Failure to Reimburse Necessary Business Expenses:

13 i. Plaintiff contended that Defendants failed to reimburse Plaintiff and other
14 putative class members for necessary business expenses.

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

18 iii. Defendants disputed that Plaintiff or any putative class members incurred
19 reimbursable business expenses. Defendants also contended that they had a policy for
20 reimbursing employees for business-related expenses reasonably incurred in accordance with
21 job responsibilities such as giving them their uniform, that Plaintiff and other putative class
22 members failed to request reimbursement from Defendants, and Defendants did not know and
23 had no reason to know that the alleged business-related expenses were incurred.

24 iv. Based on Class Counsel’s investigations and analysis, this claim centered
25 on the following: Putative class members incurred costs associated with complying with
26 Defendants’ dress code (including and not limited to, requirements regarding uniform and
27 footwear) and using personal cell phones for work duties. Specifically, Plaintiff and putative
28 class members reported often times receiving and responding to calls and texts from their

1 supervisors on their personal cell phones. Defendants' Person Most Knowledgeable testified
2 that non-exempt employees were in fact not allowed to use their personal cell phones for job
3 related duties and that some non-exempt employees that did use their cell phones were
4 reimbursed for this cost, raising individual issues. (See, Exh. B, 79:17-80:7; Exh. C, 109:23-
5 110:6). Defendants further contended that branded T-shirts were provided and that the other
6 clothing that was required were items that employees likely already owned or would wear
7 outside of work and that this too creates individualized issues. California Labor Code requires
8 reimbursement of "necessary" expenses, as opposed to reimbursement of any and all expenses
9 incurred in the course of performing work. (See, Cal. Lab. Code § 2802; *Gattuso v. Harte-*
10 *Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554.) Furthermore, whether or not a reimbursable
11 expense was necessary, would depend, in part, on the reasonableness of the employee's choice,
12 and whether or not an expense was incurred, would have to be established as well. (*Cochran*
13 *v. Schwan's Home Services, Inc.* (2014) 228 Cal.App.4th 1137.) Class Counsel considered case
14 law and labor agency policy guidance, indicating that stating a preference for and/or requiring
15 clothing does not trigger the employer's obligation to reimburse for said required clothing, e.g.,
16 courts have found that employers may specify basic wardrobe items which are "usual and
17 generally usable in the occupation" without requiring the employer to pay for and/or furnish
18 such items, and that only clothing or footwear of a distinctive design and/or color could be
19 considered a "uniform" within the meaning of the California Labor Code. (See, e.g., *Townley*
20 *v. BJ's Restaurants, Inc.* (2019) 37 Cal.App.5th 179, 184-186.)

21 v. If it could be proven that business expenses in the amount of one dollar
22 and twenty cents (\$1.20) per workweek were required to be reimbursed by Defendants, but
23 were not, during the relevant time period, the potential value of this claim was estimated to be
24 \$118,266.00 (98,555 workweeks x \$1.20 unreimbursed business expenses). Class Counsel also
25 took into consideration that, not only would it have to be established that expenses were
26 incurred, but also that the nature of the expenses were such that Defendants were required to
27 reimburse them. While Class Counsel disagreed with Defendants' arguments and factual
28 contentions, Class Counsel considered Defendants' arguments and the potential for

individualized issues that may be created based on each job position and job location, as well applicable case law and regulations, the costs and expenses associated with further litigation and certification, the circumstances and realities of the case, and risks to recovery, and applied appropriate discounts for them. At this juncture, a discount of 55% was applied to account for the risks associated with obtaining and maintaining class certification (bringing the value of this claim closer to \$53,219.70), a discount of 65% was applied to account for the risks associated with succeeding on the merits and establishing liability (bringing the value of this claim closer to \$18,626.90), and a discount of 85% was applied to account for the risks associated with proving the extent of damages and obtaining an award thereof (bringing the value of this claim closer to \$2,794.03).

h. PAGA Penalties:

i. Under the PAGA, as amended, California Labor Code sections 2698, *et seq.*, civil penalties that may be assessed and collected by the state labor agency, for a violation of the California Labor Code, may, as an alternative, be recovered by an aggrieved employee plaintiff. If the California Labor Code already specifies and provides a civil penalty for the violation of a provision of the California Labor Code, said civil penalty is recoverable by the aggrieved employee plaintiff. Additionally, the PAGA statute establishes a civil penalty that is recoverable by an aggrieved employee plaintiff, for violation of provisions of the California Labor Code for which the California Labor Code does not specifically provide for a civil penalty, as follows: one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation. (Cal. Lab. Code § 2699(f).) Pursuant to California Labor Code section 2699(i), seventy-five percent (75%) of the penalties recovered are to be allocated to the State of California, with the remaining twenty-five percent (25%) allocated to the aggrieved employees. The statute of limitations period applicable to such penalties is one year prior to the filing of the complaint. (Cal. Civ. Proc. Code § 340.)

ii. Defendants contended that violations of multiple provisions of the California Labor Code do not give rise to cumulative penalties, but that instead, the initial

1 violation penalty and subsequent violation penalty provided by statute, should only apply once
2 per pay period, if at all, rather than cumulatively for each separate California Labor Code
3 provision that is, arguably, violated during a pay period.

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

13 iv. Defendants also maintained and continue to maintain that they had
14 legally-compliant employment policies and practices throughout the statutory period.
15 Defendants denied and continue to deny that they ever violated any provision of the California
16 Labor Code and argued, that, even if, *arguendo*, such violations occurred, Defendants will not
17 be treated as having engaged in subsequent violations giving rise to heightened penalties. In
18 other words, Defendants argued that heightened civil penalties for subsequent violations would
19 not be assessed unless it could be shown that Defendants had notice that they were violating
20 the law, e.g., because it had been cited by a labor agency or adjudged by a court to have done
21 so. (See, e.g., *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.4th 1157, 1209.) Defendants argued
22 that they would be able to show a lack of willfulness in the violations, such that the alleged
23 California Labor Code violations would not be considered “willful.” Defendants contended
24 that, at best, even if a violation giving rise to a penalty was shown for each pay period, only the
25 lower civil penalty associated with initial violations would apply.

26 v. Importantly, to prevail on the PAGA claim, Defendants contended that
27 some courts have required plaintiffs to show at the outset that they have suffered injury, in order
28 to establish standing, and that Plaintiff would also have to prove all requisite elements to prove

1 violations of the underlying California Labor Code provisions, in order to show that
2 Defendants' conduct gives rise to penalties. The overtime and meal and rest period allegations
3 are fundamental to this action; however, for the reasons discussed above, there were substantial
4 limitations on exposure for, and challenges to showing liability for, these claims. Defendants
5 argued that Plaintiff would not be able to establish violations of the underlying California Labor
6 Code provisions and the fundamental allegations regarding overtime and meal and rest periods.
7 Defendants also contended that multiple individualized issues, such as the number of different
8 locations and job titles, vitiated the manageability of representative adjudication of PAGA
9 penalties.

10 vi. Defendants would also likely seek bifurcation of discovery and/or trial of
11 the PAGA claim—multiple courts have taken such an approach.

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

17 viii. Defendants also contended that, before a PAGA claim could be tried,
18 under existing law, the court of law would have to be satisfied that the adjudication of the PAGA
19 claim, based on a theory of uniform wage and hour practices relating to a large group of
20 aggrieved employees, is sufficiently “manageable” so as not to interfere with Defendants' right
21 to due process. Defendants alleged that the putative class members' job titles, job duties, and
22 locations varied. Defendants contended that there was variation as to the circumstances that
23 could allegedly cause the employees to work overtime or to be deprived of the opportunity to
24 take legally-compliant, duty-free meal and/or rest periods. Defendants further contended that
25 these issues presented challenges not only to liability, but challenges to Plaintiff's ability to
26 show that a PAGA claim could be efficiently and manageably adjudicated without abridging
27 Defendants' due process rights.

28 ix. Class Counsel took into consideration case law that held that, given the

1 derivative nature of a PAGA claim, it would stand or fall based on the claims from which it
2 derives, and the success of showing, *inter alia*, off-the-clock work, failure to properly pay
3 wages, failure to reimburse for expenses, etc. Class Counsel also considered case law
4 demonstrating that courts have attributed little separate value to PAGA claims, for example,
5 allowing them to be resolved for \$0 where the other underlying California Labor Code claims
6 are being resolved. (See, e.g. *Matter of Nordstrom Commission Cases* (2010) 186 Cal.App.4th
7 576, 588-590 (No abuse of discretion by the trial court in approving the allocation of \$0 toward
8 PAGA penalties, where PAGA claim is resolved as a part of an overall resolution of the
9 underlying California Labor Code violations); *Franco v. Ruiz Food Prods, Inc.* (E.D. Cal. Nov.
10 27, 2012) No. 1:10-cv-02354-SKO, 2012 WL 5941801, at *14 (Approving allocation of
11 \$10,000, out of the settlement of \$2.5 million, toward the settlement of the PAGA claim);
12 *Garcia v. Gordon Trucking* (E.D. Cal. Oct. 31, 2012) No.1:10-CV-0324-AWI-SKO, 2012 WL
13 5364655, at *3 (Approving the allocation of \$10,000, out of the settlement of \$3.7 million,
14 toward the settlement of the PAGA claim); *Chu v. Wells Fargo Investments, LLC* (N.D. Cal.
15 Feb. 16, 2011) No. C 05-4526 MHP, C 0647924 MHP, 2011 WL 672645, at *1 (Approving the
16 allocation of \$10,000, out of the settlement of \$6.9 million, toward the settlement of the PAGA
17 claim); *Jack v. Hartford Ins. Co.* (S.D. Cal. Oct. 13, 2011) No. 3:09-cv-1683-MMA (JMA),
18 2011 WL 4899942, at *18 (Approving the allocation of \$3,000, out of the settlement of \$1.2
19 million, toward the settlement of the PAGA claim); *Schiller v. David's Bridal, Inc.* (E.D. Cal.
20 June 11, 2012) 2012 WL 2117001, at *14 (approving the allocation of \$10,000, out of the
21 settlement of \$518,245, toward settlement of the PAGA claim)). Class Counsel also considered
22 that "PAGA's penalty provisions are subject to a variety of equitable factors which" call for
23 "qualitative evaluation and weighing of a variety of factors" by the trial court. (*Laface v. Ralphs*
24 *Grocery Co.* (Cal. Ct. App. 2022) 75 Cal.App.5th 388, 458.) Class Counsel considered that a
25 court may reduce the amount of PAGA penalties awarded to an employee based upon
26 discretionary factors other than the employer's ability to pay, and that many trial courts have
27 significantly reduced PAGA civil penalties or altogether declined to award PAGA civil
28 penalties. (See, e.g., *Fleming v Covidien, Inc.* (C.D. Cal. Aug. 12, 2011) No. ED CV10-01487

RGK (OPx), 2011 U.S. Dist. LEXIS 154590, at **8-9 (Out of \$2,800,000 PAGA penalties requested, the court awarded \$500,000.); *Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal.App.4th 1112, 1136, *disapproved on other grounds* (Out of \$512,000 PAGA penalties requested, the court awarded \$358,588.); *Aguirre v Genesis Logistics* (C.D. Cal. Dec. 30, 2013) No. SACV 12-00687-JVS (ANx), 2013 U.S. Dist. LEXIS 189820, at **6-7 (Out of \$1,800,000 PAGA penalties requested, the court awarded \$500,000.); *Halevi v Aroma Bakery Café, Inc.* (Aug. 30, 2013) Los Angeles County Superior Court No. 468146 (The court declined to award PAGA penalties after trial, although at trial the court awarded wages to class, on the basis that, *inter alia*, action was not prompted by availability of PAGA penalties, penalties were not necessary to remedy ongoing or future violations, and plaintiffs did not offer evidence establishing imposition of penalties on individual defendants would not be confiscatory.); *Makabi v Gedalia* (Mar. 2, 2016) No. B261005, 2016 Cal. App. Unpub. LEXIS 1489, at **6-7 (Noting that the trial court found in favor of plaintiffs on California Labor Code violation claims, but declined to award any PAGA penalties.); *Arnold v San Diego Second Chance Program* (Dec. 18, 2017) San Diego County Superior Court No. 37-2016-00018375 (No PAGA penalties awarded.); *Felczer v Apple Inc.* (Sept. 13, 2017) San Diego County Superior Court No. 37-2011-00102593 (No PAGA penalties awarded.); *Allen v American Multi-Cinema* (July 24, 2016) Alameda County Superior Court No. RG11585502 (No PAGA penalties awarded.); *Atempa v Pama* (July 31, 2015) San Diego County Superior Court (Out of PAGA penalties of \$456,133 sought, the court awarded \$197,434.00.); *Driscoll v Granite Rock* (Sept. 20, 2011) Santa Clara County Superior Court No. 1-08-cv-103426 (The court declined to award PAGA penalties.); *In re Taco Bell Wage and Hour Actions* (E.D. Cal. Apr. 8, 2016) No. 1:07-cv-01314-SAB, 2016 U.S. Dist. LEXIS 48557, at *41 (The court declined to award PAGA penalties after trial.); *Morales v Bridgestone Retail Operations LLC* (Aug. 2, 2018) Orange County Superior Court No. 30-2017-00900244 (Out of \$7 million PAGA penalties requested, the court awarded \$425,000.); *Carrington v Starbucks Corp.* (2018) 30 Cal.App.5th 504, 517, 529 (Out of \$75 million in penalties sought, the court affirmed the trial court's \$150,000 PAGA penalty award based on 30,000 violations, which reduced the penalty rate to \$5 per violation.)). Overall, at

1 the time of reaching the settlement, there were significant risks and uncertainty relating to the
2 PAGA claim, including and not limited to, imminent amendment, the manageability
3 requirement, whether or not Plaintiff will prevail on the merits and establish entitlement to
4 penalties, and the extent of penalties likely to be assessed.

5 x. Assuming that the Court would be satisfied that the PAGA claim was
6 susceptible to being efficiently tried and adjudicated on a representative basis, if it could be
7 proven that civil penalties in the amount of \$1,950 are owed for each of the one thousand three
8 hundred and sixty-eight (1,368) aggrieved employees who were estimated to have worked
9 during the one-year statutory period, the PAGA penalties at issue, which the Court could
10 determine whether or not to assess and whether or not to reduce, were estimated to be
11 approximately \$2,667,600.00 (1,368 estimated aggrieved employees x \$1,950 civil penalties).

12 xi. Class Counsel recognized the realities of Defendants' arguments,
13 evidence and information obtained through investigations and formal and informal discovery,
14 the circumstances and realities of the case, the current state of the law, the costs of continued
15 litigation, and the risks to recovery, and applied appropriate discounts for them. At this juncture,
16 a discount of 55% was applied to account for the risks associated with establishing
17 manageability and possible bifurcation of discovery and/or trial (bringing the value of this claim
18 closer to \$1,200,420.00), a discount of 70% was applied to account for the risks associated with
19 succeeding on the merits and establishing violations warranting the imposition of penalties
20 (bringing the value of this claim closer to \$360,126.00), and a discount of 85% was applied to
21 account for the risks associated with proving the extent of penalties that should be assessed and
22 the Court's possible discretionary reduction of the amount of penalties imposed (bringing the
23 value of this claim closer to \$54,018.90).

24 i. Total Value

25 i. The potential total value of the claims is \$21,842,981.60. After
26 discounting for the risks associated with obtaining and maintaining class certification as
27 discussed in great detail per claim above and the risks with PAGA manageability, the potential
28 total value is closer to \$9,829,341.72. After discounting for the risks associated with succeeding

on the merits and establishing liability, the potential total value is closer to \$3,176,281.10. After discounting for the risks associated with proving the extent of damages and obtaining an award thereof, the total potential value is closer to \$476,442.16.

j. Summary

i. The foregoing discussion confirms that the amount of the Settlement is adequate in light of Plaintiff's allegations and causes of action, the evidence at issue with respect to those allegations and causes of action, and legal and factual arguments and circumstances which pose challenges to monetary recovery. The conclusion to be drawn from the foregoing analysis is that neither class certification, liability, nor the ability to adjudicate and/or recover monetary relief on a class-wide or representative-basis is clear-cut, which is why the parties elected to settle this matter. Class Counsel recognized the risks and realities of the case, applicable case law and regulations, the costs and expenses of further litigation and certification, and risks to recovery and applied appropriate discounts as discussed above. This Settlement involves highly disputed claims and is the product of compromise.

ii. Class Counsel submits that the settlement presented for preliminary approval is within a reasonable range of recoveries for this type of litigation, and is fair, reasonable, adequate, and in the best interest of the Class, given the inherent cost and risks of further litigation. Having addressed the Court's points of inquiry, the Court is respectfully requested to grant preliminary approval of the Settlement.

SETTLEMENT AGREEMENT AND CLASS NOTICE

9. Based on the Court's guidance set forth in the March 4, 2025 Minute Order, the Parties negotiated, approved, and executed the Second Amended Joint Stipulation of the Class Action and PAGA Settlement and Release ("Second Amended Settlement Agreement") (together with the Original Agreement, "Settlement," "Agreement," or "Settlement Agreement"), a true and correct executed copy of which is attached hereto as "**EXHIBIT D.**" A redlined version of the Second Amended Settlement Agreement showing how the terms of the Original Agreement have been revised, is attached hereto as "**EXHIBIT E.**"

10. Further, pursuant to the Court's March 4, 2025 Minute Order, the Parties met and

1 conferred, revised, and finalized the proposed Notice of Class Action Settlement (“Class
2 Notice”), a true and correct copy of which is attached hereto as “**EXHIBIT F.**” A redline
3 version of the revised Class Notice showing revisions made pursuant to the Court’s guidance,
4 is attached hereto as “**EXHIBIT G.**”

5 **SETTLEMENT ADMINISTRATOR**

6 11. The Parties have agreed to retain CPT Group, Inc. (“Settlement Administrator”)
7 to handle the notice and settlement administration process. Pursuant to the Court’s March 4,
8 2025 Minute Order, Plaintiff has obtained an updated bid to reflect the correct class size as well
9 as include the cost for a second distribution. The Parties respectfully request that the Court
10 appoint CPT Group, Inc. to handle these procedures and serve as the Settlement Administrator.
11 Attached as “**EXHIBIT H**” is an updated Settlement Administrator Estimate including costs
12 for mail notice, email notice, hosting a website, and a second distribution. The Settlement
13 Administration Costs will be paid out of the Gross Settlement Amount, subject to approval of
14 the Court.

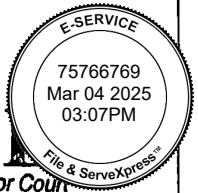
15 I declare under penalty of perjury under the laws of the State of California that the
16 foregoing is true and correct.

17 Executed on this 21st day of April 2025, at Glendale, California.

18 

19 _____
20 Tara Zabehi
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28

EXHIBIT A



FILE
San Francisco County Superior Court

MAR 04 2025

CLERK OF THE SUPERIOR COURT
By Julia Allen
Deputy

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO
DEPARTMENT 304

COORDINATION PROCEEDING
SPECIAL TITLE [RULE 3.550]

**SUPER DUPER BURGERS WAGE AND
HOUR CASES**

INCLUDED ACTIONS:

Martinez v. Back of the House, Inc., et al., No.
RG21113642 (Alameda County Super. Ct.)

Lopez v. Back of the House, Inc., et al., No. CGC-
19-579264 (San Francisco County Super. Ct.)

Martinez v. Back of the House, Inc., et al., No.
CGC-21-594380 (San Francisco County Super.
Ct.)

Case No. CGC-22-005249
JUDICIAL COUNCIL COORDINATION
PROCEEDING NO. 5249

ORDER ON PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT

Plaintiff's Motion for Preliminary Approval of Class Action Settlement came on for hearing on March 4, 2025. Having considered the pleadings and papers on file in the action, and the arguments of counsel presented at the hearing, the Court hereby continues Plaintiff's Motion for a supplemental filing addressing the issues set forth below. The supplemental filing shall be filed by April 21, 2025; Plaintiff Lopez may file any response by April 28, 2025; and the Court will hold a hearing on the motion on May 13, 2025 at 11:00 a.m.

1 **BACKGROUND**

2 This is a coordinated wage and hour proceeding that includes three actions: (1) *Lopez v. Back of*
3 *the House, Inc., et al.*, San Francisco Superior Court, Case No. CGC-19-579624; (2) *Martinez v. Back of*
4 *the House, Inc., et al.*, San Francisco Superior Court, Case No. CGC-21-594380; and (3) *Martinez v. Back*
5 *of the House, Inc., et al.*, Alameda County Superior Court, Case No. RG21113642. On January 13, 2023,
6 Plaintiffs Magaly Olayo Lopez (“Plaintiff Lopez”) and Erickson Martinez (“Plaintiff Martinez”) filed a
7 Consolidated Class Action Complaint against Defendants Back of the House, Inc.; EBurger, LLC;
8 JBurger, LLC; Mission 98 Super, LLC; MBurger, LLC; 2355 Telegraph Ave, LLC; The Veranda Super,
9 LLC; 5399 Prospect Road, LLC; Super Emeryville, LLC; DBurger LLC; MetBurger, LLC; Super Novato
10 LLC; Super Los Gatos LLC; KBurger, LLC; Adriano Paganini; and Edmondo Sarti (collectively,
11 “Defendants”). Plaintiffs allege eleven causes of action: (1) unpaid overtime; (2) unpaid meal period
12 premiums; (3) unpaid rest period premiums; (4) unpaid minimum wages; (5) final wages not timely paid;
13 (6) wages not timely paid during employment; (7) non-compliant wage statements; (8) failure to keep
14 requisite payroll records; (9) unreimbursed business expenses; (10) violation of the UCL; and (11) civil
15 penalties under PAGA. (Consol. Compl. ¶¶ 74-148.)

16 On September 13, 2023, the parties attended a Mandatory Settlement Conference with settlement
17 officer Pang Ly. (Zabehi Decl. Ex. 2 § II.N.) With the assistance of the settlement officer’s evaluations
18 and proposal, Plaintiff Martinez and Defendants reached a settlement. (*Id.*) By order dated July 1, 2024,
19 the Court denied Plaintiff Martinez’s motion for preliminary approval without prejudice. Plaintiff
20 Martinez now renews his motion for preliminary approval of a class and PAGA settlement. Plaintiff
21 Lopez opposes the motion.¹

22 **LEGAL STANDARD**

23 In order to determine whether a proposed class action settlement is fair and reasonable, a trial
24 court “should consider relevant factors, such as the strength of plaintiffs’ case, the risk, expense,

25 ¹ The statutory deadline to file an opposition was February 19, 2025. (Code Civ. Proc. § 1005(b).)
26 Plaintiff Lopez filed her opposition on February 20, 2025. Plaintiff Martinez objects to the late filing.
27 (Reply, 1-2.) However, Plaintiff Martinez does not identify any prejudice associated with the late filing
28 of the opposition. “A trial court has broad discretion to accept or reject late-filed papers.” (*Jack v. Ring*
LLC (2023) 91 Cal.App.5th 1186, 1210 (cleaned up).) The Court exercises its discretion to consider
Plaintiff Lopez’s opposition.

1 complexity and likely duration of further litigation, the risk of maintaining class action status through
2 trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings,
3 the experience and views of counsel, the presence of a governmental participant, and the reaction of the
4 class members to the proposed settlement.” (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1494, 1801.)

5 Likewise, a trial court charged with reviewing and approving a PAGA settlement (Lab. Code §
6 2699(s)(2)) should evaluate a PAGA settlement “to determine whether it is fair, reasonable, and adequate
7 in view of PAGA’s purposes to remediate present labor law violations, deter future ones, and to maximize
8 enforcement of state labor laws.” (*Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 77; see also
9 *Amaro v. Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th 521, 542-543 [reviewing PAGA
10 portion of class action settlement to determine its fairness].)

11 DISCUSSION

12 **I. Settlement Class Certification**

13 Before granting preliminary approval, a court must determine that the proposed settlement
14 presents a proper class for settlement purposes. In general, “[t]he party advocating class treatment must
15 demonstrate the existence of an ascertainable and sufficiently numerous class, a well-defined community
16 of interest, and substantial benefits that render proceeding as a class superior to the alternatives.” (*Brinker*
17 *Restaurant Corp. v. Super. Ct.* (2012) 53 Cal.4th 1004, 1021; Code Civ. Proc. § 382.) In the settlement
18 context, class certification is properly subjected to a lesser standard of scrutiny because: (1) to the extent
19 the class certification requirements are designed to keep a lawsuit manageable for trial, that purpose is
20 inapposite in the settlement context; and (2) to the extent the class certification requirements are designed
21 to protect the interests of non-representative class members, that purpose is addressed through the Court’s
22 fairness analysis. (See *Dunk*, 48 Cal.App.4th at 1807 n.19.)

23 **A. Settlement Class**

24 Under the prior settlement agreement, the “Class” was defined as: “all current and former hourly-
25 paid or non-exempt employees who worked for any of the Defendants or Employers at a Super Duper
26 Burgers restaurant within the State of California at any time during the Class Period, *except for those*
27 *employees who entered into releases of the claims asserted in the Action prior to full execution of the*
28

1 *Parties' Memorandum of Understanding.*" (Zabehi Decl. Ex. 3 § I.B (emphasis added); see also *id.* at Ex.
2 3 § I.X [defining "PAGA Group" or "PAGA Group Member(s)"].) Plaintiff Martinez's initial motion was
3 silent regarding the employees who entered into releases of claims asserted in the proceeding prior to
4 execution of the Memorandum of Understanding. (Jul. 1, 2024 Order, 2.) Thus, the Court directed
5 Plaintiff Martinez to provide a copy of the release of claims and address the following in any renewed
6 motion: (1) the number of putative class members who entered into releases of claims prior to execution
7 of the Memorandum of Understanding; (2) the scope of the releases; (3) when the releases were executed;
8 (4) the circumstances under which Defendants obtained the releases; and (5) whether those putative class
9 members received a monetary payment in exchange for a release of claims, and if so, the total amount of
10 those payments. (*Id.*)

11 Rather than addressing the issues raised in the Court's July 1, 2024 Order, Plaintiff Martinez and
12 Defendants amended the class definition by removing the italicized language above without explanation.
13 (See also Opposition, 2.) However, on reply, Plaintiff Martinez clarifies that while "discussing this issue
14 with Defendants, it became clear that no such releases ever existed," which is why the reference to
15 releases was omitted from the Class definition. (Reply, 3.) Indeed, Defendant Back of the House, Inc.'s
16 Director of Human Resources declares that "[t]here are no class members who entered into separate
17 release agreements with Defendants for any of the claims asserted in this action or any efforts to obtain
18 separate release agreements from individual class members." (Spencer Flores Decl. ¶ 3; see Zabehi Reply
19 Decl. ¶ 5.) Thus, the proposed settlement presents a proper class for settlement purposes.

20 Plaintiff asserts that based on information provided by Defendants, the settlement class consists of
21 approximately 1,425 current and former employees who worked a total of 98,555 workweeks during the
22 class period, which runs through March 4, 2025. (Opening Brief, 17; Zabehi Decl. ¶ 10.) However,
23 Defendants previously represented that for the shorter period from September 16, 2015 through
24 September 11, 2023, there were approximately 3,086 class members and 103,252 workweeks worked by
25 class members. (Opening Brief, 17 fn. 59; Settlement Agreement § V.C.5.) The Settlement Agreement
26 recites that on December 17, 2024, Defendants confirmed that due to "extraneous information and data
27 that had inadvertently been included and analyzed by them," those figures were substantially overstated.
28

1 (*Id.*) Particularly given the magnitude of this error, Defendants should be explain in a declaration in a
2 supplemental filing, how the error occurred, how it was discovered, and to supply assurances as to the
3 reliability of the current data, such that the Court may conclude that the settlement class is numerous,
4 ascertainable, includes a well-defined community of interest, and is superior to the alternatives. (See
5 Zabehi Decl. ¶¶ 10, 17, 25; Opening Brief, 16-17.)

6 **B. Typicality**

7 The test for typicality considers (1) “whether other members have the same or similar injury,” (2)
8 whether the action is based on conduct which is not unique to the named plaintiffs,” and (3) “whether
9 other class members have been injured by the same course of conduct.” (*Martinez v. Joe’s Crab Shack*
10 *Holdings* (2014) 231 Cal.App.4th 362, 375, citing *Seastrom v. Neways, Inc.* (2007) 149 Cal.App.4th
11 1496, 1502.) The typicality element requires that a representative plaintiff have claims that are similar,
12 although not necessarily identical, to the remainder of the class. (*Classen v. Weller* (1983) 145
13 Cal.App.3d 27, 46.)

14 Plaintiff Lopez argues that Plaintiff Martinez does not establish typicality because “the only
15 relevant statements provided [in his declaration] are speculative and insufficient” as they are based on
16 “his understanding” of Defendants’ policies and are silent as to the class. (Opposition, 3.) Plaintiff
17 Martinez disagrees, arguing “that Plaintiff Martinez’s declaration doesn’t simply mention policies but also
18 the uniform practices of Defendants.” (Reply, 4.) Although Plaintiff Martinez’s declaration includes a
19 handful of relevant facts supporting his individual claims, his declaration lacks facts demonstrating his
20 claims are typical of those of the proposed settlement class, which includes over 1,400 employees at more
21 than a dozen different restaurants. (See, e.g., Martinez Decl. ¶¶ 2-6.) Further, as discussed below,
22 Plaintiff’s *Kullar* analysis remains insufficient to enable the Court to assess a realistic range of outcomes
23 of the litigation.

24 **II. Fairness**

25 When evaluating the fairness of a settlement, “[t]he most important factor is the strength of the
26 case for plaintiffs on the merits, balanced against the amount offered in settlement.” (*Kullar v. Foot*
27 *Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130.) An initial presumption of fairness exists if certain
28

1 factors are present, but “an informed evaluation cannot be made without an understanding of the amount
2 that is in controversy and the realistic range of outcomes of the litigation.” (*Id.* at 120; accord, *Muñoz v.*
3 *BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 409 [*Kullar* does not mandate
4 “an explicit statement of the maximum amount the plaintiff class could recover if it prevailed on all its
5 claims,” but it does require “a record which allows ‘an understanding of the amount that is in controversy
6 and the realistic range of outcomes of the litigation.’”]; *Clark v. American Residential Services LLC*
7 (2009) 175 Cal.App.4th 785, 790, 801-803 [vacating order approving settlement of wage and hour
8 settlement where trial court lacked sufficient information to make an informed evaluation of the fairness
9 of the settlement].)

10 Plaintiff Lopez argues that “[d]espite clear instructions, Plaintiff Martinez has failed to provide
11 any substantive information regarding his valuation of the class claims, the size of the discount given, and
12 why said discount is appropriate considering the strengths and weaknesses of the claims at hand.”
13 (Opposition, 3; see *id.* at 4.) However, Plaintiff Lopez fails to address Plaintiff Martinez’s discussion of
14 those issues. (See Zabehi Decl. ¶¶ 24-28.) The Court nevertheless concludes that the discussion remains
15 inadequate.

16 In its July 1, 2024 Order, the Court stated that “[i]n any renewed motion, Plaintiff Martinez must
17 include . . . a substantive discussion regarding the bases for any settlement discount.” (Jul. 1, 2024 Order,
18 4.) In the renewed motion, Plaintiff Martinez provides an overall value of the case and associated claim
19 values. (Zabehi Decl. ¶ 28.) Based on the overall value of the case, \$21,842,981.60 (*id.* ¶ 28.i.i), the
20 Gross Settlement Amount of \$800,000.00 represents a settlement discount of approximately 96.3%.
21 Additionally, while evaluating the case, Plaintiff Martinez discounted the claims at issue to account for
22 risks associated with class certification, PAGA manageability, succeeding on the merits, and proving the
23 extent of damages and penalties. (*Id.* ¶ 28.) After discounting the claims, Plaintiff Martinez valued this
24 case at \$476,442.16, representing a 97.8% settlement discount. (*Id.*)

25 Plaintiff Martinez’s reasoning for the magnitude of the settlement discount is generic and lacks
26 substance as to the specifics of his particular case. (Opening Brief, 13-14; Zabehi Decl. ¶¶ 11-12, 18-19,
27 27-28.) For example, Plaintiff Martinez’s counsel sets forth various arguments raised by Defendants.
28

(Zabehi Decl. ¶ 27.) However, the discussion merely recites contentions that are common to wage and hour class actions and lack any meaningful discussion of the facts in this case or any explanation of the strength and weaknesses of the claims that could support a settlement discount. (Compare, e.g., *Amaro*, 69 Cal.App.5th at 532 [deposition transcripts “contained testimony giving some credence to the notion that some of the claims involve systemic violations more likely to be certified than those involving individualized assessments.” (cleaned up)].) For example, for the Labor Code section 2802 claim, the defendant argues it has a process and procedure for reimbursing expenses and pay stubs reflect a significant number of employees were in fact reimbursed for business expenses which, if true, would suggest that claim is weak in comparison to others. (Zabehi Decl. ¶ 27.) However, Plaintiff Martinez has applied substantially identical discount rates to each of the claims (e.g., 55% to account for the risks associated with class certification, 65% or 70% to account for the risks associated with succeeding on the merits and establishing liability, and 85% to account for the risks associated with proving damages and obtaining an award). (Zabehi Decl. ¶ 28.a.iii [overtime and minimum wage claims], 28.b.iii [meal period claim], 28.c.iii [rest period claim], 28.d.ii [failure to timely pay wages], 28.e.ii [wage statement violations], ¶ 28.g [failure to reimburse necessary business expenses].) Moreover, Plaintiff applies the same discount rates to the claim for PAGA penalties, albeit for different risks (e.g., 55% for the risks associated with establishing manageability and possible bifurcation of discovery and/or trial, 70% for the risks associated with succeeding on the merits and establishing violations warranting the imposition of penalties, and 85% for the risks associated with proving the extent of penalties and the Court’s possible discretionary reduction of such penalties. (*Id.* ¶ 28.h [PAGA penalties].) Plaintiff’s application of substantially identical discount rates to a wide range of claims suggests, improbably, that each is equally strong (or weak) for settlement purposes. Moreover, no explanation is provided for the steep 85% discount “to account for the risks associated with proving the extent of damages and obtain an award thereof,” even once a class has been certified to pursue a given claim and the class prevails on the merits of that claim. If this discount is meant to suggest that the settlement amount is based in part on Defendants’ inability to pay a larger amount, Plaintiff must say so explicitly and support the assertion with an admissible declaration by Defendants regarding their financial condition.

1 In short, the absence of any substantive discussion regarding the bases for the settlement discounts
2 constrains the Court's ability to determine whether the settlement is fair and reasonable. Accordingly,
3 Plaintiff Martinez must supplement the record.

4 **III. Reverse Auction**

5 Plaintiff Lopez urges the Court to deny Plaintiff Martinez's motion on the ground that the
6 settlement is the product of a reverse auction. (Opposition, 1.) Plaintiff Martinez contends that a reverse
7 action did not occur here because "there cannot be collusion when every attempt is made to include
8 someone, but they deliberately refuse to be included or be reasonable." (Reply, 5; see, e.g., Zabehi Reply
9 Decl. ¶¶ 2, 6-8; Wayne Decl. ¶¶ 3-7.) Plaintiff Lopez "must at least provide some evidence of unfairness
10 to the class or misconduct to support a reverse auction finding." (*Amaro*, 69 Cal.App.5th at 546.)
11 Plaintiff Lopez fails to do so here.

12 Courts have long recognized that settlement class actions present unique due process concerns for
13 absent class members. One inherent risk is that class counsel may collude with the defendants,
14 tacitly reducing the overall settlement in return for a higher attorney's fee. A reverse auction is
15 said to occur when the defendant in a series of class actions picks the most ineffectual class
16 lawyers to negotiate a settlement with [] the hope that the district court will approve a weak
17 settlement that will preclude other claims against the defendant. It has an odor of mendacity about
18 it. To guard against this potential for class action abuse, class action settlements require court
19 approval, which may be granted only after a fairness hearing and a determination that the
20 settlement taken as a whole is fair, reasonable, and adequate.

21 (*Amaro*, 69 Cal.App.5th at 544 (cleaned up); see *In re Bluetooth Headset Products Liability Litigation*
22 (9th Cir. 2011) 654 F.3d 935, 946; *Negrete v. Allianz Life Ins. Co. of North America* (9th Cir. 2008) 523
23 F.3d 1091, 1099.) "Courts are highly skeptical of reverse auctions." (*Rahman v. Gate Gourmet, Inc.*
24 (N.D. Cal. Nov. 22, 2021) 2021 WL 5973046, *4.)

25 First, Plaintiff Lopez contends that "Defendants elected to deal directly with counsel for Plaintiff
26 Martinez because they perceived an opportunity to pay a much lesser settlement." (Opposition, 4; see,
27 e.g., Uriarte Decl. ¶¶ 3 [Plaintiff Lopez's counsel offered to enter into a co-counsel agreement with
28 Plaintiff Martinez's counsel to negotiate the best possible settlement with Defendants but Plaintiff
Martinez's counsel declined the offer], 4 [Plaintiff Martinez's proposed settlement includes "a much
lower value than what we communicated to Defendants for a global settlement of the entire action."].)
However,

1 To start, it cannot be the case that every time there are dueling plaintiffs' lawyers in parallel class
2 actions, it necessarily means a settlement was the result of a reverse auction. As the Ninth Circuit
3 has noted, a reverse auction argument without evidence of underhanded activity would lead to the
4 conclusion that no settlement could ever occur in the circumstances of parallel or multiple class
5 actions—none of the competing cases could settle without being accused by another of
participating in a collusive reverse auction. This is why courts look for a showing of impropriety
to find that a reverse auction is occurring. And here, the facts simply do not support a finding that
some kind of collusion was afoot.

6 (*In re Lyft Inc. Securities Litigation* (N.D. Cal. Aug. 7, 2023) 2023 WL 5068504, *9; see *Negrete*, 523
7 F.3d at 1099-1100.)

8 The intervenors in *Amaro* raised a similar argument as Plaintiff Lopez here, contending that the
9 defendant's "'plaintiff shopping' led to a massively discounted settlement that should not have been
10 approved." (69 Cal.App.5th at 585.) The *Amaro* court was "unconvinced by [the intervenor's] contention
11 that permitting a defendant sued in multiple class actions to negotiate separately with each named plaintiff
12 will lead to a 'race to the bottom.'" (*Id.*) The court reasoned that the intervenor's "assertion overlooks
13 that trial courts are the gatekeepers of class action settlements. They must review and approve such
14 settlements to ensure they are fair, adequate, reasonable, and free of collusion. Class members may object
15 if they believe these standards have not been met in a given settlement." (*Id.* (cleaned up).) Therefore,
16 Plaintiff Lopez's argument that Defendant chose to negotiate a settlement with Plaintiff Martinez rather
17 than Plaintiff Lopez or Plaintiffs collectively, standing alone, does not rise to the level of collusion that
18 would support a finding of a reverse auction.

19 Second, Plaintiff Lopez argues that should the Court grant Plaintiff Martinez's motion, then
20 "counsel for Plaintiff Martinez and Defendants benefit [] **to the detriment of the settlement class** because
21 a smaller settlement necessarily yields smaller individual payouts" and "would not require any fee
22 sharing." (Opposition, 5 (emphasis in original).) Plaintiff Lopez asserts that she "and her counsel are
23 confident that they can achieve a better settlement for the putative class." (*Id.*)² However, "the possibility
24 that a settlement could have been greater does not mean it is not fair and reasonable, in light of the

25
26 ² Plaintiff Lopez's unsupported assurance rings hollow in light of the history of this case. Plaintiff Lopez
27 filed her case in 2019, two years before Plaintiff Martinez filed her actions, and prior mediations in 2021
28 and 2022 were unsuccessful. As this Court has warned on multiple past occasions, given the impending
expiration of the five-year statute, the parties' lengthy delays in the resolution of this case and Plaintiffs'
counsel's apparent inability to work together for the benefit of the putative class of employees threaten to
leave the class without any remedy whatever.

1 countervailing litigation risks present.” (*In re Lyft Inc. Securities Litigation*, 2023 WL 5068504 at *7,
2 quoting *Young v. LG Chem Ltd.* (9th Cir. 2019) 783 Fed.Appx. 727, 737; see also *Briseño v. Henderson*
3 (9th Cir. 2021) 998 F.3d 1014, 1022 [courts do not have a “duty to maximize the settlement fund for class
4 members”].) Indeed, “[w]hile the participation of a neutral mediator is not, by itself, dispositive of
5 whether the settlement is fair, adequate, and reasonable, it nonetheless is a factor weighing in favor of a
6 finding of non-collusiveness.” (*Camilo v. Ozuna* (N.D. Cal. Apr. 1, 2020) 2020 WL 1557428, *8
7 (cleaned up); see *In re Lyft Inc. Securities Litigation*, 2023 WL 5068504 at *10 [“While not dispositive,
8 the involvement of a neutral or court-affiliated mediator or facilitator in those negotiations may bear on
9 whether they were conducted in a manner that would protect and further the class interests.” (cleaned
10 up)].) Here, Plaintiff Martinez and Defendants reached a settlement with the assistance of a court-
11 affiliated settlement officer’s evaluations and proposal following a Mandatory Settlement Conference.
12 (Zabehi Decl. Ex. 2 § II.N.) Moreover, the requested attorneys’ fees award of one-third of the Gross
13 Settlement Amount is not unusual. (*Id.* at Ex. 2 § V.B.2.) “Fee awards in class actions average around
14 one-third of the recovery regardless of whether the percentage method or the lodestar method is used.”
15 (*Amaro*, 69 Cal.App.5th at 545 (cleaned up).)

16 Thus, the record before the Court does not support a finding of a reverse auction such that the
17 Court should deny Plaintiff Martinez’s motion. (See *Hibler v. Santander Consumer USA, Inc.* (C.D. Cal.
18 Nov. 21, 2013) 2013 WL 12137716, *5 fn. 11 [“The fact that a class action has settled while a parallel
19 class action is pending in and of itself is insufficient to support a conclusion that a reverse auction took
20 place . . . if Intervenor fears Plaintiff’s settlement is ‘weak,’ he may object at the fairness hearing or opt-
21 out of the settlement completely.” (cleaned up)]; compare, e.g., *Litty v. Merrill Lynch & Co.* (C.D. Cal.
22 Apr. 27, 2015) 2015 WL 4698475, *10 [denying preliminary approval of class action settlement
23 reasoning that “while there is no evidence of overt misconduct, it is troubling that plaintiff and defendant
24 in addition to settling plaintiff’s individual claims are also sweeping into the settlement two separate cases
25 without involving plaintiffs’ counsel in those cases.”].)

26 **IV. Cy Pres and Second Distributions**

27 The Settlement Agreement provides that funds associated with uncashed or cancelled checks will
28

1 be paid to a *cy pres* recipient, Children of Shelters. (Settlement Agreement § V.D.11.) However, given
2 the size of the settlement class and the duration of the class period, it is likely that the Settlement
3 Administrator will be unable to locate a substantial number of class members, with the result that a
4 substantial number of class members will not cash their settlement checks. Under the circumstances, the
5 Court believes that it would be appropriate to reserve the possibility of ordering a second distribution of
6 such residual funds to settlement class members who cashed their checks during the initial distribution.
7 The parties are directed to amend the Settlement Agreement to provide for such a second distribution.
8 Any residual funds remaining following the second distribution may be transferred to the *cy pres*
9 recipient.

10 **V. Class Notice**

11 The Court raises the following issues with the proposed class notice:

12 • Notice, Page One:

- 13 ○ The word “restaurants” should be singular rather than plural. (See also Notice, 3.)
- 14 ○ Under “WHY YOU ARE GETTING THIS NOTICE,” the notice implies that a class
- 15 action settlement has been reached globally when the actual class action settlement is
- 16 between Plaintiff Martinez and Defendants. The notice should be revised to explain
- 17 that there are class action cases coordinated under Judicial Council Coordination
- 18 Proceeding No. 5249 and that a class action settlement has been reached between
- 19 Plaintiff Martinez and Defendants.

20 • Notice, Section II:

- 21 ○ “Plaintiff Magaly Olayoy Lopez” should be “Plaintiff Magaly Olayo Lopez.”
- 22 ○ Plaintiff Martinez filed a PAGA Complaint in Alameda County on September 22, 2021
- 23 rather than September 23, 2021. (Opening Brief, 5.)
- 24 ○ The Operative Complaint is not a PAGA only complaint. Thus, the following sentence
- 25 should be revised: “On January 13, 2023, Plaintiff Martinez and Plaintiff Lopez filed
- 26 the Consolidated Class Action Complaint for Damages & Enforcement Under the
- 27 Private Attorneys General Act, California Labor Code § 2698, Et Seq. (‘Operative
- 28

Complaint') against Defendants in the Action."

- The settlement resolves claims brought pursuant to PAGA by Plaintiff Martinez only. Accordingly, the following sentence should be revised: "Because this Settlement resolves claims brought pursuant to PAGA by Plaintiffs acting as representatives . . ."
- In the sentence beginning with "Nothing in the Settlement is intended to or will be construed as an admission by Defendants . . ." the term "Plaintiffs" should be replaced with "Plaintiff Martinez."
- Notice, Section III, Paragraph B: Settlement Class Members are referred to Section IV.B for the Settlement Administrator's email and mailing addresses. (See also Notice, § IV.C [discussing objections].) Section IV.B concerns requesting exclusion from the class settlement, which may create confusion amongst any settlement class members, who intend to only dispute workweeks. The Settlement Administrator's contact information should be provided in a separate section of the notice.
- Notice, Section IV, Paragraph B: The fourth requirement to request for exclusion from the settlement should be "clearly state that you request to be excluded from the Class Settlement" rather than "clearly state that the you request to be excluded from the Class Settlement."
- Notice, Section V:
 - Class Members, who submit a written objection, shall receive notice if the Final Approval Hearing is continued.
 - There are no limitations on personal appearances, thus, language regarding limits on personal appearances should be omitted.
 - For remote appearances, Settlement Class Members should be directed to contact Plaintiff Martinez's counsel, who can then request a remote appearance through the Court's procedures.

VI. Settlement Administrator

The proposed settlement administrator is CPT Group, Inc. (Zabehi Decl. Ex. 2 § I.II.) Plaintiff Martinez's counsel submitted a recent estimate from CPT Group, Inc. for settlement administration costs

1 based on a class size of 3,086 class members. (*Id.* at Ex. 4.) As discussed above, however, Defendants
2 now assert that the class size is only 1,425. (*Id.* at Ex. 2 § V.C.5; Opening Brief, 17 fn. 59.) Accordingly,
3 the estimate from CPT Group, Inc. is overstated. Plaintiff Martinez's counsel is directed to submit a
4 revised estimate from CPT Group, Inc. that is based on the correct number of estimated class members.

5 **VII. Proposed Order**

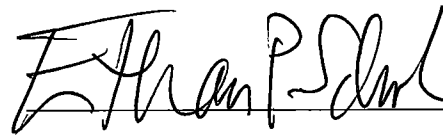
6 Plaintiff Martinez's counsel is directed to email a Word-editable version of the proposed
7 preliminary approval order to ComplexLit@sftc.org.

8
9 **CONCLUSION**

10 For the foregoing reasons, Plaintiff's motion for preliminary approval of class action settlement is
11 continued for a supplemental filing to May 13, 2025 at 11:00 a.m.

12 IT IS SO ORDERED.

13
14 Dated: March 4, 2025



Ethan P. Schulman
Judge of the Superior Court

CERTIFICATE OF ELECTRONIC SERVICE
(CCP 1010.6(6) & CRC 2.260(g))

I, Felicia Green, a Deputy Clerk of the Superior Court of the County of San Francisco, certify that I am not a party to the within action.

On March 4, 2025, I electronically served ORDER ON PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT via File & ServeXpress on the recipients designated on the Transaction Receipt located on the File & ServeXpress website.

Dated: MAR 04 2025

Brandon E. Riley, Court Executive Officer

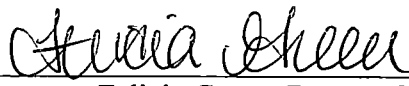
By: 
Felicia Green, Deputy Clerk

EXHIBIT B

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN FRANCISCO

COORDINATION PROCEEDING SPECIAL) Case No. CJC-22-005249
TITLE [RULE 3.550])

SUPER DUPER BURGERS WAGE AND)
HOUR CASES)

INCLUDED ACTIONS:)

MARTINEZ V. BACK OF THE HOUSE,)
INC., ET AL., NO. RG21113642)
(ALAMEDA COUNTY SUPER. CT.))

LOPEZ V. BACK OF THE HOUSE,)
INC., ET AL., NO. CGC-19-579624)
(SAN FRANCISCO COUNTY SUPER. CT.))

MARTINEZ V. BACK OF THE HOUSE,)
INC., ET AL., NO. CGC-21-594380)
(SAN FRANCISCO COUNTY SUPER. CT.))

DEPOSITION OF EDMUNDO ONAS, PERSON MOST

KNOWLEDGEABLE AT DEFENDANT BACK OF THE HOUSE, INC.,
taken on behalf of the plaintiff, via videoconference,
commencing at 3:00 p.m., Monday, August 7, 2023, before
Diana L. Porter, Certified Shorthand Reporter No. 12729.

1 APPEARANCES:

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17 ALSO PRESENT:

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VIDEOCONFERENCE; MONDAY, AUGUST 7, 2023

3:00 P.M.

(EDMUNDO ONAS, deponent, was sworn
and examined and testified as
follows:)

CERTIFIED SHORTHAND REPORTER: Please raise
your right hand. You do solemnly state, under penalty
of perjury, that the testimony that you shall give in
this matter shall be the truth, the whole truth, and
nothing but the truth?

THE DEPONENT: (Inaudible.)

CERTIFIED SHORTHAND REPORTER: I'm sorry. I
didn't hear you.

THE DEPONENT: Yes.

CERTIFIED SHORTHAND REPORTER: Thank you. You
can put your hand down, and counsel can proceed.

EXAMINATION

BY MR. DRUMMOND:

Q Could you please state and spell your name for
the record?

A Yeah. It's Edmundo, E-D-M-U-N-D-O, Onas,
O-N-A-S.

1 longer period of time. So --

2 Q And is that a policy that you communicate to
3 other general managers and managers, that if it's busy,
4 you can interrupt a meal period but not a rest period?

5 A Yes. Well, I mean, we -- the general managers
6 are, you know, able to take care of the business, but
7 also to ensure that either the break is taken later on
8 or to ensure that a meal premium is paid if the break
9 was missed or both if they -- you know, if they end up
10 still taking the break, a meal break, uninterrupted one,
11 or if it's they took it later, meal, and what the law
12 states, then they have to do both, allow them to take
13 their meal break and ensure that the premium is paid.

14 Q Under company policy, when is an employee
15 entitled to a second meal break?

16 A I would have to look at the policy to -- to be
17 sure, but I believe it's after the tenth hour. But I
18 would have to look at the policy to confirm.

19 Q And under company policy, when is a nonexempt
20 employee entitled to their first meal break?

21 A If they haven't signed the waiver, it's before
22 the fifth hour.

23 Q If an employee is having lunch and a supervisor
24 or a coworker wants to come up and ask them a question
25 about work, that's okay; right?

1 MR. DRUMMOND: Are you instructing him not to
2 answer?

3 MS. HOLVICK: No. I'm respectfully asking you
4 to rephrase your question.

5 MR. DRUMMOND: Can the court reporter, please
6 read the question back?

7 (Simultaneous speaking.)

8 THE DEPONENT: I don't understand the question,
9 I guess, is what I'm trying to say. So if you could,
10 yeah, repeat it in a different way.

11 MR. DRUMMOND: Could the reporter repeat the
12 question please and then --

13 (The testimony was read back as
14 follows:

15 "Q Defendant has failed to properly
16 compensate employees for interrupted meal
17 periods. Do you have any facts to dispute
18 this?")

19 MS. HOLVICK: Okay. And there is already an
20 answer to it, which is him asking you to explain or
21 rephrase.

22 BY MR. DRUMMOND:

23 Q So I'm saying defendant has failed to
24 adequately recompense employees who have had their meal
25 breaks interrupted. Do you have any facts to contradict

1 this?

2 MS. HOLVICK: And I will -- I think all you're
3 doing is repeating the question, the same question. So
4 my objection is the same, which is this is a harassing
5 question that calls for a legal conclusion. It lacks
6 foundation. Misstates prior testimony.

7 If the witness understands the question,
8 you're -- you can answer.

9 THE DEPONENT: I mean, all I can say is what we
10 do to ensure that breaks are taken accordingly and
11 that's their schedule and that they're taken according
12 to schedule.

13 BY MR. DRUMMOND:

14 Q Can you identify any facts to show that
15 defendant has succeeded in providing nonexempt employees
16 with ten-minute uninterrupted rest breaks for every four
17 hours that they work in compliance with California law?

18 A Other than the schedule, that's it.

19 Q During my deposition of Ms. Flores earlier, I
20 was being told about certain goals that were
21 communicated to general managers and then to managers.
22 These goals pertained to four primary areas: Service,
23 cleanliness and maintenance, staffing, and employee
24 relations. Does that sound familiar to you?

25 A Yes, they're familiar. I mean, I just -- I

1 BY MR. DRUMMOND:

2 Q And to your knowledge, the policies that apply
3 to -- strike that.

4 Other than the difference with regard to
5 business expenses, is there any other difference in
6 terms of the applicable policies with respect to
7 managers and general managers compared with cooks and
8 cashiers?

9 A With regards?

10 Q Any wage-and-hour-related policy.

11 A There is no difference. They're all nonexempt
12 employees.

13 Q I was hearing earlier about a bonus program for
14 managers on the basis of certain deliverables with
15 regard to financial results, Yelp reviews, cleanliness
16 and, I assume, meeting other operational goals. Do you
17 know what I'm referring to here?

18 A Yes.

19 Q Could you kind of fill in the details for me a
20 little bit? I would like to know how much is provided
21 in a bonus to managers through this program.

22 A Well, it's based on their results, you know,
23 like food, food costs, labor costs, controllable costs,
24 which could be, you know, repairs, supplies, what have
25 you, and then Yelp reviews and then the -- the

1 operational goals that we were talking about, which is
2 the service, cleanliness, employee relations, yeah.

3 Q And who decides the criteria required to
4 receive a bonus?

5 A The -- sorry. Say that again. Like, are you
6 asking for this specific one right here?

7 Q So for the bonus program for managers, who
8 decides what the -- what the list of criteria is for the
9 manager to receive that bonus?

10 A I do.

11 Q Do you alone decide that, or do you decide that
12 with the director of operations?

13 A The criteria is I decided on the criteria. But
14 as far as the awarding of it, it's -- you know, if
15 there's any kind of discretionary that needs to be
16 awarded, I usually work with the -- the director of
17 operations.

18 Q Have you ever awarded the bonus that we're
19 speaking about to a manager who was not meeting his or
20 her deliverables?

21 A I have.

22 Q On which occasion?

23 A If there are circumstances beyond their control
24 that affected their deliverables.

25 Q Can you give me an example?

1 room or employee bulletin board, and then during
2 onboarding, when they're signing off on the meal policy.

3 Q And signing the meal policy is a requisite for
4 employment; right?

5 A It's part of the onboarding process, yes.

6 Q And where are all of the places where the
7 defendant's rest period policies are contained?

8 A The same employee handbook. They're posted and
9 then during the onboarding.

10 Q Do you play any direct role in the scheduling
11 of meal periods?

12 A No.

13 Q Which employees do play a direct role in the
14 scheduling of meal periods?

15 A It would be the general manager for each
16 location.

17 Q So the general manager for each location
18 unilaterally decides what the meal period schedule will
19 be?

20 A Yes. They create the schedules, yes.

21 Q Do you ever review these meal period schedules?

22 A I do a spot check.

23 Q Is a spot check when you visit a store and
24 you're looking at the schedules?

25 A Yes.

1 Q What sort of things are you looking for when
2 you're doing a spot check of the schedules?

3 A Just ensure that it's within -- the breaks are
4 scheduled according to the law, that it's in compliance
5 with the law, and that it's appropriate to the business
6 needs.

7 Q And what is your understanding of what
8 compliance of the law requires?

9 A Like, their given a meal break for every five
10 or -- five and ten hours that they work. In this case,
11 for cooks and cashier, mostly the fifth hour. And,
12 then, the rest break, they are allowed a rest break
13 every four hours.

14 Q And does that policy apply to restaurant
15 managers, general managers, and senior general managers?

16 A Yes.

17 Q What about keyholders?

18 A Yes.

19 Q And what about kitchen trainers?

20 A Yes.

21 Q Shift managers?

22 A Yes.

23 Q Rest periods are not scheduled; correct?

24 A They are.

25 Q Do you play any direct role in the scheduling

1 please?

2 BY MR. DRUMMOND:

3 Q Are there any agreements promulgated by
4 defendant and given to nonexempt employees that say that
5 they can take their meals while working, that their meal
6 does not have to be off-duty? Do you know of any such
7 agreement?

8 A No.

9 Q And what is the policy with respect to
10 employees breaking policy? In other words, how do you
11 address employees that are in violation of company
12 policy?

13 A I think we would always try to understand first
14 what was the reason for them missing their break.

15 Q I'm not asking about missing break. I'm asking
16 about the enforcement of company policy generally. What
17 is the procedure if an employee is in violation of
18 company policy generally?

19 MS. HOLVICK: I'm going to object that the
20 question is overbroad, vague and ambiguous, and calls
21 for speculation.

22 But you answer to the extent you're able.

23 THE DEPONENT: I mean, if an employee misses
24 their break, we make sure that they are given the
25 penalty, the meal premium penalty.

1 A Yes.

2 Q Are you familiar with the defendant's policy
3 with respect to rest breaks as it exists within the
4 handbook?

5 A Yes.

6 Q The company handbook does not mention that
7 employees are allowed to leave the premises; is this
8 correct?

9 MS. HOLVICK: Object that it calls for
10 speculation.

11 You can answer if you're able.

12 THE DEPONENT: I would have to confirm and look
13 in the handbook.

14 BY MR. DRUMMOND:

15 Q So when you said that you're familiar with the
16 rest break policy as it exists in the handbook earlier,
17 what did you mean by that?

18 A I'm familiar on when they're allowed their rest
19 break for according to the law.

20 Q But you don't know if employees are allowed by
21 policy to leave the premises for rest breaks?

22 A I can't confirm. But I know that when I'm at
23 the restaurant and they take their rest break, that they
24 leave the restaurant.

25 Q But, again, I just want a yes or no on this

1 BY MR. DRUMMOND:

2 Q Do you ever advise senior general managers in
3 how to interact with and advise general managers?

4 A Yes.

5 Q Do you ever advise them with regard to how they
6 should be communicating to managers as well as other
7 nonexempt employees?

8 A Yes.

9 Q And what sorts of advice or directives do you
10 give them with regard to how they should be
11 communicating with other nonexempt employees?

12 A I mean, I think it's just the -- the -- it's
13 just effectively communicating with them, like, from a
14 leadership standpoint, like, you know, how they should
15 talk to them and all that. So that's usually the part
16 that I play, part of their development.

17 Q Do you ever reimburse the phone bill for senior
18 general managers?

19 A They also receive a phone allowance.

20 Q But it's the case that no matter how much they
21 use their phone, there is a cap to that allowance;
22 correct?

23 A They get a certain amount every month, yeah.

24 Q And is this phone allowance also extended to
25 general managers?

1 A Yes.

2 Q Is this phone allowance also extended to
3 restaurant managers?

4 A Yes.

5 Q Is this phone allowance also extended to shift
6 managers?

7 A No.

8 Q Is the allowance in the same amount for
9 restaurant managers, general managers, and senior
10 general managers?

11 A Yes.

12 Q What is that amount?

13 A I would have to confirm, but I believe it's a
14 hundred dollars a month.

15 Q Do you ever communicate with restaurant
16 managers?

17 A I would say once in a while.

18 Q Are there any bonuses or incentive programs
19 that you or management has put into place for nonexempt
20 employees, other than the bonus program we were
21 discussing earlier for managers?

22 A I mean, we do, yes. To answer your question,
23 yes.

24 Q Can you describe all the different programs and
25 incentives that you offer?

1 A Yeah. We do contests, you know, for, like,
2 Halloween or pride or Super Duper Day, you know, like,
3 just to motivate not just the managers but the team.

4 Q What is Super Duper Day?

5 A It's our anniversary, super Duper anniversary.
6 So --

7 Q And when is -- when is that?

8 A April, the last Monday of April every year.

9 Q And is that the day that the first Super Duper
10 location was founded?

11 A It's actually the day that former Mayor Ed Lee
12 declared Super Duper Day, yeah. We opened right around
13 April. Everybody knows that, yes.

14 Q What do the employees get on Super Duper Day?

15 A Just have fun. The managers treat them. They
16 get to decorate the restaurants, you know, balloons
17 yeah. And then the --

18 (Simultaneous speaking.)

19 THE DEPONENT: They get, like, a -- you know,
20 like, a special treat where they meal -- order out food,
21 you know, from another restaurant. So --

22 BY MR. DRUMMOND:

23 Q Do you have a specific budget that you give to,
24 say, a general manager for what kind of food they should
25 be ordering out?

1 A If they win or if during the Super Duper Day?

2 Q During Super Duper Day?

3 A It's at their discretion.

4 Q Is it anywhere in writing --

5 A No.

6 Q -- that there is an observance Super Duper Day?

7 A Other than the certificate from the mayor, I
8 believe that's the only one. So --

9 Q Are there any other incentive programs or
10 payment programs where nonexempt employees get paid
11 outside of their regular rate of pay?

12 A I mean, we encourage --

13 Yes. In answer to your question, yes.

14 Q Could you describe all the different sorts of
15 payments that would be included?

16 A Well, like, the -- what we actually give to --
17 as the -- as an incentive?

18 Q Yes.

19 A Gift cards.

20 Q And what are those gift cards for?

21 A It varies. Could be 25 bucks. It could be a
22 hundred and fifty dollars. Just depends.

23 Q And for what reason are these gift cards given?

24 A Well, it's the prize for the contest that I
25 mentioned. That's one. And, then, you know, like, the

1 general managers are allowed to run, like, an employee
2 of the month programs and they can give them a gift
3 card. It's -- you know, we encourage them to, you know,
4 do whatever, build their morale, their team morale.

5 Q How does one win the competition, again, that
6 you were describing? And could you rename what that
7 competition is?

8 A The Super Duper Day is basically -- it's --
9 they submit photos of their restaurants. And then they
10 send it to our marketing department, and then the
11 marketing department posts it on social media. And then
12 they get votes, and whoever has the most votes or likes
13 or whatever, then that's the winner.

14 Q And so the idea would be, generally speaking,
15 to have a kind of incentive program to create
16 better-looking restaurants?

17 A No. It's to promote fun in the restaurant.
18 That's really all it is, just to promote some fun.
19 That's all.

20 CERTIFIED SHORTHAND REPORTER: I'm sorry. I
21 didn't understand the word. "No, it's."

22 THE DEPONENT: To promote fun in the
23 restaurant.

24 CERTIFIED SHORTHAND REPORTER: Thank you.

25 ///

1 BY MR. DRUMMOND:

2 Q And so they're judged based off of the
3 appearance of the decorations? Or what's the --

4 A Yeah, decorations. Really, it's up to the
5 people that are voting, you know.

6 Q And why would you want to promote fun in a work
7 setting?

8 A I think it's important for employee engagement
9 and morale.

10 Q So as far as the gift cards are concerned, can
11 you describe this program in greater detail to me? Is
12 this at the discretion of general management, or
13 who's -- who's giving out these gift cards?

14 A For the contests? That contest that I just
15 mentioned? The gift cards for the contest I just
16 mentioned or --

17 Q Oh, I had that mixed up. I thought the gift
18 cards were something separate. So the gift cards are if
19 you win the competition?

20 A Yes. That's the practice.

21 Q Okay. And what's the value of the gift cards?

22 A It varies. It could be \$20. Could be \$50.
23 Could be a \$150.

24 Q And that gift card, if there's a store that
25 wins, each nonexempt employee at that location gets one

1 gift card; correct?

2 A No. It's actually if the general manager, and
3 then the restaurant manager and the kitchen manager gets
4 the gift cards. And then we give them gift cards to use
5 to purchase the meal that they're going to buy for the
6 team or whatever treat they decide to do.

7 Q Okay. And the employee of the month program,
8 do you know of any locations that are using an employee
9 of the month program currently?

10 A I can't say specifically.

11 Q Does that mean you don't know if they're
12 running an employee of the month program, or does that
13 mean that they're just not at this time?

14 A I don't know. Some are and some aren't. It's
15 at the discretion of the general manager.

16 Q Is there anyone working for defendant that
17 would know which locations are running an employee of
18 the month program?

19 A Just the general managers.

20 Q During the entirety of your time with
21 defendant, have you observed any locations practice
22 employee of the month?

23 A Yes.

24 Q Was there a financial award that accompanied
25 the award of employee of the month?

1 A A gift card.

2 Q Was there a typical value of that gift card or
3 an assigned value?

4 A I would say probably a hundred dollars.

5 Q An employee of the month is an incentive
6 program, is it not?

7 A Yes.

8 Q Does each facility receive a predetermined
9 payroll budget from corporate?

10 A With regards?

11 Q So my assumption is that there's a certain
12 amount of money any given location is allowed to spend.
13 Is that not the case?

14 A Allowed to spend for, like, incentives or just
15 a budget as far as financial operations?

16 Q My apologies. I'm moving off of incentives.

17 A Okay.

18 Q I'm now just moving through general business
19 operations.

20 So is there a previously set amount, a budget
21 that applies to each location for what their total
22 expenses can be?

23 A Yes, yes.

24 Q Does this vary by location?

25 A Yes.

DEPOSITION OFFICER'S CERTIFICATE

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN BERNARDINO)

I, Diana L. Porter, hereby certify:

I am a duly qualified Certified Shorthand
Reporter, in the State of California, holder of
Certificate No. 12729, issued by the Court Reporters
Board of California, and which is in full force and
effect. (Bus. & Prof. Section 8016)

I am not financially interested in this action
and am not a relative or employee of any attorney of the
parties, or of any of the parties. (Civ. Proc. Section
2025.320(a))

I am authorized to administer oaths or
affirmations pursuant to California Code of Civil
Procedure, Section 2093(b) and prior to being examined,
the deponent was first placed under oath or affirmation
by me. (Civ. Proc. Sections 2025.320, 2025.540(a))

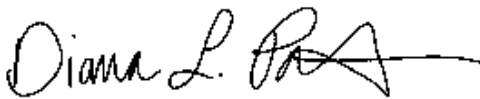
I am the deposition officer that
stenographically recorded the testimony in the foregoing
deposition and the foregoing transcript is a true record
of the testimony given. (Civ. Proc. Section 2025.540(a))

I have not, and shall not, offer or provide any

1 services or products to any party's attorney or third
2 party who is financing all or part of the action without
3 first offering same to all parties or their attorneys
4 attending the deposition and making same available at
5 the same time to all parties or their attorneys. (Civ.
6 Proc. Section 2025.320(b))

7 I shall not provide any service or product
8 consisting of the deposition officer's notations or
9 comments regarding the demeanor of any witness,
10 attorney, or party present at the deposition to any
11 party or any party's attorney or third party who is
12 financing all or part of the action, nor shall I collect
13 any personal identifying information about the witness
14 as a service or product to be provided to any party or
15 third party who is financing all or part of the action.
16 (Civ. Proc. Section 2025.320(c))

17
18 Dated: August 29, 2023

19
20 

21 Diana L. Porter, CSR No. 12729
22
23
24
25

EXHIBIT C

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN FRANCISCO

COORDINATION PROCEEDING SPECIAL) Case No. CJC-22-005249
TITLE [RULE 3.550])

SUPER DUPER BURGERS WAGE AND)
HOUR CASES)

INCLUDED ACTIONS:)

MARTINEZ V. BACK OF THE HOUSE,)
INC., ET AL., NO. RG21113642)
(ALAMEDA COUNTY SUPER. CT.))

LOPEZ V. BACK OF THE HOUSE,)
INC., ET AL., NO. CGC-19-579624)
(SAN FRANCISCO COUNTY SUPER. CT.))

MARTINEZ V. BACK OF THE HOUSE,)
INC., ET AL., NO. CGC-21-594380)
(SAN FRANCISCO COUNTY SUPER. CT.))

DEPOSITION OF JESSICA SPENCER FLORES, PERSON

MOST KNOWLEDGEABLE AT DEFENDANT BACK OF THE HOUSE, INC.,
taken on behalf of the plaintiff, via videoconference,
commencing at 10:00 a.m., Monday, August 7, 2023, before
Diana L. Porter, Certified Shorthand Reporter No. 12729.

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21
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24
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VIDEOCONFERENCE; MONDAY, AUGUST 7, 2023

10:00 A.M.

(JESSICA SPENCER FLORES, deponent,
was sworn and examined and testified
as follows:)

CERTIFIED SHORTHAND REPORTER: Please raise
your right hand. You do solemnly state, under penalty
of perjury, that the testimony that you shall give in
this matter shall be the truth, the whole truth, and
nothing but the truth?

THE DEPONENT: Yes.

CERTIFIED SHORTHAND REPORTER: You can put your
hand down, and counsel can proceed.

EXAMINATION

BY MR. DRUMMOND:

Q Thank you.

You've been deposed at a deposition before;
correct?

A Yes.

Q I understand you were deposed by Mr. Uriarte in
September 24, 2021; correct?

A Yes.

1 align with the schedule?

2 A Once in a while, on a rare occasion.

3 Q So it's always exactly the schedule?

4 A No. I just said once in a while, on a rare
5 occasion maybe if the business isn't what we were
6 expecting.

7 Q Is it precise to the minute on most occasions?

8 A I wouldn't say precise to the minute, but I
9 would say it's pretty precise within 10 to 15 minutes.

10 Q The meal waiver form is a mandatory form that
11 must be signed in order for one to be hired; correct?

12 A The policy is required to be signed, but they
13 can decide whether to waive or not. It's voluntary.

14 Q Can you identify any specific procedures or
15 efforts made by the company, other than those that
16 you've already discussed, during the employee's shift
17 when they are working to ensure that the nonexempt
18 employees' meal periods are not being taken after their
19 fifth hour of work or tenth hour of work, et cetera.

20 A As I said, we follow the schedule the best that
21 we can. But we also have an automated penalty generated
22 that's set up in Dayforce, you know, if, on the rare
23 occasion, something happens, someone doesn't show up, or
24 it's just crazy busy and we cannot send that employee at
25 the appropriate time. Then they would receive a

1 one-hour meal premium penalty. So that's another way.

2 Q Are there any bonuses or incentive payments or
3 awards that are given to nonexempt employees?

4 A Yes.

5 Q Can you describe those for me?

6 A Sure. The managers are on a discretionary
7 bonus plan based on the results of the restaurants. And
8 we also have a bonus for, like, finding and training a
9 manager, things like that.

10 Q Are there any other bonuses?

11 A Not that I can think of.

12 Q Initially, you said that first bonus regarding
13 the performance of the restaurants was something that
14 was given to managers and that it was discretionary.
15 Are there any -- is there any criteria that has to be
16 met in order for that bonus to be given to the managers?

17 A Yes. We have guidelines that we want them to
18 follow, but we will make discretionary decisions if
19 somebody's been working really hard. You know, we may
20 award it even if they don't meet all of the
21 requirements.

22 Q Has Super Duper or defendant ever engaged in
23 the practice of having an employee of the month?

24 A I'm forgetting the exact language that we've
25 used, but we have done something where, yes, we

1 shutting down the facility?

2 MS. HOLVICK: Objection. The question is vague
3 and ambiguous, overbroad, calls for speculation.

4 But you can answer if you're able.

5 THE DEPONENT: By shutting down the facility,
6 do you mean just day to day or, like, a permanent
7 closure?

8 BY MR. DRUMMOND:

9 Q Day to day. I'll reask.

10 What are all the tasks that are involved in
11 shutting down one of the defendant's restaurants for the
12 day?

13 A Yeah. I can give you my best estimate, and Ed
14 Onas would have a more precise answer. But the main
15 responsibilities would be some cleaning, making sure all
16 of the food is put away, dealing with the cash drawer,
17 checking out, and then checking in with your manager,
18 clocking out, and going home.

19 Q So the question I just asked pertained to job
20 responsibilities and activities, which is Topic 6 in the
21 notice. I've been told that you, Ms. Flores, are the
22 person most knowledgeable at defendant regarding Topic
23 Number 6. Are you telling me that, in fact, Mr. Onas is
24 the person most knowledgeable with regard to Topic
25 Number 6?

1 employees?

2 A I don't recall the exact time frame, but during
3 COVID, there was a cutoff. I think it was, like, every
4 two hours, they would throw it away and we would give
5 them a new one.

6 Q Are all employees meant to wear gloves?

7 A Not all, just kitchen employees per health
8 department regulation.

9 Q Are there any supplies used by employees of
10 defendants that are not provided by defendant?

11 A None that I can think of.

12 Q Are there any locker rooms for nonexempt
13 employees?

14 A Depending on the location, there is an area
15 where we have lockers. I wouldn't always say it's a
16 locker room, but it could be part of a hallway. It
17 could be part of the office.

18 Q Is it ever a locker room?

19 A I think in a couple of our larger locations,
20 there's an actual room.

21 Q How many locations is that?

22 A My best estimate is three or four.

23 Q What items are employees permitted to have on
24 their person while they're working?

25 A They are permitted to have their uniforms.

1 They're permitted to have whatever pen or piece of paper
2 if they need to write things down. They're not
3 permitted to have a phone in -- where guests could see
4 it. It would need to be put away either in their
5 pocket, out of visibility, or in the locker room or
6 locker area.

7 Q When switching from a morning shift to an
8 evening shift, is there any overlap between the
9 schedules of different employees?

10 A Yes, there is.

11 Q How much time -- again, you can give it in a
12 range -- is there in overlap?

13 A There is -- my best estimate is, like, 20 to 30
14 minutes between, like, let's say, the closing day
15 cashier and the opening evening cashier. But we
16 typically stagger the times all day long.

17 Q Do you have any evidence to contradict that
18 managers are communicating with employees via text or
19 cell phone calls?

20 A Can you repeat that? Do I have any evidence
21 that -- sorry. I missed the part.

22 Q That's okay. Do you have any evidence to
23 contradict that managers are using cell phones to
24 communicate with nonexempt employees, be it by text
25 message or phone call?

1 without the double negative?

2 MR. DRUMMOND: No.

3 MS. HOLVICK: Okay. Well, do your best.

4 THE DEPONENT: Okay. No. I don't believe so,
5 but it's a little hard to understand that question.

6 BY MR. DRUMMOND:

7 Q Are there any facts to deny that nonexempt
8 employees answer work-related questions from supervisors
9 and employees off the clock?

10 MS. HOLVICK: I'm going to object that the
11 question lacks foundation.

12 You can answer if you're able.

13 THE DEPONENT: My knowledge how people would be
14 communicated to on their phone would be, "Hey. We're
15 short a cashier. Can you come in tonight?" And that
16 would be the extent of the communication, or perhaps an
17 employee calling a manager because they're sick.

18 BY MR. DRUMMOND:

19 Q What are you basing that knowledge on?

20 A Because that's our practice. That's a way to
21 communicate. I don't know how else we would call or
22 communicate with somebody to come in, you know, if we
23 were short-staffed.

24 Q So you're assuming? I just want to be clear.

25 A I don't have the phone records of all of the

1 Counsel, to the extent you're willing to ask
2 questions without a double negative, I think that would
3 be helpful.

4 You can answer if you understand it.

5 THE DEPONENT: Can you ask it again, please?

6 BY MR. DRUMMOND:

7 Q Mm-hmm.

8 Are there any facts to deny that nonexempt
9 employees have meetings with supervisors off the clock?

10 A I mean, all work-related activities are
11 supposed to be on the clock.

12 Q But do you have any facts to deny this?

13 A I don't have a fact to deny it, but that is our
14 procedure and policy.

15 MS. HOLVICK: Counsel, we've been going about
16 an hour. I'd like to take a short restroom break if we
17 can.

18 MR. DRUMMOND: Yes, that's fine. We'll go off
19 the record.

20 (A recess was taken.)

21 CERTIFIED SHORTHAND REPORTER: We're back on
22 the record.

23 BY MR. DRUMMOND:

24 Q Are you aware that you're still under oath?

25 A I am. And if I can please make a clarification

1 A Yes.

2 Q Has this been the case since September of 2015?

3 A Yes.

4 Q Has the company since September of 2015 paid
5 any meal premium penalty payments?

6 A Yes.

7 Q Does each separate LLC entity have it's the own
8 record of premium payments paid or is there one
9 consolidated record?

10 A Each LLC has its own payroll records.

11 Q Do you know how many meal period premiums were
12 paid for each entity as for this year?

13 A No. I would have to look that up.

14 Q Do you know that number as to any entity?

15 A No. I would have to check my records.

16 Q The company never advised employees in writing
17 that they were entitled to a meal period premium for any
18 short, late, missed, or interrupted meal periods;
19 correct?

20 MS. HOLVICK: Sorry. Can we have that read
21 back, please.

22 (The testimony was read back as
23 follows:

24 "Q The company never advised employees
25 in writing that they were entitled to a

1 meal period premium for any short, late,
2 missed, or interrupted meal periods;
3 correct?")

4 THE DEPONENT: I believe that's written in the
5 handbook, but I would need to double-check.

6 BY MR. DRUMMOND:

7 Q Is that the only place that it's written, to
8 your knowledge?

9 A Regarding the premium pay, yes.

10 Q And what documents would evidence that meal
11 premiums were actually being paid?

12 A So our time clock system in Dayforce, if
13 somebody doesn't take the meal period within the correct
14 time frame, it generates an automatic penalty. It shows
15 it on their time sheet so the employee can see it in
16 real time, and then that's reflected on their pay stub.

17 Q And do you have access to documents that
18 evidence the number of meal period premiums paid as to
19 each LLC and entity involved in this lawsuit?

20 A Yes.

21 Q And what form does that documentation take?

22 A Well, there's reporting that I have that has a
23 record of all of the timekeeping and the penalties, if
24 there were any. And then I have pay stubs. I have
25 payroll reports.

1 Q Does there exist any Excel spreadsheet or PDF
2 document, for example, that evidences all the meal
3 period premiums paid by the different entities?

4 A Yes. That would be in the payroll report.

5 Q And to confirm for the record, that was not
6 produced today; correct?

7 A Correct, not today.

8 Q Do any employees have any on-duty meal period
9 agreements?

10 A The last part of the question, I couldn't --
11 can you repeat it, please?

12 Q Do any employees have any on-duty meal period
13 agreements?

14 A On-duty meal period agreements?

15 Q Mm-hmm.

16 MS. HOLVICK: I'm just going to object that
17 that calls for a legal conclusion.

18 You can answer if you understand.

19 THE DEPONENT: We don't have an agreement, but
20 employees are relieved of duty during their meal
21 periods.

22 BY MR. DRUMMOND:

23 Q Does the company pay any rest period premium
24 payments?

25 A We have the option to if we find that there's a

1 violation.

2 Q What do you define as a violation?

3 A Well, I would define a violation if an employee
4 was prevented from being able to take their ten-minute
5 rest period.

6 Q How many rest period premium payments are made
7 to employees on an annual basis for defendant?

8 A None.

9 Q And there's no documents that evidence rest
10 period premiums being paid; correct?

11 A That's correct.

12 Q Does the employee's handbook in 2015 expressly
13 tell employees that they are free to leave the premises
14 during rest breaks?

15 MS. HOLVICK: You froze for a second. Can you
16 please repeat question?

17 MR. DRUMMOND: No problem.

18 BY MR. DRUMMOND:

19 Q The company's employee handbook in 2015, does
20 not expressly tell employees that they're free to
21 leaving the premises during rest breaks; is that
22 correct?

23 A I would have to double-check that. But that --
24 I know that that's in our handbook, that they're allowed
25 to leave the premises. We also have it in a posting

1 and, I believe, their rest period policy that they sign
2 off on. They're definitely allowed to leave the
3 premises.

4 Q And that's communicated in the handbook that
5 was issued in 2015 or for 2015?

6 A Again, I would -- I will have to double-check
7 that, the 2015, since I think it was eight years ago.
8 But, yeah, it's clear that employees can leave the
9 premises during their ten-minute rest periods.

10 Q If it wasn't communicated to employees in 2015
11 via the handbook how would they know?

12 A They would know by the postings that we have.
13 They would know by their manager letting them know when
14 they send them on the rest period. And there's
15 certainly nowhere written that says you have to stay
16 inside the restaurant during your rest period. People
17 go and grab a coffee or do whatever they need to do.
18 People smoke. People go outside and talk on the phone.
19 There's no policy that asks them to stay in the
20 restaurant.

21 Q Are you similarly unaware of whether or not
22 it's stated in the employee handbook that employees may
23 leave the premises during rest breaks for the handbook
24 that was in effect in 2016?

25 A I would have to read through it.

DEPOSITION OFFICER'S CERTIFICATE

STATE OF CALIFORNIA)
)
COUNTY OF SAN BERNARDINO) ss.

I, Diana L. Porter, hereby certify:

I am a duly qualified Certified Shorthand Reporter, in the State of California, holder of Certificate No. 12729, issued by the Court Reporters Board of California, and which is in full force and effect. (Bus. & Prof. Section 8016)

I am not financially interested in this action and am not a relative or employee of any attorney of the parties, or of any of the parties. (Civ. Proc. Section 2025.320(a))

I am authorized to administer oaths or affirmations pursuant to California Code of Civil Procedure, Section 2093(b) and prior to being examined, the deponent was first placed under oath or affirmation by me. (Civ. Proc. Sections 2025.320, 2025.540(a))

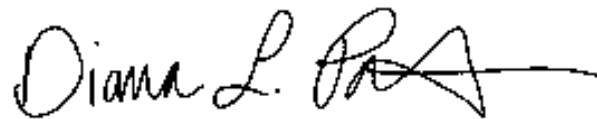
I am the deposition officer that stenographically recorded the testimony in the foregoing deposition and the foregoing transcript is a true record of the testimony given. (Civ. Proc. Section 2025.540(a))

I have not, and shall not, offer or provide any

1 services or products to any party's attorney or third
2 party who is financing all or part of the action without
3 first offering same to all parties or their attorneys
4 attending the deposition and making same available at
5 the same time to all parties or their attorneys. (Civ.
6 Proc. Section 2025.320(b))

7 I shall not provide any service or product
8 consisting of the deposition officer's notations or
9 comments regarding the demeanor of any witness,
10 attorney, or party present at the deposition to any
11 party or any party's attorney or third party who is
12 financing all or part of the action, nor shall I collect
13 any personal identifying information about the witness
14 as a service or product to be provided to any party or
15 third party who is financing all or part of the action.
16 (Civ. Proc. Section 2025.320(c))

17
18 Dated: August 29, 2023

19
20 
21

22 Diana L. Porter, CSR No. 12729
23
24
25

EXHIBIT D

**SECOND AMENDED JOINT STIPULATION OF CLASS ACTION AND PAGA SETTLEMENT
AGREEMENT AND RELEASE**

This Second Amended Joint Stipulation of Class Action and PAGA Settlement Agreement and Release (“Settlement,” “Agreement,” or “Settlement Agreement”) is made by and between Plaintiff Erickson Martinez (“Plaintiff”) and Defendants Back of the House, Inc.; EBurger, LLC; JBurger, LLC; Mission 98 Super, LLC; MBurger, LLC; 2355 Telegraph Ave, LLC; The Veranda Super, LLC; 5399 Prospect Road, LLC; Super Emeryville, LLC; DBurger, LLC; MetBurger, LLC; Super Novato, LLC; Super Los Gatos, LLC; KBurger, LLC; Adriano Paganini; and Edmondo Sarti (collectively, “Defendants”) (together, with Plaintiff, the “Parties” or individually referred to as “Party”). Pursuant to Section V.H, Paragraph 6 of the First Amended Joint Stipulation of Class Action and PAGA Settlement Agreement and Release executed on January 31, 2025, upon full execution of this Settlement Agreement, Parties hereby amend and supplant the First Amended Joint Stipulation of Class Action and PAGA Settlement Agreement and Release.

This Settlement Agreement shall be binding on Plaintiff, Participating Class Members (as defined below), PAGA Group Members (as defined below), the State of California (as set forth herein), and on Defendants and Employers (as defined below), subject to the terms and conditions hereof and approval of the Court.

I. DEFINITIONS

In addition to other terms defined in this Agreement, the terms below have the following meaning in this Agreement:

A. “Action” means the coordinated action entitled *Super Duper Burgers Wage and Hour Cases* in the Superior Court of the State of California for the County of San Francisco, Case No. CJC-22-005249 and Judicial Council Coordination Proceeding No. 5249, which expressly includes the following actions: (1) *Erickson Martinez v. Back of the House, Inc., et al.*, Case No. CGC-21-594380 filed in the Superior Court of the State of California, County of San Francisco; (2) *Erickson Martinez v. Back of the House, Inc., et al.*, Case No. RG21113642 filed in the Superior Court of the State of California, County of Alameda; and (3) *Magaly Olayo Lopez v. Back of the House, Inc., et al.*, Case No. CGC-19-579264 filed in the Superior Court of the State of California, County of San Francisco.

B. “Class” means all current and former hourly-paid or non-exempt employees who worked for any of the Defendants or Employers at a Super Duper Burgers restaurant within the State of California at any time during the Class Period.

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

D. “Class Counsel” means Edwin Aiwazian, Arby Aiwazian, Joanna Ghosh, and Tara Zabehi of Lawyers *for* Justice, PC.

E. “Class Counsel Fees Payment” and “Litigation Expenses Payment” mean the amounts to be paid to Class Counsel for attorneys’ fees and reimbursement of litigation expenses, respectively, as approved by the Court, to compensate them for their legal work in connection with the Action, including their pre-filing investigation, filing of the Action, all related litigation activities, all Settlement work, all post-Settlement compliance procedures, and related litigation expenses incurred in connection with the Action.

F. “Class Data” means a complete list of all Class Members that Defendants will diligently and in good faith compile from their records and provide to the Settlement Administrator. The Class Data will be formatted in a readable Microsoft Office Excel spreadsheet and will include each Class Member’s full name, last known mailing address, last known email address, Social Security Number, total number of Workweeks during the Class Period, total number of Workweeks during the PAGA Period, and any other information required by the Settlement Administrator in order to effectuate the terms of the Settlement.

G. “Class Notice” means the Notice of Class Action Settlement, substantively in the form attached hereto as **Exhibit A** to this Agreement and incorporated by reference into this Agreement.

H. “Class Period” means the period from September 16, 2015 through March 4, 2025.

I. “Class Settlement” means the settlement and release of all Released Class Claims.

J. “Court” means the Superior Court of the State of California for the County of San Francisco.

K. “Defendants’ Counsel” means Marie Trimble Holvick and Matthew Wayne of Gordon Rees Scully Mansukhani, LLP.

1 L. “Effective Date” means the date when all of the following events have occurred: (1) the
2 Settlement Agreement has been executed by all Parties, Class Counsel, and Defendants’ Counsel; (2)
3 the Court has given and entered Preliminary Approval to the Settlement; (3) the Class Notice has been
4 mailed and emailed (if email addresses are available) to the Class Members, providing them with an
5 opportunity to object to the terms of the Class Settlement or opt out of the Class Settlement by mail
6 and/or email; (4) the Court has held a Final Approval Hearing and entered Final Approval Order and
7 Judgment; and (5) the later of the following events: five (5) business days after the period for filing any
8 appeal, writ, or other appellate proceeding opposing the Court’s Final Approval Order and Judgment
9 has elapsed without any appeal, writ, or other appellate proceeding having been filed; or, if any appeal,
10 writ, or other appellate proceeding opposing the Court’s Final Approval Order and Judgment has been
11 filed, five (5) business days after any appeal, writ, or other appellate proceedings opposing the
12 Settlement has been finally and conclusively dismissed with no right to pursue further remedies or relief.

13 M. “Employers” means Back of the House, Inc., EBurger, LLC, JBurger, LLC, Mission 98
14 Super, LLC, MBurger, LLC, 2355 Telegraph Ave, LLC, The Veranda Super, LLC, 5399 Prospect Road,
15 LLC, Super Emeryville, LLC, DBurger, LLC, MetBurger, LLC, Super Novato, LLC, Super Los Gatos,
16 LLC, KBurger, LLC, 117 New Montgomery, LLC, 3401 California Street, LLC, Super Napa, LLC, Super
17 Serramonte, LLC, and Geary Mas, LLC.

18 N. “Final Approval” means the determination by the Court that the Settlement is fair,
19 reasonable, and adequate, and entry of judgment based thereon.

20 O. “Final Approval Hearing” means the hearing to be conducted by the Court to determine
21 whether to approve finally and implement the terms of this Agreement and enter the Final Approval Order
22 and Judgment.

23 P. “Gross Settlement Amount” means Eight Hundred Thousand Dollars and Zero Cents
24 (\$800,000.00) to be paid by Defendants and subject to Section V.C.5, in full resolution of all Released
25 Class Claims, Released PAGA Claims, and the Action. This amount is an all-in amount without any
26 reversion to Defendants and will be inclusive of all payments of the Individual Settlement Shares to the
27 Participating Class Members, Individual PAGA Payments to PAGA Group Members, Settlement
28 Administration Expenses to the Settlement Administrator, Class Counsel Fees Payment to Class Counsel,

1 Litigation Expenses Payment to Class Counsel, Service Payment to Plaintiff, and LWDA Payment to the
2 LWDA, as set forth in this Agreement. The employer's share of payroll taxes on the Wage Portion of the
3 Individual Settlement Shares ("Employer Taxes") will be paid by Defendants separately and in addition
4 to the Gross Settlement Amount.

5 Q. "Individual PAGA Payment" means a PAGA Group Member's *pro rata* share of the PAGA
6 Group Member Amount that a PAGA Group Member is eligible to receive under the PAGA Settlement,
7 to be calculated in accordance with Section V.B.3.a below.

8 R. "Individual Settlement Payment" means the net payment of each Participating Class
9 Member's Individual Settlement Share, after reduction for the employee's share of taxes and withholdings
10 with respect to the Wage Portion of the Individual Settlement Share.

11 S. "Individual Settlement Share" means the *pro rata* share of the Net Settlement Amount that
12 a Class Member may be eligible to receive under the Settlement Agreement, to be calculated in accordance
13 with Section V.C.2 below.

14 T. "LWDA" means the California Labor and Workforce Development Agency.

15 U. "LWDA Payment" means the amount that the Parties have agreed to pay the LWDA for
16 its seventy-five percent (75%) share of the PAGA Payment, as set forth in Section V.B.3 below.

17 V. "Net Settlement Amount" means the portion of the Gross Settlement Amount that is
18 available for distribution to Participating Class Members for the Class Settlement, which is the Gross
19 Settlement Amount less the Court-approved amounts for the Service Payment, Class Counsel Fees
20 Payment, Litigation Expenses Payment, PAGA Payment, and Settlement Administration Expenses.

21 W. "Non-Participating Class Member" means a Class Member who submits a valid and timely
22 Request for Exclusion from the Class Settlement.

23 X. "PAGA Group" or "PAGA Group Member(s)" means all current and former hourly-paid
24 or non-exempt employees who worked for any of the Defendants or Employers at a Super Duper Burgers
25 restaurant within the State of California at any time during the PAGA Period.

26 Y. "PAGA Payment" means Fifty Thousand Dollars and Zero Cents (\$50,000.00) of the Gross
27 Settlement Amount allocated as civil penalties under the Private Attorneys General Act, California Labor
28 Code § 2698, *et seq.* ("PAGA"). Seventy-five percent (75%) of the PAGA Payment, or Thirty-Seven

1 Thousand Five Hundred Dollars and Zero Cents (\$37,500.00), will be payable to the LWDA (“LWDA
2 Payment”), and the remaining twenty-five percent (25%), or Twelve Thousand Five Hundred Dollars and
3 Zero Cents (\$12,500.00), will be distributed on a *pro rata* basis to PAGA Group Members based on their
4 Workweeks during the PAGA Period (“PAGA Group Member Amount”).

5 Z. “PAGA Period” means the period from May 17, 2018 through March 4, 2025, which is the
6 time period for which Released PAGA Claims are settled and resolved by way of this Settlement
7 Agreement; pursuant to *Gina Johnson v. Maxim Healthcare Services, Inc.* (2021) 66 Cal.App.5th 924,
8 based on the *Martinez* LWDA Letter having been provided on July 19, 2021, Plaintiff contends that his
9 PAGA claim can reach back to at least as far back as July 19, 2018 and as such Parties have agreed to
10 settle and resolve Released PAGA Claims for the period commencing on and from July 19, 2018. Further,
11 for the purposes of settlement only, Defendants agree to waive any statute of limitations defense to
12 Plaintiff’s PAGA claim so that the PAGA period and release of class members’ PAGA claims extends
13 back to May 17, 2018. (*See Hutcheson v. Superior Ct.* (2022) 74 Cal. App. 5th 932, 942; *Amaro v.*
14 *Anaheim Arena Mgmt., LLC* (2021) 69 Cal. App. 5th 521, 542.)

15 AA. “PAGA Settlement” means the settlement and release of Released PAGA Claims.

16 BB. “Participating Class Member” means a Class Member who does not submit a valid and
17 timely Request for Exclusion from the Class Settlement.

18 CC. “Preliminary Approval” means entry of the Court order granting preliminary approval of
19 the Settlement Agreement.

20 DD. “Released Class Claims” means any and all claims, rights, demands, liabilities, and causes
21 of action of any nature or description, under state, federal, or local law, that were alleged in the Operative
22 Complaint, or reasonably could have been alleged based on the factual allegations contained in the
23 Operative Complaint, arising during the Class Period, including claims for failure to pay all wages due
24 (including minimum, regular, and overtime wages), failure to provide proper meal periods and to properly
25 provide associated premium pay, failure to provide proper rest periods and associated premium pay, failure
26 to pay all wages timely at the time of termination, failure to pay all wages timely during employment,
27 failure to provide compliant wage statements, failure to keep requisite payroll records, and failure to
28 indemnify necessary business expenses, in violation of California Labor Code §§ 201, 202, 203, 204,

218.5, 218.6, 226, 226.7, 510, 512, 1174, 1194, 1197, 1197.1, 1198, 2800 and 2802 and Industrial Welfare Commission Wage Orders Nos. 4-2001, 5-2001, and 7-2001, unfair business practices in violation of California Business & Professions Code § 17200 *et seq.* based on the aforementioned, and all damages, penalties, interest, and other amounts recoverable under the aforementioned claims, causes of action, or legal theories of relief. Plaintiff and Participating Class Members will release Defendants and the Released Parties from all remedies that could be claimed in connection with the Released Class Claims including but not limited to, statutory, constitutional, contractual damages, unpaid costs, penalties, punitive damages, interest, attorneys' fees, litigation costs, restitution, and equitable relief.

EE. "Released PAGA Claims" means any and all causes of action that were alleged in the Operative Complaint and *Martinez* LWDA Letter, or reasonably could have been alleged based on the factual allegations contained in the Operative Complaint and *Martinez* LWDA Letter, arising during the PAGA Period, for civil penalties pursuant to the Private Attorneys General Act, California Labor Code § 2698, *et seq.*, for Defendants' alleged failure to pay all wages due (including minimum, regular, and overtime wages), failure to provide proper meal periods and to properly provide associated premium pay, failure to provide proper rest periods and associated premium pay, failure to pay all wages timely at the time of termination, failure to pay all wages timely during employment, failure to provide compliant wage statements, failure to keep requisite payroll records, and failure to indemnify necessary business expenses, in violation of California Labor Code §§ 201, 202, 203, 204, 218.5, 218.6, 226, 226.7, 510, 512, 1174, 1194, 1197, 1197.1, 1198, 2800 and 2802 and Industrial Welfare Commission Wage Orders Nos. 4-2001, 5-2001, and 7-2001.

FF. "Released Parties" means Back of the House, Inc., EBurger, LLC, JBurger, LLC, Mission 98 Super, LLC, MBurger, LLC, 2355 Telegraph Ave, LLC, The Veranda Super, LLC, 5399 Prospect Road, LLC, Super Emeryville, LLC, DBurger, LLC, MetBurger, LLC, Super Novato, LLC, Super Los Gatos, LLC, KBurger, LLC, 117 New Montgomery, LLC, 3401 California Street, LLC, Super Napa, LLC, Super Serramonte, LLC, Geary Mas, LLC, Adriano Paganini, and Edmondo Sarti, and each of their past, present and/or future parent companies, partners, subsidiaries, affiliates, divisions, related companies, successors, and predecessors, as well as their respective past, present and future owners, officers, directors, shareholders, employees, agents, members, managers, principals, representatives, accountants, auditors,

consultants, insurers and reinsurers, investors, lenders, administrators, company-sponsored employee benefit plans, assigns, joint venturers, and attorneys, both individually and in their official capacities, as well as all persons acting by, through, under, or in concert with any of these persons or entities.

GG. “Request for Exclusion” means the written request by a Class Member to exclude himself or herself from the Class Settlement submitted in accordance with Section V.D.3.a below.

HH. “Service Payment” means the amount to be paid to Plaintiff in recognition of his efforts in prosecuting the Action, as set forth in Section V.B.1 below.

II. “Settlement Administrator” means CPT Group, Inc., the third-party administrator proposed by the Parties and approved by the Court for purposes of administering the Settlement. The Parties and their counsel each represent that they do not have any financial interest in the Settlement Administrator or otherwise have a relationship with the Settlement Administrator that could create a conflict of interest.

JJ. “Settlement Administration Expenses” means the expenses payable from the Gross Settlement Amount, subject to Court approval, to the Settlement Administrator for administration of the Settlement, as set forth in Section V.B.4 below.

KK. “Workweek(s)” means the number of weeks each Class Member worked in an hourly-paid or non-exempt position at a Super Burgers restaurant during the Class Period and/or PAGA Period, excluding periods of time when Class Members’ work for Defendants had ceased, employment with Employers had been separated, and/or the Defendants and/or Employers’ businesses were closed based on COVID-19 related closures.

II. RECITALS

A. On May 17, 2019, Plaintiff Magaly Olayo Lopez (“Plaintiff Lopez”) sent a letter to the LWDA and Defendants, regarding her intent to pursue civil penalties for claimed violations of California Labor Code sections 201, 202, 203, 204, 226(a)-(e), 226.3, 226.7, 510, 512, 558, 1194, and IWC Wage Orders, including *inter alia*, Wage Orders 5-2001, and any other applicable IWC Wage Order (“Lopez LWDA Letter”).

B. On September 16, 2019, Plaintiff Lopez filed a Class Action Complaint (“Lopez Complaint”) against Defendants Back of the House, Inc., Mission 98 Super, LLC, MBurger, LLC, and JBurger, LLC in the Superior Court of the State of California for the County of San Francisco, Case No.

CGC-19-579264, entitled *Magaly Olayo Lopez v. Back of the House, Inc., et al.*, alleging causes of action for violation of (1) California Labor Code §§ 201, 204 and 1194 (Failure to Pay All Wages), (2) California Labor Code §§ 226.7 and 512 (Failure to Provide Compliant Meal Periods and Associated Premiums), (3) California Labor Code § 226.7 (Failure to Provide Compliant Rest Periods and Associated Premiums), (4) California Labor Code § 226 (Failure to Provide Compliant Wage Statements), (5) California Labor Code §§ 201, 202 and 203 (Waiting Time Penalties); (6) California Private Attorneys General Act § 2698, and (7) California Business & Professions Code § 17200, *et seq.* (“*Lopez Action*”).

C. On December 19, 2019, Defendants Back of the House, Inc., Mission 98 Super, LLC, MBurger, LLC, and JBurger, LLC filed an Answer to the *Lopez* Complaint.

D. On July 16, 2020, Plaintiff Lopez filed an Amendment to the *Lopez* Complaint, thereby adding the following additional Defendants: 2355 Telegraph Ave, LLC; The Veranda Super, LLC; 5399 Prospect Road, LLC; Super Emeryville, LLC; DBurger, LLC; EBurger, LLC; MetBurger, LLC; Super Novato, LLC; Super Los Gatos, LLC; and KBurger, LLC.

E. On December 14, 2020, Defendants 2355 Telegraph Ave, LLC; The Veranda Super, LLC; 5399 Prospect Road, LLC; Super Emeryville, LLC; DBurger, LLC; EBurger, LLC; MetBurger, LLC; Super Novato, LLC; Super Los Gatos, LLC; and KBurger, LLC filed an Answer to the *Lopez* Complaint.

F. On July 19, 2021, Plaintiff Martinez sent a letter to the LWDA and Defendants, regarding his intent to pursue civil penalties for claimed violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 551, 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802, and IWC Wage Orders, including *inter alia*, Wage Orders 4-2001, 5-2001, 7-2001, and any other applicable IWC Wage Order (“*Martinez LWDA Letter*”).

G. On August 9, 2021, Plaintiff Martinez filed a Class Action Complaint for Damages (“*Martinez Class Complaint*”) against Defendants Back of the House, Inc., EBurger, LLC, and JBurger, LLC in the Superior Court of the State of California for the County of San Francisco, Case No. CGC-21-594380, entitled *Erickson Martinez v. Back of the House, Inc., et al.*, alleging causes of action for violation of (1) California Labor Code §§ 510 and 1198 (Failure to Pay Overtime), (2) California Labor Code §§ 226.7 and 512(a) (Failure to Provide Compliant Meal Periods and Associated Premiums), (3) California Labor Code § 226.7 (Failure to Provide Compliant Rest Periods and Associated Premiums), (4) California

Labor Code §§ 1194, 1197 and 1197.1 (Failure to Pay Minimum Wages), (5) California Labor Code §§ 201 and 202 (Failure to Timely Pay Final Wages), (6) California Labor Code § 204 (Failure to Timely Pay Wages During Employment), (7) California Labor Code § 226(a) (Failure to Provide Compliant Wage Statements), (8) California Labor Code § 1174(d) (Failure to Keep Requisite Payroll Records), (9) California Labor Code §§ 2800 and 2802 (Failure to Reimburse Business Expenses), and (10) California Business & Professions Code § 17200, *et seq.* (“*Martinez Class Action*”).

H. On September 22, 2021, Plaintiff Martinez filed a Complaint for Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, Et Seq. (“*Martinez PAGA Complaint*”) against Defendants Back of the House, Inc., EBurger, LLC, Adriano Paganini, and Edmondo Sarti for penalties under the California Private Attorneys General Act in the Superior Court of the State of California for the County of Alameda, Case No. RG21113642, entitled *Erickson Martinez v. Back of the House, Inc., et al.* (“*Martinez PAGA Action*”).

I. On December 3, 2021, Defendants Back of the House, Inc., EBurger, LLC, and JBurger, LLC filed an Answer to the *Martinez Class Complaint*.

J. On December 3, 2021, Defendants Back of the House, Inc., EBurger, LLC, Adriano Paganini, and Edmondo Sarti filed an Answer to the *Martinez PAGA Complaint*.

K. On September 15, 2022, the Court entered the Order Granting Petition for Coordination, thereby coordinating the *Lopez Action*, *Martinez Class Action*, and *Martinez PAGA Action* as included action in the coordinated proceeding entitled *Super Duper Burgers Wage and Hour Cases*, Judicial Council Coordination Proceeding No. 5249, pending in the Superior Court of the State of California for the County of San Francisco, assigned Case No. CJC-22-005249 (i.e., Action).

L. On January 13, 2023, Plaintiff and Plaintiff Lopez filed the Consolidated Class Action Complaint for Damages & Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, Et Seq. (“*Operative Complaint*”) against Defendants in the Action. The Operative Complaint alleges causes of action for violation of (1) California Labor Code §§ 510 and 1198 (Failure to Pay Overtime), (2) California Labor Code §§ 226.7 and 512(a) (Failure to Provide Compliant Meal Periods and Associated Premiums), (3) California Labor Code § 226.7 (Failure to Provide Compliant Rest Periods and Associated Premiums), (4) California Labor Code §§ 1194, 1197 and 1197.1 (Failure to Pay Minimum

1 Wages), (5) California Labor Code §§ 201 and 202 (Failure to Timely Pay Final Wages), (6) California
2 Labor Code § 204 (Failure to Timely Pay Wages During Employment), (7) California Labor Code § 226(a)
3 (Failure to Provide Compliant Wage Statements), (8) California Labor Code § 1174(d) (Failure to Keep
4 Requisite Payroll Records), (9) California Labor Code §§ 2800 and 2802 (Failure to Reimburse Business
5 Expenses), (10) California Business & Professions Code § 17200, *et seq.*; and (11) California Labor Code
6 § 2698, *et seq.* (California Labor Code Private Attorneys General Act of 2004). By way of the Operative
7 Complaint, Plaintiff, on his own, on behalf of himself individually, on behalf of other putative class
8 members, and on behalf of the State of California and other aggrieved employees pursuant to PAGA,
9 alleges and pursues all twelve causes of action asserted in the Operative Complaint.

10 M. On March 17, 2023, Defendants filed an Answer to the Operative Complaint.

11 N. The Action was mediated by settlement officer Pang Ly of the San Francisco County
12 Superior Court at the Mandatory Settlement Conference that took place on September 13, 2023. While
13 the Action did not settle right away at the Mandatory Settlement Conference, with the aid of the mediator's
14 evaluations and proposal, the Parties ultimately reached a settlement of the Action. Upon being informed
15 of the settlement, on October 6, 2023, the Court vacated the October 13, 2023 deadline for Plaintiffs to
16 file a motion for class certification.

17 O. Defendants deny all material allegations set forth in the Action and have asserted
18 numerous affirmative defenses. Notwithstanding, in the interest of avoiding further litigation,
19 Defendants desire to fully and finally settle the Action, Released Class Claims, and Released PAGA
20 Claims.

21 P. Class Counsel in the Action diligently investigated the allegations asserted in the Action
22 and evaluated the claims against Defendants, including any and all applicable defenses and the
23 applicable law. The investigation included, *inter alia*, the exchange of information, data, and
24 documents, and review of numerous corporate policies and practices.

25 Q. The settlement discussions were conducted at arm's-length, and the settlement is the
26 result of an informed and detailed analysis of Defendants' potential liability and exposure in relation to
27 the costs and risks associated with continued litigation. Based on the documents produced, as well as
28 Class Counsel's own independent investigation and evaluation, Class Counsel believes that the

1 settlement with Defendants for the consideration and on the terms set forth in this Settlement Agreement
2 is fair, reasonable, and adequate and is in the best interest of the Class Members, the State of California,
3 and PAGA Group Members in light of all known facts and circumstances, including the risk of
4 significant delay and uncertainty associated with litigation and various defenses asserted by Defendants.

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

10 Based on the aforementioned recitals that are a part of this Agreement, the Parties agree as follows:

11 **III. CLASS CERTIFICATION**

12 A. For purposes of this settlement only, the Parties stipulate to the certification of the Class.

13 B. The Parties agree that certification for the purpose of settlement is not an admission that
14 certification is proper under Section 382 of the California Code of Civil Procedure. Should, for
15 whatever reason, the Court not grant Final Approval, or if the Final Approval Order and Judgment
16 thereon does not become final, the Parties' stipulation to class certification as part of the Settlement
17 shall become null and void *ab initio* and shall have no bearing on, and shall not be admissible in
18 connection with, the issue of whether or not certification would be appropriate or inappropriate in a non-
19 settlement context in this or any other proceeding.

20 **IV. PRIVATE ATTORNEYS GENERAL ACT SETTLEMENT**

21 A. Effective July 1, 2024, California Labor Code, Section 2699(m) was amended to require
22 that "any civil penalties recovery by aggrieved employees shall be distributed as follows: sixty-five
23 percent (65%) to the LWDA and thirty-five percent (35%) to the aggrieved employees. However,
24 California Labor Code, Section 2699(v)(2) also states that "[t]he amendments made to this section by the
25 act adding this subdivision shall not apply to a civil action with respect to which the notice required by
26 subparagraph (A) of paragraph (1) of subdivision (a) ... of Section 2699.3 was filed before June 19,
27 2024." In other words, the amended distribution provision for civil penalties (set forth in California Labor
28 Code, Section 2699(m)) does not apply to a civil action in which the required notice was filed before June

19, 2024. In conformity with Section 2699.3(a)(1)(A) of the former version of the PAGA statute, Plaintiff filed the written notice with the LWDA, and also provided the written notice to Defendant, on July 19, 2021, i.e., the *Martinez* LWDA Notice. As such, the former version of the PAGA statute applies, and pursuant Section 2699(i) of that version of the statute, civil penalties recovered shall be distributed as follows: seventy-five percent (75%) to the LWDA and twenty-five percent (25%) to the aggrieved employees.

V. SETTLEMENT TERMS AND CONDITIONS

A. **Gross Settlement Amount.** Subject to the terms and conditions of this Agreement, including Section V.C.5, the Gross Settlement Amount that Defendants will pay under this Settlement is Eight Hundred Thousand Dollars and Zero Cents (\$800,000.00). This amount is all-inclusive of all payments contemplated in this resolution, excluding any Employer Taxes, which will be separately paid by Defendants to the Settlement Administrator. The entire Gross Settlement Amount will be disbursed pursuant to this Agreement without the need to submit a claim form and none of the Gross Settlement Amount will revert to Defendants.

B. **Payments from the Gross Settlement Amount.** Subject to the terms and conditions of this Agreement, the Settlement Administrator will make the following distributions out of the Gross Settlement Amount:

1. **To Plaintiff:** In recognition of his efforts and work in prosecuting the Action, and in exchange for Plaintiff's execution of a general release of all claims against Defendants in Plaintiff's individual capacity and California Civil Code Section 1542, as outlined in Section V.E.3, Plaintiff will apply to the Court for an award of not more than Ten Thousand Dollars and Zero Cents (\$10,000.00) to Plaintiff as a Service Payment. Defendants will not oppose the Service Payment of up to \$10,000.00 for Plaintiff. The Settlement Administrator will distribute the Court-approved Service Payment out of the Gross Settlement Amount, in addition to Plaintiff's Individual Settlement Payment and/or Individual PAGA Payment(s), subject to Court approval. The Settlement Administrator will issue an IRS Form 1099 to Plaintiff for the Service Payment, and Plaintiff shall be solely and legally responsible for correctly characterizing this compensation for tax purposes and for paying any taxes on the amounts received. If the Court approves a Service Payment of less than \$10,000.00 for Plaintiff, the difference

1 between the lesser amount approved by the Court and the amount allocated toward the Service Payment
2 will be part of the Net Settlement Amount for the benefit of Participating Class Members.

3 2. **To Class Counsel:** Class Counsel will apply to the Court for an award of not more
4 than one-third (1/3) of the Gross Settlement Amount, which is presently Two Hundred Sixty-Six Thousand
5 Six Hundred Sixty-Six Dollars and Sixty-Seven Cents (\$266,666.67) for attorneys' fees (i.e., Class
6 Counsel Fees Payment) and an amount not more than Fifteen Thousand Dollars and Zero Cents
7 (\$15,000.00) for reimbursement of actual litigation costs and expenses incurred (i.e., Litigation Expenses
8 Payment). Defendants will not oppose a request for the Class Counsel Fees Payment and Litigation
9 Expenses Payment consistent with this Agreement and approved by the Court. The Settlement
10 Administrator will distribute the Class Counsel Fees Payment and Litigation Expenses Payment out of the
11 Gross Settlement Amount, subject to Court approval. These amounts will cover any and all work
12 performed and any and all costs incurred by Class Counsel in connection with the litigation of the
13 Action, including without limitation all work performed and costs incurred to date, and all work to be
14 performed and all costs to be incurred in connection with obtaining the Court's approval of this
15 Settlement Agreement, including any objections raised and any appeals necessitated by those objections.
16 Class Counsel shall be solely and legally responsible for correctly characterizing this compensation for
17 tax purposes and for paying any taxes on the amounts received. With respect to the Class Counsel Fees
18 Payment and Litigation Expenses Payment to Class Counsel, the Settlement Administrator may purchase
19 an annuity to utilize United States Treasuries and bonds or other attorney fee deferral vehicles, for Class
20 Counsel. Any additional expenses for the purchase and/or use of attorney fee deferral vehicles for Class
21 Counsel, by the Settlement Administrator, will be paid separately by Class Counsel and will not be
22 included within the Settlement Administration Expenses. If the Court approves a Class Counsel Fees
23 Payment or a Litigation Expenses Payment of less than these amounts, the difference between the lesser
24 amount approved by the Court and the amount allocated toward the Class Counsel Fees Payment and
25 Litigation Expenses Payment will be part of the Net Settlement Amount for the benefit of Participating
26 Class Members. Class Counsel assumes full responsibility and liability for taxes owed on the Class
27 Counsel Fees Payment and Litigation Expenses Payment to Class Counsel.

1 3. **To the Labor Workforce and Development Agency and PAGA Group**
2 **Members.** The Parties will seek approval from the Court for the PAGA Payment of Fifty Thousand
3 Dollars and Zero Cents (\$50,000.00) out of the Gross Settlement Amount, of which seventy-five percent
4 (75%), or \$37,500.00, will be distributed to the LWDA (i.e., LWDA Payment) and twenty-five percent
5 (25%), or \$12,500.00, will be distributed to the PAGA Group Members on a *pro rata* basis (i.e., PAGA
6 Group Member Amount). If the Court approves a PAGA Payment of less than \$50,000.00, the remainder
7 will be part of the Net Settlement Amount for the benefit of Participating Class Members.

8 a. **Individual PAGA Payment Calculation.** Individual PAGA Payments
9 will be calculated and apportioned from the PAGA Payment based upon the number of Workweeks each
10 PAGA Group Member worked during the PAGA Period, as follows: the Settlement Administrator will
11 divide the PAGA Group Member Amount by the Workweeks of all PAGA Group Members during the
12 PAGA Period to yield the “PAGA Workweek Value,” and multiply each PAGA Group Member’s
13 individual Workweeks during the PAGA Period by the PAGA Workweek Value to yield his or her
14 Individual PAGA Payment that he or she is eligible to receive under the PAGA Settlement. The
15 Settlement Administrator will report the Individual PAGA Payments on IRS 1099 Forms, if applicable.
16 PAGA Group Members assume full responsibility and liability for any taxes owed on their Individual
17 PAGA Payment.

18 4. **To the Settlement Administrator.** The Settlement Administrator will distribute
19 out of the Gross Settlement Amount, to itself, its reasonable fees and expenses, as approved by the Court,
20 in an amount not to exceed Thirty-Seven Thousand and Five Hundred Dollars and Zero Cents
21 (\$37,500.00) (i.e., Settlement Administration Expenses). These costs, which will be paid from the Gross
22 Settlement Amount, subject to Court approval, will include, *inter alia*, translating the Class Notice into
23 Spanish, printing, distributing, emailing, and tracking Class Notices and other documents for this
24 Settlement, establishing a settlement website, calculating and distributing payments due under the
25 Settlement, redistributing payments, issuing of 1099 and W-2 IRS Forms and all required tax reporting,
26 filings, withholdings, and remittances, providing necessary reports and declarations, and other duties and
27 responsibilities set forth herein to process this Settlement, and as requested by the Parties. The Settlement
28 Administrator shall transmit the required Employer Taxes and employees’ share of the withholdings to

the appropriate state and federal tax authorities. The Settlement Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund (“QSF”) under US Treasury Regulation section 468B-1. To the extent actual Settlement Administration Expenses are greater than the estimated amount stated herein, such excess amount will be deducted from the Gross Settlement Amount, subject to approval by the Court. To the extent the Settlement Administration Expenses approved by the Court are less than \$37,500.00, the remainder will be part of the Net Settlement Amount for the benefit of Participating Class Members. The Parties each represent they do not have a financial interest in the Settlement Administrator or otherwise have a relationship with the Settlement Administrator that creates or could create a conflict of interest.

C. **Payments from the Net Settlement Amount.** The Net Settlement Amount will be the remainder of the Gross Settlement Amount after deducting the Service Payment, Class Counsel Fees Payment, Litigation Expenses Payment, PAGA Payment, and Settlement Administration Expenses. The Net Settlement Amount will be distributed to Participating Class Members as follows:

1. **Individual Settlement Share.** Subject to the terms and conditions of this Agreement, the Settlement Administrator will distribute an Individual Settlement Share from the Net Settlement Amount to each Participating Class Member. The submission of a claim form is not required in order for a Participating Class Member to be paid their Individual Settlement Share.

2. **Individual Settlement Share Calculation.**

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

b. After Final Approval of the Settlement, the Settlement Administrator will divide the final Net Settlement Amount by the Workweeks of all Participating Class Members during the Class Period to yield the “Final Workweek Value,” and multiply each Participating Class Member’s

individual Workweeks during the Class Period by the Final Workweek Value to yield his or her Individual Settlement Share.

3. Withholding.

a. Each Individual Settlement Share will be allocated as follows: twenty percent (20%) wages (the “Wage Portion”) and eighty percent (80%) penalties, interest, and non-wage damages (“Non-Wage Portion”). The Wage Portion will be reported on an IRS Form W-2 and the Non-Wage Portion will be reported on IRS Form 1099 (if applicable) by the Settlement Administrator. The Settlement Administrator will withhold the employee’s share of taxes and withholdings with respect to the Wage Portion of the Individual Settlement Shares, and issue checks to Participating Class Members for their Individual Settlement Payments (i.e., payment of their Individual Settlement Share net of these taxes and withholdings). The Settlement Administrator will not undertake any withholding with respect to the Non-Wage Portion of Individual Settlement Shares. Any payment for an Individual PAGA Payment will be allocated as one hundred percent (100%) penalties and will be reported on an IRS Form-1099, if necessary; the Settlement Administrator will not undertake any withholding with respect to the Individual PAGA Payment. Employer Taxes will be paid separately and in addition to the Gross Settlement Amount. Participating Class Members and PAGA Group Members assume full responsibility and liability for any taxes owed on any portion of their Individual Settlement Payment and/or Individual PAGA Payment.

4. Effect of Non-Participating Class Members. Non-Participating Class Members will not be issued an Individual Settlement Share, and their Request for Exclusion will not reduce the Gross Settlement Amount or the Net Settlement Amount. Any Non-Participating Class Member’s respective estimated Individual Settlement Share will remain a part of the Net Settlement Amount for distribution to Participating Class Members on a *pro rata* basis.

5. Workweeks Information. Defendants previously represented that for the period of September 16, 2015 through September 11, 2023, there were approximately 3,086 Class Members and approximately 103,252 Workweeks worked by Class Members. On December 17, 2024, Defendants confirmed that due to extraneous information and data that had inadvertently been included and analyzed by them, the number of Class Members and Workweeks provided up to and including September 11, 2023

(3,086 Class Members and approximately 103,252 Workweeks) were overstated. Defendants now represent that updated and corrected calculations reflect that for the period of September 16, 2015 through September 9, 2024 there were approximately 1,425 Class Members and approximately 98,555 Workweeks worked by Class Members. Nevertheless, the Parties agree that even with the updated, reduced number of Class Members and Workweeks, the Gross Settlement Amount remains fair and reasonable and shall remain the same.

D. Procedure for Approving Settlement.

1. Motion for Preliminary Approval of Settlement by the Court.

a. After execution of this Settlement Agreement, Plaintiff will file a motion for preliminary approval of the Settlement with the Court for an order granting preliminary approval of the Settlement, setting a date for the Final Approval Hearing, and approving the Class Notice (the “Motion for Preliminary Approval”). Any disagreement among the Parties concerning the Class Notice, the proposed orders, or other documents necessary to implement the Settlement will be referred to the mediator or the Court for resolution.

b. At the hearing on the Motion for Preliminary Approval, the Parties will jointly appear, support the granting of the motion, and submit a proposed order granting Preliminary Approval of the Settlement.

c. Should the Court decline to preliminarily approve material aspects of the Settlement or grant preliminary approval conditioned on any material modification or change to the Settlement (including, but not limited to, the scope of releases of claims or the binding effect of the Settlement on Participating Class Members or PAGA Group Members), the Parties shall work together in good faith to address any concerns raised by the Court and attempt to propose a revised Settlement for the Court’s approval.

2. Notice to Class Members. After the Court enters an order granting Preliminary Approval of the Settlement (“Order Granting Preliminary Approval”), every Class Member will be sent the Class Notice as follows:

a. No later than twenty (20) business days after the Court enters an Order Granting Preliminary Approval, Defendants will provide to the Settlement Administrator an electronic

1 database containing the Class Data. If any or all of the Class Data is unavailable to Defendants, Defendants
2 will so inform Class Counsel and the Parties will make their best efforts to reconstruct or otherwise agree
3 upon the Class Data prior to when it must be submitted to the Settlement Administrator. This information
4 will otherwise remain confidential and will not be disclosed to anyone, except as required to applicable
5 taxing authorities, or pursuant to Defendants' express written authorization or by order of the Court. All
6 Class Data will be used for settlement notification and settlement administration and will not be used for
7 any other purpose by Class Counsel.

8 b. Using best efforts to mail it as soon as possible, and in no event later than
9 ten (10) business days after receiving the Class Data, the Settlement Administrator will search the U.S.
10 Postal Service's National Change of Address database to attempt to locate updated mailing addresses for
11 Class Members (and use the updated mailing addresses that are located, in lieu of the mailing address
12 information provided by Defendants in the Class Data) and mail the Class Notice in English and Spanish
13 to all Class Members via first-class U.S. Mail. The Settlement Administrator will also perform a single
14 email distribution of the Class Notice to all email addresses available within the Class Data.

15 c. If a Class Notice is returned as undeliverable, and without a forwarding
16 address, on or before the Response Deadline, the Settlement Administrator will promptly, within five (5)
17 calendar days of receipt, search for a more current address for the Class Member by way of skip trace and
18 re-mail the Class Notice to an alternate address located through skip trace. The Settlement Administrator
19 will use the Class Data and otherwise work with Defendants to find a more current address. If a Class
20 Notice is returned as undeliverable, and with a forwarding address, on or before the Response Deadline,
21 the Settlement Administrator will promptly, within five (5) calendar days of receipt, re-mail the Class
22 Notice to the forwarding address. If the Class Notice is re-mailed, the Settlement Administrator will note
23 for its own records the date and address of each such re-mailing and notify Class Counsel and Defendants'
24 Counsel of the re-mailing, as part of a weekly status report provided to the Parties.

25 d. The Settlement Administrator must, on a weekly basis, provide written
26 reports to Class Counsel and Defendants' Counsel that, among other things, tally the number of Class
27 Notices mailed, emailed, or re-mailed, Class Notices returned undelivered, the number of Requests for
28

1 Exclusion from the Class Settlement, objections to the Class Settlement, and Workweeks Disputes it
2 receives (“Weekly Report”).

3 e. Not later than sixteen (16) court days before the date by which Plaintiff files
4 the motion for final approval of the Settlement, the Settlement Administrator will provide the Parties for
5 filing with the Court a declaration of due diligence setting forth its compliance with its obligations under
6 this Agreement and detailing the number of Requests for Exclusion it received (including the numbers of
7 valid and deficient submissions), the names of all Non-Participating Class Members, the number of
8 Workweeks Disputes received (including the numbers of valid and deficient submissions) and the outcome
9 of these disputes, the number of objections received (including the numbers of complete and deficient
10 submissions), and attaching the objections received. Prior to the Final Approval Hearing, the Settlement
11 Administrator will supplement its declaration of due diligence if any material changes occur from the date
12 of the filing of its prior declaration.

13 f. The Settlement Administrator will also host the Class Notice via a content-
14 neutral settlement website managed by the Settlement Administrator. The settlement website will provide
15 contact information for Class Counsel and the Settlement Administrator. The Settlement Administrator
16 will provide Class Counsel and Defendants’ Counsel with a preview of the proposed website. Class
17 Counsel and Defendants’ counsel must mutually approve the URL for the website and the contents of the
18 website before the website goes live and also must approve any modifications to the website.

19 **3. Objections, Workweeks Disputes, and Requests for Exclusion.** Class Members
20 may submit a Request for Exclusion from the Class Settlement, Participating Class Members may submit
21 objections to the Class Settlement (including objections to Class Counsel Fees Payment, Litigation
22 Expenses Payment, and Service Payments), and Class Members and PAGA Group Members may also
23 submit disputes as to Workweeks allocated to them, pursuant to the following procedures:

24 a. **Requests for Exclusion from the Class Settlement.** The Parties agree,
25 and the Class Notice will provide, that Class Members who wish to exclude themselves from the Class
26 Settlement must send a signed Request for Exclusion to the Settlement Administrator by mail or email,
27 postmarked no later than forty-five (45) calendar days after the Settlement Administrator mails the Class
28 Notice (“Response Deadline”). A Request for Exclusion must: (1) contain the case name and number of

the Action; (2) state the Class Member's full name, address, telephone number, and last four digits of his or her Social Security number; (3) be signed; and (4) clearly state that the Class Member requests to be excluded from the Class Settlement. If a question is raised about the authenticity of a signed Request for Exclusion, the Settlement Administrator will have the right to demand additional proof of the Class Member's identity. A Non-Participating Class Member will not participate in or be bound by the Class Settlement or to portions of the Final Approval Order and Judgment that apply to the Class Settlement (however, if a Non-Participating Class Member is a PAGA Group Member, he or she will nevertheless be bound to the PAGA Settlement and the portions of the Final Approval Order and Judgment that apply to the PAGA Settlement). A Class Member who does not complete and mail or email a valid and timely Request for Exclusion in the manner and by the deadline specified above will automatically be deemed a Participating Class Member and be bound by all terms and conditions of the Class Settlement, including the release of Released Class Claims, if the Settlement is approved by the Court, and by the Final Approval Order and Judgment (as it pertains to the Class Settlement), regardless of whether he or she has objected to the Class Settlement. Non-Participating Class Members shall not be permitted to file objections to the Class Settlement or appear at the Final Approval Hearing to voice any objections to the Class Settlement.

All Participating Class Members who do not submit a valid and timely Request for Exclusion will be issued an Individual Settlement Share, without the need to file a claim form, and will be bound by all of the terms of the Class Settlement, including without limitation, the release of the Released Class Claims as set forth in this Agreement. Any Class Member who submits a valid and timely Request for Exclusion is nevertheless bound to the PAGA Settlement if he or she is a PAGA Group Member, as well as any judgment that may be entered by the Court if it grants Final Approval to the Settlement, as it pertains to the PAGA Settlement.

b. Objections to the Class Settlement. The Parties agree, and the Class Notice will provide, that only Participating Class Members may object to the Class Settlement, either in writing or orally at the Final Approval Hearing. Objections in writing must be submitted to the Settlement Administrator (who will provide copies to the Parties' counsel and attach copies to its declaration that is filed with the Court in advance of the Final Approval Hearing) by mail or email, postmarked no later than the Response Deadline. A written objection must: (1) contain the case name and number of the Action;

(2) state the Participating Class Member's full name, address, telephone number, and last four digits of his or her Social Security number; (3) be signed; (4) clearly set forth the grounds for the objection; (5) attach any documentation that the objection is based upon; and (6) identify any counsel representing the Participating Class Member with respect to the objection. In addition to submitting a written objection, or alternatively, Participating Class Members shall be entitled to be heard at the Final Approval Hearing (whether individually or through separate counsel) to orally object to the Class Settlement or any aspect thereof. A Participating Class Member who does not submit an objection in the manner and by the deadline specified above will be deemed to have waived any objection and will be foreclosed from making any objection (whether by appeal or otherwise) to the Class Settlement or any aspect thereof. Non-Participating Class Members shall have no ability to comment on or object to the Class Settlement.

c. **Workweeks Disputes.** The Parties agree, and the Class Notice will provide, that each Class Member and PAGA Group Member may dispute the number of Workweeks allocated to him or her during the Class Period and/or PAGA Period. Any dispute as to this allocation will be resolved by the Settlement Administrator. Any such dispute must be in writing and sent to the Settlement Administrator, by mail or email, postmarked no later than the Response Deadline. A written dispute ("Workweeks Dispute") must: (1) contain the case name and number of the Action; (2) state the Class Member's or PAGA Group Member's full name, address, telephone number, and last four digits of his or her Social Security number; (3) be signed; (4) clearly state that the Class Member or PAGA Group Member disputes the number of Workweeks credited to him or her and state the number of Workweeks he or she believes are correct; and (5) attach any documentation to support the dispute.

d. **Re-mailed Notice.** In the event that a Class Notice is re-mailed to a Class Member, the Response Deadline for that Class Member shall be extended by fifteen (15) calendar days from the original deadline.

4. **Right of Defendants to Reject Settlement.** If ten percent (10%) or more of the Class Members submit valid and timely Requests for Exclusion, Defendants will have the right, but not the obligation, to void the Settlement and the Parties will have no further obligations under the Settlement, including any obligation by Defendants to pay the Gross Settlement Amount, or any amounts that otherwise would have been owed under this Agreement, except that Defendants will pay the Settlement

Administration Expenses incurred as of the date that Defendants exercise the right to void the Settlement. Defendants will notify Class Counsel in writing and the Court whether it is exercising this right to void no later than seven (7) calendar days after the Settlement Administrator notifies the Parties that the number of valid and timely Requests for Exclusion it has received exceeds ten percent (10%) or more of the Class Members.

5. No Solicitation. The Parties and their counsel represent that neither the Parties nor their respective counsel have or will solicit or otherwise encourage directly or indirectly any Class Member to object to the Class Settlement, appeal from the Final Approval Order and Judgment, or submit Requests for Exclusion from the Class Settlement.

6. Additional Briefing and Final Approval.

a. Plaintiff will file with the Court their application for the Class Counsel Fees Payment, Litigation Expenses Payment, and Service Payment no later than the date on which Plaintiff files the motion for final approval, and not later than sixteen (16) court days before the Final Approval Hearing, and the application will be scheduled to be heard by the Court at the Final Approval Hearing. Plaintiff may combine the motion seeking final approval of the settlement with the application for the Class Counsel Fees Payment, Litigation Expenses Payment, and Service Payment. If any opposition is filed, then not later than five (5) court days before the Final Approval Hearing, both Parties may file a reply in support of the motion for Final Approval and/or application for Service Payment, Class Counsel Fees Payment, and Litigation Expenses Payment.

b. If the Court does not grant final approval of the Settlement or grants final approval conditioned on any material modification or change to the Settlement (including, but not limited to, the scope of the release of claims with respect to Participating Class Members and/or PAGA Group Members), then the Parties shall work together in good faith to address any concerns raised by the Court and attempt to propose a revised Settlement for the Court's approval. However, an award by the Court of a lesser amount than that sought by Plaintiff and Class Counsel for the Service Payment, Class Counsel Fees Payment, or Litigation Expenses Payment, will not constitute a material modification to the Settlement within the meaning of this Paragraph.

c. Upon final approval of the Settlement by the Court at or after the Final

1 Approval Hearing, the Parties will present for the Court's approval and entry a proposed order granting
2 final approval of the Settlement and judgment based thereon ("Final Approval Order and Judgment").
3 After entry of the Final Approval Order and Judgment, the Court will have continuing jurisdiction over
4 the Action and the Settlement solely for purposes of (i) enforcing this Agreement, (ii) addressing
5 settlement administration matters, and (iii) addressing such post-judgment matters as may be appropriate
6 under court rules or applicable law. The entry of the judgment will be pursuant to California Rule of
7 Court 3.769(h) in a form acceptable to the Parties.

8 **7. Waiver of Right to Appeal.** Provided that the Final Approval Order and Judgment
9 is consistent with the terms and conditions of this Agreement, Plaintiff and Participating Class Members
10 who did not timely submit an objection to the Class Settlement, Defendants, and their respective counsel
11 hereby waive any and all rights to appeal from the Final Approval Order and Judgment, including all
12 rights to any post-judgment proceeding and appellate proceeding, such as, but not limited to, a motion to
13 vacate judgment, a motion for new trial, and any extraordinary writ. The waiver of appeal does not include
14 any waiver of the right to oppose any appeal, appellate proceedings, or post-judgment proceedings. If an
15 appeal is taken from the Final Approval Order and Judgment, the time for consummation of the Settlement
16 (including making payments under the Settlement) will be suspended until such time as the appeal is
17 finally resolved and the Final Approval Order and Judgment becomes final.

18 **8. Vacating, Reversal, or Material Modification of Final Approval Order and**
19 **Judgment on Appeal or Review.** If, after a notice of appeal, a petition for review, or a petition for
20 *certiorari*, or any other motion, petition, or application, the reviewing Court vacates, reverses, or modifies
21 the Final Approval Order and Judgment such that there is a material modification to the Settlement
22 (including, but not limited to, the scope of the release of claims with respect to Participating Class
23 Members and/or PAGA Group Members), and that Court's decision is not completely reversed and the
24 Final Approval Order and Judgment is not fully affirmed on review by a higher Court, then the Parties
25 shall work together in good faith to address any concerns raised by the reviewing Court and propose a
26 revised Settlement for the approval of the Court. A vacation, reversal, or modification of the Court's
27 award of the Service Payment or the Class Counsel Fees Payment or Litigation Expenses Payment will
28 not constitute a vacation, reversal, or material modification of the Final Approval Order and Judgment

1 within the meaning of this Paragraph, provided that Defendants' obligation to make payments under this
2 Settlement will remain limited to the Gross Settlement Amount.

3 **9. Procedure for Funding of Settlement.** Within thirty (30) calendar days after the
4 Effective Date, Defendants shall fully fund the Gross Settlement Amount, and also fund the amounts
5 necessary to fully pay their Employer Taxes to the Settlement Administrator.

6 **10. Procedure for Payment of Settlement Payments.** The Settlement Administrator
7 shall distribute the following payments: Within ten (10) business days of the funding of the Gross
8 Settlement Amount and Employer Taxes, the Settlement Administrator will mail checks for all Individual
9 Settlement Payments to Participating Class Members, Service Payment to Plaintiff, Individual PAGA
10 Payments to PAGA Group Members, LWDA Payment to the LWDA, the Settlement Administration
11 Expenses to itself (the Settlement Administrator), and Class Counsel Fees Payment and Litigation
12 Expenses Payment to Class Counsel.

13 **11. Uncashed Individual Settlement Payment and Individual PAGA Payment**
14 **Checks.** The Settlement Administrator may, at its discretion, distribute the Individual Settlement
15 Payments and Individual PAGA Payments by way of a single check that combines both payments (if
16 applicable). Each Individual Settlement Payment and Individual PAGA Payment check will be valid and
17 negotiable for one hundred and eighty (180) calendar days from the date the checks are issued, and
18 thereafter, shall be canceled. All funds associated with canceled checks will be distributed a second time
19 amongst those Participating Class Members and PAGA Members who cashed their checks the first time.
20 Any residual funds remaining following the second distribution will be transmitted to the *cypres*, Children
21 of Shelters, in accordance with California Code of Civil Procedure section 384. The Parties and their
22 counsel each represent they do not have a financial interest in Children of Shelters or otherwise have a
23 relationship with Children of Shelters that creates or could create a conflict of interest.

24 **12.** All Participating Class Members and PAGA Group Members shall be bound by the
25 terms and conditions of this Settlement Agreement regardless of whether they cash or otherwise negotiate
26 their Individual Settlement Payment check and/or Individual PAGA Payment check or not.

27 **13. Final Report by Settlement Administrator to Court.** Within ten (10) calendar
28 days after final disbursement of all funds from the Gross Settlement Amount, the Settlement Administrator

will serve on the Parties and file with the Court a declaration proving a final report on the disbursements of all funds from the Gross Settlement Amount.

E. Release of Claims.

1. Release of Released Class Claims. Upon the Effective Date, Plaintiff and each Participating Class Member will be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged the Released Parties from any and all Released Class Claims. This release and waiver, however, shall be conditional on Defendants' full payment of the Gross Settlement Amount necessary to fund all payment obligations.

2. Release of Released PAGA Claims. Upon the Effective Date, Plaintiff, the State of California, and all PAGA Group Members will be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged the Released Parties from any and all Released PAGA Claims. This release and waiver, however, shall be conditional on Defendants' full payment of the Gross Settlement Amount necessary to fund all payment obligations. PAGA Group Members cannot exclude themselves from the PAGA Settlement.

3. Plaintiff's Release of Claims. In addition, upon the Effective Date and full funding of the Gross Settlement Amount, Plaintiff will be deemed to have fully released and discharged the Released Parties from any and all claims arising from his employment with Defendants, separation of employment from Defendants, and any acts that have or could have been asserted in any legal action or proceeding against Defendants, whether known or unknown, arising under any federal, state, or local law, or statute, including, *inter alia*, those arising under the California Labor Code, Fair Labor Standards Act, Americans with Disabilities Act, Title VII of the Civil Rights Act of 1964, Employee Retirement Income Security Act, National Labor Relations Act, California Corporations Code, California Business and Professions Code, Orders of the California Industrial Welfare Commission, California Fair Employment and Housing Act, California Constitution (all as amended), and law of contract and tort, as well as for discrimination, harassment, retaliation, wrongful termination, lost wages, benefits, other employment compensation, emotional distress, medical expenses, other economic and non-economic damages, attorney fees, and costs, arising on or before the date on which the Settlement is executed. With respect to

those claims released by Plaintiff in an individual capacity, Plaintiff acknowledges and waives any and all rights and benefits available under California Civil Code Section 1542, which provides:

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.

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

F. No Effect on Other Benefits. Any payments made under this Settlement will not result in any additional benefit payments (such as 401(k) or bonus) to Plaintiff, Participating Class Members, and PAGA Group Members.

G. Limitation on Public Statements About Settlement. Plaintiff and Class Counsel represent that they have not and will not issue any press, publications, or other media releases about the Settlement (including, but not necessarily limited to advertising or marketing materials or on social media) or have any communication with the press or media regarding the Settlement. This provision will not prohibit Class Counsel from (i) communicating with Class Members after Preliminary Approval is granted for the sole purpose of administering the Settlement; (ii) complying with ethical obligations; (iii) submitting orders and/or information to the LWDA to comply with the PAGA statute; or (iv) referring to the Action and Settlement in other litigations to support their adequacy as attorneys for a putative class or to justify an award of attorneys' fees. Plaintiff and Class Counsel agree not to respond to any media

inquiries except to refer reporters to the papers filed with the Court. Defendants may disclose information regarding the Settlement under its contractual and legal obligations.

H. Miscellaneous Terms.

1. No Admission of Liability or Class Certification for Other Purposes.

a. Defendants and the Released Parties deny that they have engaged in any unlawful activity, have failed to comply with the law in any respect, have any liability to anyone under the claims asserted in the Action, or that but for the Settlement a class should be certified in the Action. This Agreement is entered into solely for the purpose of compromising highly disputed claims. Nothing in this Agreement is intended or will be construed as an admission of liability or wrongdoing by Defendants or the Released Parties, or an admission by Plaintiff that any of the claims were non-meritorious or any defense asserted by Defendants was meritorious. This Settlement and the fact that Plaintiff and Defendants were willing to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (other than solely in connection with effectuating the Settlement pursuant to this Agreement).

b. Whether or not the Final Approval Order and Judgment becomes final, neither the Settlement, this Agreement, any document, statement, proceeding, or conduct related to the Settlement or the Agreement, nor any reports or accounting of those matters, will be (i) construed as, offered or admitted in evidence as, received as, or deemed to be evidence for any purpose adverse to Plaintiff or Defendants or any of the Released Parties, including, but not limited to, evidence of a presumption, concession, indication, or admission by any of the Released Parties of any liability, fault, wrongdoing, omission, concession, or damage; or (ii) disclosed, referred to, or offered in evidence against any of the Released Parties, in any further proceeding in the Action, or any other civil, criminal, or administrative action or proceeding except for purposes of effectuating the Settlement pursuant to this Agreement.

c. This section and all other provisions of this Agreement notwithstanding, any and all provisions of this Agreement may be admitted in evidence and otherwise used in any and all proceedings for the limited purpose of enforcing any or all terms of this Agreement or defending any claims released or barred by this Agreement.

1 2. **Integrated Agreement.** After this Agreement is signed and delivered by all Parties
2 and their counsel, this Agreement and its exhibits will constitute the entire agreement between the Parties
3 relating to the Settlement, and it will then be deemed that no oral representations, warranties, covenants,
4 or inducements have been made to any Party concerning this Agreement or its exhibits other than the
5 representations, warranties, covenants, and inducements expressly stated in this Agreement and its
6 exhibits.

7 3. **Attorney Authorization.** The Parties and their counsel will cooperate with each
8 other and use their best efforts to affect the implementation of the Settlement. In the event the Parties are
9 unable to reach agreement on the form or content of any document needed to implement the Agreement,
10 or on any supplemental provisions that may become necessary to effectuate the terms of this Agreement,
11 the Parties will seek the assistance of a mediator for resolution.

12 4. **No Prior Assignments:** The Parties represent, covenant, and warrant that they have
13 not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber
14 to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released
15 and discharged in this Settlement.

16 5. **No Tax Advice:** Neither Class Counsel nor Defendants' Counsel intend for
17 anything contained in this Settlement to constitute advice regarding taxes or taxability, nor will anything
18 in this Settlement be relied upon as such within the meaning of United States Treasury Department
19 Circular 230 (31 CFR Part 10, as amended) or otherwise. Except as provided above, neither Defendants,
20 Employers, and Released Parties, nor their counsel, shall have any liability for any tax implications related
21 to the receipt of settlement funds herein, including by the Court-appointed third-party administrator; any
22 and all such liability and/or obligations shall be borne solely by the payee recipients of any funds to be
23 paid by Defendants and Employers herein.

24 6. **Modification of Agreement.** This Agreement, and any and all parts of it, may be
25 amended, modified, changed, or waived only by an express written instrument signed by counsel for the
26 Parties, subject to Court approval. Counsel for all Parties may amend or modify this Agreement as needed
27 without signatures from their respective clients. The Parties agree that this Agreement may be signed
28 electronically.

7. **Agreement Binding on Successors.** This Agreement will be binding upon, and inure to the benefit of, the successors or assigns of each of the Parties.

8. **Applicable Law.** All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the laws of the State of California.

9. **Cooperation in Drafting.** The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting, it being recognized that, because of the arms-length negotiations between the Parties, all Parties have contributed equally to the preparation of this Settlement Agreement.

10. **Fair Settlement.** The Parties and their respective counsel believe and warrant that this Agreement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at this Agreement through arms-length negotiations, taking into account all relevant factors, current and potential. The Parties further acknowledge that they are each represented by competent counsel and that they have had an opportunity to consult with their counsel regarding the fairness and reasonableness of this Settlement Agreement.

11. **Use of Documents and Data.** All originals, copies, and summaries of documents and data provided to Class Counsel by Defendants in connection with the mediation or other settlement negotiations in this matter may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule.

12. **Headings.** The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.

13. **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.

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

15. **Posting of the Final Approval Order and Judgment.** The Parties shall provide the Settlement Administrator with a copy of the Final Approval Order and Judgment once it is entered by the Court, and the Settlement Administrator shall post the Final Approval Order and Judgment on its website within three (3) business days of receipt, and shall maintain the posting for sixty (60) calendar days. No individualized notice of the Final Approval Order and Judgment will be required to be provided to the Class.

16. **Notice.** All notices, demands or other communications given under this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, addressed as follows:

To Plaintiff and the Class:

Edwin Aiwarzian
Arby Aiwarzian
Joanna Ghosh
Tara Zabehi
LAWYERS for JUSTICE, PC
450 North Brand Blvd., Suite 900
Glendale, California 91203
Tel.: (818) 265-1020
Fax: (818) 265-1021
E-Mail: edwin@calljustice.com; arby@calljustice.com; joanna@calljustice.com; tara@calljustice.com

To Defendants:

Marie Trimble Holvick
Matthew Wayne
Gordon Rees Scully Mansukhani LLP
272 Battery Street, Suite 2000
San Francisco, California 94111
Tel: (415) 986-5900
Fax: (415) 986-8054
E-Mail: mholvick@grsm.com; mwayne@grsm.com;

17. **Execution in Counterparts.** This Agreement may be executed in one or more counterparts by facsimile, electronically, or email which for purposes of this Agreement will be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument provided that counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

1 18. **Continuing Jurisdiction.** The Court shall retain continuing jurisdiction over the
2 Action under California Code of Civil Procedure section 664.6 to ensure the continuing implementation
3 of this Agreement and enforcement of the Settlement until performance in full of the terms of this
4 Settlement.

5 *[Signatures included on next page]*
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IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this Joint Stipulation of Class Action and PAGA Settlement and Release between Plaintiff and Defendants:

IT IS SO AGREED.

REPRESENTATIVE PLAINTIFF ERICKSON MARTINEZ

Electronically Signed: 2025-04-20 09:07:04 UTC - 1862753237
Erickson Martinez
Notarized Digitally: 2025-04-20 09:07:04 UTC - 1862753237

Dated: 04/20/2025, 2025

Erickson Martinez, Plaintiff

DEFENDANT BACK OF THE HOUSE, LLC

DocuSigned by:
Edmondo Sarti
E6817C916E7D455...

Dated: April 18, 2025 | 3:16 PM PDT, 2025

Back of the House, LLC, Defendant
By:
Title:

DEFENDANT EBURGER, LLC

DocuSigned by:
Edmondo Sarti
E6817C916E7D455...

Dated: April 18, 2025 | 3:16 PM PDT, 2025

EBurger, LLC, Defendant
By:
Title:

DEFENDANT JBURGER, LLC

DocuSigned by:
Edmondo Sarti
E6817C916E7D455...

Dated: April 18, 2025 | 3:16 PM PDT, 2025

JBurger, LLC, Defendant
By:
Title:

DEFENDANT MISSION 98 SUPER, LLC

DocuSigned by:
Edmondo Sarti
E6817C916E7D455...

Dated: April 18, 2025 | 3:16 PM PDT, 2025

Mission 98 Super, LLC, Defendant
By:
Title:

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///
///

DEFENDANT MBURGER, LLC

Dated: April 18, 2025 | 3:16 PM PDT

DocuSigned by:

 MBurger, LLC, Defendant
 By:
 Title:

DEFENDANT 2355 TELEGRAPH AVE, LLC

Dated: April 18, 2025 | 3:16 PM PDT

DocuSigned by:

 2355 Telegraph Ave, LLC, Defendant
 By:
 Title:

DEFENDANT THE VERANDA SUPER, LLC

Dated: April 18, 2025 | 3:16 PM PDT

DocuSigned by:

 The Veranda Super, LLC, Defendant
 By:
 Title:

DEFENDANT 5399 PROSPECT ROAD, LLC

Dated: April 18, 2025 | 3:16 PM PDT

DocuSigned by:

 5399 Prospect Road, LLC, Defendant
 By:
 Title:

DEFENDANT SUPER EMERYVILLE, LLC

Dated: April 18, 2025 | 3:16 PM PDT

DocuSigned by:

 Super Emeryville, LLC, Defendant
 By:
 Title:

DEFENDANT DBURGER, LLC

Dated: April 18, 2025 | 3:16 PM PDT

DocuSigned by:

 DBurger, LLC, Defendant
 By:
 Title:

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DEFENDANT METBURGER, LLC

Dated: April 18, 2025 | 3:16 PM PDT, 2025

DocuSigned by:
Edmondo Sarti
E6817C916E7D455...
MetBurger, LLC, Defendant
By:
Title:

DEFENDANT SUPER NOVATO, LLC

Dated: April 18, 2025 | 3:16 PM PDT, 2025

DocuSigned by:
Edmondo Sarti
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Super Novato, LLC, Defendant
By:
Title:

DEFENDANT SUPER LOS GATOS, LLC

Dated: April 18, 2025 | 3:16 PM PDT, 2025

DocuSigned by:
Edmondo Sarti
E6817C916E7D455...
Super Los Gatos, LLC, Defendant
By:
Title:

DEFENDANT KBURGER, LLC

Dated: April 18, 2025 | 3:16 PM PDT, 2025

DocuSigned by:
Edmondo Sarti
E6817C916E7D455...
KBurger, LLC, Defendant
By:
Title:

DEFENDANT ADRIANO PAGANINI

Dated: April 21, 2025 | 11:26 AM PDT, 2025

DocuSigned by:
[Signature]
3CA831E390E7428...
Adriano Paganini, Defendant

DEFENDANT EDMONDO SARTI

Dated: April 18, 2025 | 3:16 PM PDT, 2025

DocuSigned by:
Edmondo Sarti
E6817C916E7D455...
Edmondo Sarti, Defendant

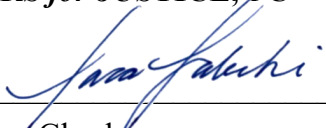
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AGREED AS TO FORM:

Dated: April 21, 2025

LAWYERS for JUSTICE, PC

By: 

Joanna Ghosh
Tara Zabehe
Attorneys for Plaintiffs

Dated: April 21, 2025

GORDON REES SCULLY MANSUKHANI, LLP

By: 

Marie Trimble Holvick
Matthew Wayne
Attorneys for Defendants

EXHIBIT E

SECOND AMENDED JOINT STIPULATION OF CLASS ACTION AND PAGA SETTLEMENT

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AGREEMENT AND RELEASE

This Second Amended Joint Stipulation of Class Action and PAGA Settlement Agreement and Release (“Settlement,” “Agreement,” or “Settlement Agreement”) is made by and between Plaintiff Erickson Martinez (“Plaintiff”) and Defendants Back of the House, Inc.; EBurger, LLC; JBurger, LLC; Mission 98 Super, LLC; MBurger, LLC; 2355 Telegraph Ave, LLC; The Veranda Super, LLC; 5399 Prospect Road, LLC; Super Emeryville, LLC; DBurger, LLC; MetBurger, LLC; Super Novato, LLC; Super Los Gatos, LLC; KBurger, LLC; Adriano Paganini; and Edmondo Sarti (collectively, “Defendants”) (together, with Plaintiff, the “Parties” or individually referred to as “Party”). Pursuant to Section V.H, Paragraph 6 of the First Amended Joint Stipulation of Class Action and PAGA Settlement Agreement and Release executed on January 31, 2025, upon full execution of this Settlement Agreement, Parties hereby amend and supplant the First Amended Joint Stipulation of Class Action and PAGA Settlement Agreement and Release.

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This Settlement Agreement shall be binding on Plaintiff, Participating Class Members (as defined below), PAGA Group Members (as defined below), the State of California (as set forth herein), and on Defendants and Employers (as defined below), subject to the terms and conditions hereof and approval of the Court.

I. DEFINITIONS

In addition to other terms defined in this Agreement, the terms below have the following meaning in this Agreement:

A. “Action” means the coordinated action entitled *Super Duper Burgers Wage and Hour Cases* in the Superior Court of the State of California for the County of San Francisco, Case No. CJC-22-005249 and Judicial Council Coordination Proceeding No. 5249, which expressly includes the following actions: (1) *Erickson Martinez v. Back of the House, Inc., et al.*, Case No. CGC-21-594380 filed in the Superior Court of the State of California, County of San Francisco; (2) *Erickson Martinez v. Back of the House, Inc., et al.*, Case No. RG21113642 filed in the Superior Court of the State of California, County of Alameda; and (3) *Magaly Olayo Lopez v. Back of the House, Inc., et al.*, Case No. CGC-19-579264 filed in the Superior Court of the State of California, County of San Francisco.

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1 B. "Class" means all current and former hourly-paid or non-exempt employees who worked
2 for any of the Defendants or Employers at a Super Duper Burgers restaurant within the State of California
3 at any time during the Class Period.

4 C. "Class Member" means a member of the Class.

5 D. "Class Counsel" means Edwin Aiwarzian, Arby Aiwarzian, Joanna Ghosh, and Tara Zabehi
6 of Lawyers for Justice, PC.

7 E. "Class Counsel Fees Payment" and "Litigation Expenses Payment" mean the amounts to
8 be paid to Class Counsel for attorneys' fees and reimbursement of litigation expenses, respectively, as
9 approved by the Court, to compensate them for their legal work in connection with the Action, including
10 their pre-filing investigation, filing of the Action, all related litigation activities, all Settlement work, all
11 post-Settlement compliance procedures, and related litigation expenses incurred in connection with the
12 Action.

13 F. "Class Data" means a complete list of all Class Members that Defendants will diligently
14 and in good faith compile from their records and provide to the Settlement Administrator. The Class
15 Data will be formatted in a readable Microsoft Office Excel spreadsheet and will include each Class
16 Member's full name, last known mailing address, last known email address, Social Security Number,
17 total number of Workweeks during the Class Period, total number of Workweeks during the PAGA
18 Period, and any other information required by the Settlement Administrator in order to effectuate the terms
19 of the Settlement.

20 G. "Class Notice" means the Notice of Class Action Settlement, substantively in the form
21 attached hereto as Exhibit A to this Agreement and incorporated by reference into this Agreement.

22 H. "Class Period" means the period from September 16, 2015 through March 4, 2025.

23 I. "Class Settlement" means the settlement and release of all Released Class Claims.

24 J. "Court" means the Superior Court of the State of California for the County of San
25 Francisco.

26 K. "Defendants' Counsel" means Marie Trimble Holvick and Matthew Wayne of Gordon
27 Rees Scully Mansukhani, LLP.
28

1 L. “Effective Date” means the date when all of the following events have occurred: (1) the
2 Settlement Agreement has been executed by all Parties, Class Counsel, and Defendants’ Counsel; (2)
3 the Court has given and entered Preliminary Approval to the Settlement; (3) the Class Notice has been
4 mailed and emailed (if email addresses are available) to the Class Members, providing them with an
5 opportunity to object to the terms of the Class Settlement or opt out of the Class Settlement by mail
6 and/or email; (4) the Court has held a Final Approval Hearing and entered Final Approval Order and
7 Judgment; and (5) the later of the following events: five (5) business days after the period for filing any
8 appeal, writ, or other appellate proceeding opposing the Court’s Final Approval Order and Judgment
9 has elapsed without any appeal, writ, or other appellate proceeding having been filed; or, if any appeal,
10 writ, or other appellate proceeding opposing the Court’s Final Approval Order and Judgment has been
11 filed, five (5) business days after any appeal, writ, or other appellate proceedings opposing the
12 Settlement has been finally and conclusively dismissed with no right to pursue further remedies or relief.

13 M. “Employers” means Back of the House, Inc., EBurger, LLC, JBurger, LLC, Mission 98
14 Super, LLC, MBurger, LLC, 2355 Telegraph Ave, LLC, The Veranda Super, LLC, 5399 Prospect Road,
15 LLC, Super Emeryville, LLC, DBurger, LLC, MetBurger, LLC, Super Novato, LLC, Super Los Gatos,
16 LLC, KBurger, LLC, 117 New Montgomery, LLC, 3401 California Street, LLC, Super Napa, LLC, Super
17 Serramonte, LLC, and Geary Mas, LLC.

18 N. “Final Approval” means the determination by the Court that the Settlement is fair,
19 reasonable, and adequate, and entry of judgment based thereon.

20 O. “Final Approval Hearing” means the hearing to be conducted by the Court to determine
21 whether to approve finally and implement the terms of this Agreement and enter the Final Approval Order
22 and Judgment.

23 P. “Gross Settlement Amount” means Eight Hundred Thousand Dollars and Zero Cents
24 (\$800,000.00) to be paid by Defendants and subject to Section V.C.5, in full resolution of all Released
25 Class Claims, Released PAGA Claims, and the Action. This amount is an all-in amount without any
26 reversion to Defendants and will be inclusive of all payments of the Individual Settlement Shares to the
27 Participating Class Members, Individual PAGA Payments to PAGA Group Members, Settlement
28 Administration Expenses to the Settlement Administrator, Class Counsel Fees Payment to Class Counsel,

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1 Litigation Expenses Payment to Class Counsel, Service Payment to Plaintiff, and LWDA Payment to the
2 LWDA, as set forth in this Agreement. The employer's share of payroll taxes on the Wage Portion of the
3 Individual Settlement Shares ("Employer Taxes") will be paid by Defendants separately and in addition
4 to the Gross Settlement Amount.

5 Q. "Individual PAGA Payment" means a PAGA Group Member's *pro rata* share of the PAGA
6 Group Member Amount that a PAGA Group Member is eligible to receive under the PAGA Settlement,
7 to be calculated in accordance with Section V.B.3.a below.

8 R. "Individual Settlement Payment" means the net payment of each Participating Class
9 Member's Individual Settlement Share, after reduction for the employee's share of taxes and withholdings
10 with respect to the Wage Portion of the Individual Settlement Share.

11 S. "Individual Settlement Share" means the *pro rata* share of the Net Settlement Amount that
12 a Class Member may be eligible to receive under the Settlement Agreement, to be calculated in accordance
13 with Section V.C.2 below.

14 T. "LWDA" means the California Labor and Workforce Development Agency.

15 U. "LWDA Payment" means the amount that the Parties have agreed to pay the LWDA for
16 its seventy-five percent (75%) share of the PAGA Payment, as set forth in Section V.B.3 below.

17 V. "Net Settlement Amount" means the portion of the Gross Settlement Amount that is
18 available for distribution to Participating Class Members for the Class Settlement, which is the Gross
19 Settlement Amount less the Court-approved amounts for the Service Payment, Class Counsel Fees
20 Payment, Litigation Expenses Payment, PAGA Payment, and Settlement Administration Expenses.

21 W. "Non-Participating Class Member" means a Class Member who submits a valid and timely
22 Request for Exclusion from the Class Settlement.

23 X. "PAGA Group" or "PAGA Group Member(s)" means all current and former hourly-paid
24 or non-exempt employees who worked for any of the Defendants or Employers at a Super Duper Burgers
25 restaurant within the State of California at any time during the PAGA Period.

26 Y. "PAGA Payment" means Fifty Thousand Dollars and Zero Cents (\$50,000.00) of the Gross
27 Settlement Amount allocated as civil penalties under the Private Attorneys General Act, California Labor
28 Code § 2698, *et seq.* ("PAGA"). Seventy-five percent (75%) of the PAGA Payment, or Thirty-Seven

1 Thousand Five Hundred Dollars and Zero Cents (\$37,500.00), will be payable to the LWDA (“LWDA
2 Payment”), and the remaining twenty-five percent (25%), or Twelve Thousand Five Hundred Dollars and
3 Zero Cents (\$12,500.00), will be distributed on a *pro rata* basis to PAGA Group Members based on their
4 Workweeks during the PAGA Period (“PAGA Group Member Amount”).

5 Z. “PAGA Period” means the period from May 17, 2018 through March 4, 2025, which is the
6 time period for which Released PAGA Claims are settled and resolved by way of this Settlement
7 Agreement; pursuant to *Gina Johnson v. Maxim Healthcare Services, Inc.* (2021) 66 Cal.App.5th 924,
8 based on the *Martinez* LWDA Letter having been provided on July 19, 2021, Plaintiff contends that his
9 PAGA claim can reach back to at least as far back as July 19, 2018 and as such Parties have agreed to
10 settle and resolve Released PAGA Claims for the period commencing on and from July 19, 2018. Further,
11 for the purposes of settlement only, Defendants agree to waive any statute of limitations defense to
12 Plaintiff’s PAGA claim so that the PAGA period and release of class members’ PAGA claims extends
13 back to May 17, 2018. (See *Hutcheson v. Superior Ct.* (2022) 74 Cal. App. 5th 932, 942; *Amaro v.*
14 *Anaheim Arena Mgmt., LLC* (2021) 69 Cal. App. 5th 521, 542.)

15 AA. “PAGA Settlement” means the settlement and release of Released PAGA Claims.

16 BB. “Participating Class Member” means a Class Member who does not submit a valid and
17 timely Request for Exclusion from the Class Settlement.

18 CC. “Preliminary Approval” means entry of the Court order granting preliminary approval of
19 the Settlement Agreement.

20 DD. “Released Class Claims” means any and all claims, rights, demands, liabilities, and causes
21 of action of any nature or description, under state, federal, or local law, that were alleged in the Operative
22 Complaint, or reasonably could have been alleged based on the factual allegations contained in the
23 Operative Complaint, arising during the Class Period, including claims for failure to pay all wages due
24 (including minimum, regular, and overtime wages), failure to provide proper meal periods and to properly
25 provide associated premium pay, failure to provide proper rest periods and associated premium pay, failure
26 to pay all wages timely at the time of termination, failure to pay all wages timely during employment,
27 failure to provide compliant wage statements, failure to keep requisite payroll records, and failure to
28 indemnify necessary business expenses, in violation of California Labor Code §§ 201, 202, 203, 204,

218.5, 218.6, 226, 226.7, 510, 512, 1174, 1194, 1197, 1197.1, 1198, 2800 and 2802 and Industrial Welfare Commission Wage Orders Nos. 4-2001, 5-2001, and 7-2001, unfair business practices in violation of California Business & Professions Code § 17200 *et seq.* based on the aforementioned, and all damages, penalties, interest, and other amounts recoverable under the aforementioned claims, causes of action, or legal theories of relief. Plaintiff and Participating Class Members will release Defendants and the Released Parties from all remedies that could be claimed in connection with the Released Class Claims including but not limited to, statutory, constitutional, contractual damages, unpaid costs, penalties, punitive damages, interest, attorneys’ fees, litigation costs, restitution, and equitable relief.

EE. “Released PAGA Claims” means any and all causes of action that were alleged in the Operative Complaint and *Martinez* LWDA Letter, or reasonably could have been alleged based on the factual allegations contained in the Operative Complaint and *Martinez* LWDA Letter, arising during the PAGA Period, for civil penalties pursuant to the Private Attorneys General Act, California Labor Code § 2698, *et seq.*, for Defendants’ alleged failure to pay all wages due (including minimum, regular, and overtime wages), failure to provide proper meal periods and to properly provide associated premium pay, failure to provide proper rest periods and associated premium pay, failure to pay all wages timely at the time of termination, failure to pay all wages timely during employment, failure to provide compliant wage statements, failure to keep requisite payroll records, and failure to indemnify necessary business expenses, in violation of California Labor Code §§ 201, 202, 203, 204, 218.5, 218.6, 226, 226.7, 510, 512, 1174, 1194, 1197, 1197.1, 1198, 2800 and 2802 and Industrial Welfare Commission Wage Orders Nos. 4-2001, 5-2001, and 7-2001.

FF. “Released Parties” means Back of the House, Inc., EBurger, LLC, JBurger, LLC, Mission 98 Super, LLC, MBurger, LLC, 2355 Telegraph Ave, LLC, The Veranda Super, LLC, 5399 Prospect Road, LLC, Super Emeryville, LLC, DBurger, LLC, MetBurger, LLC, Super Novato, LLC, Super Los Gatos, LLC, KBurger, LLC, 117 New Montgomery, LLC, 3401 California Street, LLC, Super Napa, LLC, Super Serramonte, LLC, Geary Mas, LLC, Adriano Paganini, and Edmondo Sarti, and each of their past, present and/or future parent companies, partners, subsidiaries, affiliates, divisions, related companies, successors, and predecessors, as well as their respective past, present and future owners, officers, directors, shareholders, employees, agents, members, managers, principals, representatives, accountants, auditors,

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consultants, insurers and reinsurers, investors, lenders, administrators, company-sponsored employee benefit plans, assigns, joint venturers, and attorneys, both individually and in their official capacities, as well as all persons acting by, through, under, or in concert with any of these persons or entities.

GG. “Request for Exclusion” means the written request by a Class Member to exclude himself or herself from the Class Settlement submitted in accordance with Section V.D.3.a below.

HH. “Service Payment” means the amount to be paid to Plaintiff in recognition of his efforts in prosecuting the Action, as set forth in Section V.B.1 below.

II. “Settlement Administrator” means CPT Group, Inc., the third-party administrator proposed by the Parties and approved by the Court for purposes of administering the Settlement. The Parties and their counsel each represent that they do not have any financial interest in the Settlement Administrator or otherwise have a relationship with the Settlement Administrator that could create a conflict of interest.

JJ. “Settlement Administration Expenses” means the expenses payable from the Gross Settlement Amount, subject to Court approval, to the Settlement Administrator for administration of the Settlement, as set forth in Section V.B.4 below.

KK. “Workweek(s)” means the number of weeks each Class Member worked in an hourly-paid or non-exempt position at a Super Burgers restaurant during the Class Period and/or PAGA Period, excluding periods of time when Class Members’ work for Defendants had ceased, employment with Employers had been separated, and/or the Defendants and/or Employers’ businesses were closed based on COVID-19 related closures.

II. RECITALS

A. On May 17, 2019, Plaintiff Magaly Olayo Lopez (“Plaintiff Lopez”) sent a letter to the LWDA and Defendants, regarding her intent to pursue civil penalties for claimed violations of California Labor Code sections 201, 202, 203, 204, 226(a)-(e), 226.3, 226.7, 510, 512, 558, 1194, and IWC Wage Orders, including *inter alia*, Wage Orders 5-2001, and any other applicable IWC Wage Order (“Lopez LWDA Letter”).

B. On September 16, 2019, Plaintiff Lopez filed a Class Action Complaint (“Lopez Complaint”) against Defendants Back of the House, Inc., Mission 98 Super, LLC, MBurger, LLC, and JBurger, LLC in the Superior Court of the State of California for the County of San Francisco, Case No.

CGC-19-579264, entitled *Magaly Olayo Lopez v. Back of the House, Inc., et al*, alleging causes of action for violation of (1) California Labor Code §§ 201, 204 and 1194 (Failure to Pay All Wages), (2) California Labor Code §§ 226.7 and 512 (Failure to Provide Compliant Meal Periods and Associated Premiums), (3) California Labor Code § 226.7 (Failure to Provide Compliant Rest Periods and Associated Premiums), (4) California Labor Code § 226 (Failure to Provide Compliant Wage Statements), (5) California Labor Code §§ 201, 202 and 203 (Waiting Time Penalties); (6) California Private Attorneys General Act § 2698, and (7) California Business & Professions Code § 17200, *et seq.* (“*Lopez Action*”).

C. On December 19, 2019, Defendants Back of the House, Inc., Mission 98 Super, LLC, MBurger, LLC, and JBurger, LLC filed an Answer to the *Lopez* Complaint.

D. On July 16, 2020, Plaintiff Lopez filed an Amendment to the *Lopez* Complaint, thereby adding the following additional Defendants: 2355 Telegraph Ave, LLC; The Veranda Super, LLC; 5399 Prospect Road, LLC; Super Emeryville, LLC; DBurger, LLC; EBurger, LLC; MetBurger, LLC; Super Novato, LLC; Super Los Gatos, LLC; and KBurger, LLC.

E. On December 14, 2020, Defendants 2355 Telegraph Ave, LLC; The Veranda Super, LLC; 5399 Prospect Road, LLC; Super Emeryville, LLC; DBurger, LLC; EBurger, LLC; MetBurger, LLC; Super Novato, LLC; Super Los Gatos, LLC; and KBurger, LLC filed an Answer to the *Lopez* Complaint.

F. On July 19, 2021, Plaintiff Martinez sent a letter to the LWDA and Defendants, regarding his intent to pursue civil penalties for claimed violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 551, 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802, and IWC Wage Orders, including *inter alia*, Wage Orders 4-2001, 5-2001, 7-2001, and any other applicable IWC Wage Order (“*Martinez LWDA Letter*”).

G. On August 9, 2021, Plaintiff Martinez filed a Class Action Complaint for Damages (“*Martinez Class Complaint*”) against Defendants Back of the House, Inc., EBurger, LLC, and JBurger, LLC in the Superior Court of the State of California for the County of San Francisco, Case No. CGC-21-594380, entitled *Erickson Martinez v. Back of the House, Inc., et al.*, alleging causes of action for violation of (1) California Labor Code §§ 510 and 1198 (Failure to Pay Overtime), (2) California Labor Code §§ 226.7 and 512(a) (Failure to Provide Compliant Meal Periods and Associated Premiums), (3) California Labor Code § 226.7 (Failure to Provide Compliant Rest Periods and Associated Premiums), (4) California

1 Labor Code §§ 1194, 1197 and 1197.1 (Failure to Pay Minimum Wages), (5) California Labor Code §§
2 201 and 202 (Failure to Timely Pay Final Wages), (6) California Labor Code § 204 (Failure to Timely
3 Pay Wages During Employment), (7) California Labor Code § 226(a) (Failure to Provide Compliant Wage
4 Statements), (8) California Labor Code § 1174(d) (Failure to Keep Requisite Payroll Records), (9)
5 California Labor Code §§ 2800 and 2802 (Failure to Reimburse Business Expenses), and (10) California
6 Business & Professions Code § 17200, *et seq.* (“*Martinez Class Action*”).

7 H. On September 22, 2021, Plaintiff Martinez filed a Complaint for Enforcement Under the
8 Private Attorneys General Act, California Labor Code § 2698, Et Seq. (“*Martinez PAGA Complaint*”)
9 against Defendants Back of the House, Inc., EBurger, LLC, Adriano Paganini, and Edmondo Sarti for
10 penalties under the California Private Attorneys General Act in the Superior Court of the State of
11 California for the County of Alameda, Case No. RG21113642, entitled *Erickson Martinez v. Back of the*
12 *House, Inc., et al.* (“*Martinez PAGA Action*”).

13 I. On December 3, 2021, Defendants Back of the House, Inc., EBurger, LLC, and JBurger,
14 LLC filed an Answer to the *Martinez Class Complaint*.

15 J. On December 3, 2021, Defendants Back of the House, Inc., EBurger, LLC, Adriano
16 Paganini, and Edmondo Sarti filed an Answer to the *Martinez PAGA Complaint*.

17 K. On September 15, 2022, the Court entered the Order Granting Petition for Coordination,
18 thereby coordinating the *Lopez Action*, *Martinez Class Action*, and *Martinez PAGA Action* as included
19 action in the coordinated proceeding entitled *Super Duper Burgers Wage and Hour Cases*, Judicial
20 Council Coordination Proceeding No. 5249, pending in the Superior Court of the State of California for
21 the County of San Francisco, assigned Case No. CJC-22-005249 (i.e., *Action*).

22 L. On January 13, 2023, Plaintiff and Plaintiff Lopez filed the Consolidated Class Action
23 Complaint for Damages & Enforcement Under the Private Attorneys General Act, California Labor Code
24 § 2698, Et Seq. (“*Operative Complaint*”) against Defendants in the *Action*. The *Operative Complaint*
25 alleges causes of action for violation of (1) California Labor Code §§ 510 and 1198 (Failure to Pay
26 Overtime), (2) California Labor Code §§ 226.7 and 512(a) (Failure to Provide Compliant Meal Periods
27 and Associated Premiums), (3) California Labor Code § 226.7 (Failure to Provide Compliant Rest Periods
28 and Associated Premiums), (4) California Labor Code §§ 1194, 1197 and 1197.1 (Failure to Pay Minimum

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1 Wages), (5) California Labor Code §§ 201 and 202 (Failure to Timely Pay Final Wages), (6) California
2 Labor Code § 204 (Failure to Timely Pay Wages During Employment), (7) California Labor Code § 226(a)
3 (Failure to Provide Compliant Wage Statements), (8) California Labor Code § 1174(d) (Failure to Keep
4 Requisite Payroll Records), (9) California Labor Code §§ 2800 and 2802 (Failure to Reimburse Business
5 Expenses), (10) California Business & Professions Code § 17200, *et seq.*; and (11) California Labor Code
6 § 2698, *et seq.* (California Labor Code Private Attorneys General Act of 2004). By way of the Operative
7 Complaint, Plaintiff, on his own, on behalf of himself individually, on behalf of other putative class
8 members, and on behalf of the State of California and other aggrieved employees pursuant to PAGA,
9 alleges and pursues all twelve causes of action asserted in the Operative Complaint.

10 M. On March 17, 2023, Defendants filed an Answer to the Operative Complaint.

11 N. The Action was mediated by settlement officer Pang Ly of the San Francisco County
12 Superior Court at the Mandatory Settlement Conference that took place on September 13, 2023. While
13 the Action did not settle right away at the Mandatory Settlement Conference, with the aid of the mediator's
14 evaluations and proposal, the Parties ultimately reached a settlement of the Action. Upon being informed
15 of the settlement, on October 6, 2023, the Court vacated the October 13, 2023 deadline for Plaintiffs to
16 file a motion for class certification.

17 O. Defendants deny all material allegations set forth in the Action and have asserted
18 numerous affirmative defenses. Notwithstanding, in the interest of avoiding further litigation,
19 Defendants desire to fully and finally settle the Action, Released Class Claims, and Released PAGA
20 Claims.

21 P. Class Counsel in the Action diligently investigated the allegations asserted in the Action
22 and evaluated the claims against Defendants, including any and all applicable defenses and the
23 applicable law. The investigation included, *inter alia*, the exchange of information, data, and
24 documents, and review of numerous corporate policies and practices.

25 Q. The settlement discussions were conducted at arm's-length, and the settlement is the
26 result of an informed and detailed analysis of Defendants' potential liability and exposure in relation to
27 the costs and risks associated with continued litigation. Based on the documents produced, as well as
28 Class Counsel's own independent investigation and evaluation, Class Counsel believes that the

1 settlement with Defendants for the consideration and on the terms set forth in this Settlement Agreement
2 is fair, reasonable, and adequate and is in the best interest of the Class Members, the State of California,
3 and PAGA Group Members in light of all known facts and circumstances, including the risk of
4 significant delay and uncertainty associated with litigation and various defenses asserted by Defendants.

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

10 Based on the aforementioned recitals that are a part of this Agreement, the Parties agree as follows:

11 **III. CLASS CERTIFICATION**

12 A. For purposes of this settlement only, the Parties stipulate to the certification of the Class.

13 B. The Parties agree that certification for the purpose of settlement is not an admission that
14 certification is proper under Section 382 of the California Code of Civil Procedure. Should, for
15 whatever reason, the Court not grant Final Approval, or if the Final Approval Order and Judgment
16 thereon does not become final, the Parties' stipulation to class certification as part of the Settlement
17 shall become null and void *ab initio* and shall have no bearing on, and shall not be admissible in
18 connection with, the issue of whether or not certification would be appropriate or inappropriate in a non-
19 settlement context in this or any other proceeding.

20 **IV. PRIVATE ATTORNEYS GENERAL ACT SETTLEMENT**

21 A. Effective July 1, 2024, California Labor Code, Section 2699(m) was amended to require
22 that "any civil penalties recovery by aggrieved employees shall be distributed as follows: sixty-five
23 percent (65%) to the LWDA and thirty-five percent (35%) to the aggrieved employees. However,
24 California Labor Code, Section 2699(v)(2) also states that "[t]he amendments made to this section by the
25 act adding this subdivision shall not apply to a civil action with respect to which the notice required by
26 subparagraph (A) of paragraph (1) of subdivision (a) ... of Section 2699.3 was filed before June 19,
27 2024." In other words, the amended distribution provision for civil penalties (set forth in California Labor
28 Code, Section 2699(m)) does not apply to a civil action in which the required notice was filed before June

1 19, 2024. In conformity with Section 2699.3(a)(1)(A) of the former version of the PAGA statute, Plaintiff
2 filed the written notice with the LWDA, and also provided the written notice to Defendant, on July 19,
3 2021, i.e., the *Martinez* LWDA Notice. As such, the former version of the PAGA statute applies, and
4 pursuant Section 2699(i) of that version of the statute, civil penalties recovered shall be distributed as
5 follows: seventy-five percent (75%) to the LWDA and twenty-five percent (25%) to the aggrieved
6 employees.

7 **V. SETTLEMENT TERMS AND CONDITIONS**

8 A. **Gross Settlement Amount.** Subject to the terms and conditions of this Agreement,
9 including Section V.C.5, the Gross Settlement Amount that Defendants will pay under this Settlement is
10 Eight Hundred Thousand Dollars and Zero Cents (\$800,000.00). This amount is all-inclusive of all
11 payments contemplated in this resolution, excluding any Employer Taxes, which will be separately paid
12 by Defendants to the Settlement Administrator. The entire Gross Settlement Amount will be disbursed
13 pursuant to this Agreement without the need to submit a claim form and none of the Gross Settlement
14 Amount will revert to Defendants.

15 B. **Payments from the Gross Settlement Amount.** Subject to the terms and conditions of
16 this Agreement, the Settlement Administrator will make the following distributions out of the Gross
17 Settlement Amount:

18 1. **To Plaintiff:** In recognition of his efforts and work in prosecuting the Action, and
19 in exchange for Plaintiff's execution of a general release of all claims against Defendants in Plaintiff's
20 individual capacity and California Civil Code Section 1542, as outlined in Section V.E.3, Plaintiff will
21 apply to the Court for an award of not more than Ten Thousand Dollars and Zero Cents (\$10,000.00) to
22 Plaintiff as a Service Payment. Defendants will not oppose the Service Payment of up to \$10,000.00 for
23 Plaintiff. The Settlement Administrator will distribute the Court-approved Service Payment out of the
24 Gross Settlement Amount, in addition to Plaintiff's Individual Settlement Payment and/or Individual
25 PAGA Payment(s), subject to Court approval. The Settlement Administrator will issue an IRS Form
26 1099 to Plaintiff for the Service Payment, and Plaintiff shall be solely and legally responsible for
27 correctly characterizing this compensation for tax purposes and for paying any taxes on the amounts
28 received. If the Court approves a Service Payment of less than \$10,000.00 for Plaintiff, the difference

1 between the lesser amount approved by the Court and the amount allocated toward the Service Payment
2 will be part of the Net Settlement Amount for the benefit of Participating Class Members.

3 2. **To Class Counsel:** Class Counsel will apply to the Court for an award of not more
4 than one-third (1/3) of the Gross Settlement Amount, which is presently Two Hundred Sixty-Six Thousand
5 Six Hundred Sixty-Six Dollars and Sixty-Seven Cents (\$266,666.67) for attorneys' fees (i.e., Class
6 Counsel Fees Payment) and an amount not more than Fifteen Thousand Dollars and Zero Cents
7 (\$15,000.00) for reimbursement of actual litigation costs and expenses incurred (i.e., Litigation Expenses
8 Payment). Defendants will not oppose a request for the Class Counsel Fees Payment and Litigation
9 Expenses Payment consistent with this Agreement and approved by the Court. The Settlement
10 Administrator will distribute the Class Counsel Fees Payment and Litigation Expenses Payment out of the
11 Gross Settlement Amount, subject to Court approval. These amounts will cover any and all work
12 performed and any and all costs incurred by Class Counsel in connection with the litigation of the
13 Action, including without limitation all work performed and costs incurred to date, and all work to be
14 performed and all costs to be incurred in connection with obtaining the Court's approval of this
15 Settlement Agreement, including any objections raised and any appeals necessitated by those objections.
16 Class Counsel shall be solely and legally responsible for correctly characterizing this compensation for
17 tax purposes and for paying any taxes on the amounts received. With respect to the Class Counsel Fees
18 Payment and Litigation Expenses Payment to Class Counsel, the Settlement Administrator may purchase
19 an annuity to utilize United States Treasuries and bonds or other attorney fee deferral vehicles, for Class
20 Counsel. Any additional expenses for the purchase and/or use of attorney fee deferral vehicles for Class
21 Counsel, by the Settlement Administrator, will be paid separately by Class Counsel and will not be
22 included within the Settlement Administration Expenses. If the Court approves a Class Counsel Fees
23 Payment or a Litigation Expenses Payment of less than these amounts, the difference between the lesser
24 amount approved by the Court and the amount allocated toward the Class Counsel Fees Payment and
25 Litigation Expenses Payment will be part of the Net Settlement Amount for the benefit of Participating
26 Class Members. Class Counsel assumes full responsibility and liability for taxes owed on the Class
27 Counsel Fees Payment and Litigation Expenses Payment to Class Counsel.

3. **To the Labor Workforce and Development Agency and PAGA Group**

Members. The Parties will seek approval from the Court for the PAGA Payment of Fifty Thousand Dollars and Zero Cents (\$50,000.00) out of the Gross Settlement Amount, of which seventy-five percent (75%), or \$37,500.00, will be distributed to the LWDA (i.e., LWDA Payment) and twenty-five percent (25%), or \$12,500.00, will be distributed to the PAGA Group Members on a *pro rata* basis (i.e., PAGA Group Member Amount). If the Court approves a PAGA Payment of less than \$50,000.00, the remainder will be part of the Net Settlement Amount for the benefit of Participating Class Members.

a. **Individual PAGA Payment Calculation.** Individual PAGA Payments

will be calculated and apportioned from the PAGA Payment based upon the number of Workweeks each PAGA Group Member worked during the PAGA Period, as follows: the Settlement Administrator will divide the PAGA Group Member Amount by the Workweeks of all PAGA Group Members during the PAGA Period to yield the "PAGA Workweek Value," and multiply each PAGA Group Member's individual Workweeks during the PAGA Period by the PAGA Workweek Value to yield his or her Individual PAGA Payment that he or she is eligible to receive under the PAGA Settlement. The Settlement Administrator will report the Individual PAGA Payments on IRS 1099 Forms, if applicable. PAGA Group Members assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

4. **To the Settlement Administrator.** The Settlement Administrator will distribute

out of the Gross Settlement Amount, to itself, its reasonable fees and expenses, as approved by the Court, in an amount not to exceed Thirty-Seven Thousand and Five Hundred Dollars and Zero Cents (\$37,500.00) (i.e., Settlement Administration Expenses). These costs, which will be paid from the Gross Settlement Amount, subject to Court approval, will include, *inter alia*, translating the Class Notice into Spanish, printing, distributing, emailing, and tracking Class Notices and other documents for this Settlement, establishing a settlement website, calculating and distributing payments due under the Settlement, redistributing payments, issuing of 1099 and W-2 IRS Forms and all required tax reporting, filings, withholdings, and remittances, providing necessary reports and declarations, and other duties and responsibilities set forth herein to process this Settlement, and as requested by the Parties. The Settlement Administrator shall transmit the required Employer Taxes and employees' share of the withholdings to

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1 the appropriate state and federal tax authorities. The Settlement Administrator shall establish a settlement
2 fund that meets the requirements of a Qualified Settlement Fund (“QSF”) under US Treasury Regulation
3 section 468B-1. To the extent actual Settlement Administration Expenses are greater than the estimated
4 amount stated herein, such excess amount will be deducted from the Gross Settlement Amount, subject to
5 approval by the Court. To the extent the Settlement Administration Expenses approved by the Court are
6 less than \$37,500.00, the remainder will be part of the Net Settlement Amount for the benefit of
7 Participating Class Members. The Parties each represent they do not have a financial interest in the
8 Settlement Administrator or otherwise have a relationship with the Settlement Administrator that
9 creates or could create a conflict of interest.

10 C. **Payments from the Net Settlement Amount.** The Net Settlement Amount will be the
11 remainder of the Gross Settlement Amount after deducting the Service Payment, Class Counsel Fees
12 Payment, Litigation Expenses Payment, PAGA Payment, and Settlement Administration Expenses. The
13 Net Settlement Amount will be distributed to Participating Class Members as follows:

14 1. **Individual Settlement Share.** Subject to the terms and conditions of this
15 Agreement, the Settlement Administrator will distribute an Individual Settlement Share from the Net
16 Settlement Amount to each Participating Class Member. The submission of a claim form is not required
17 in order for a Participating Class Member to be paid their Individual Settlement Share.

18 2. **Individual Settlement Share Calculation.**

19 a. After Preliminary Approval of the Settlement, the Settlement Administrator
20 will determine the Workweeks each Class Member worked during the Class Period, divide the Net
21 Settlement Amount by the Workweeks of all Class Members during the Class Period to yield the
22 “Estimated Workweek Value,” and multiply each Class Member’s individual Workweeks during the Class
23 Period by the Estimated Workweek Value to yield his or her estimated Individual Settlement Share that
24 he or she may be eligible to receive under the Class Settlement.

25 b. After Final Approval of the Settlement, the Settlement Administrator will
26 divide the final Net Settlement Amount by the Workweeks of all Participating Class Members during the
27 Class Period to yield the “Final Workweek Value,” and multiply each Participating Class Member’s
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individual Workweeks during the Class Period by the Final Workweek Value to yield his or her Individual Settlement Share.

3. **Withholding.**

a. Each Individual Settlement Share will be allocated as follows: twenty percent (20%) wages (the “Wage Portion”) and eighty percent (80%) penalties, interest, and non-wage damages (“Non-Wage Portion”). The Wage Portion will be reported on an IRS Form W-2 and the Non-Wage Portion will be reported on IRS Form 1099 (if applicable) by the Settlement Administrator. The Settlement Administrator will withhold the employee’s share of taxes and withholdings with respect to the Wage Portion of the Individual Settlement Shares, and issue checks to Participating Class Members for their Individual Settlement Payments (i.e., payment of their Individual Settlement Share net of these taxes and withholdings). The Settlement Administrator will not undertake any withholding with respect to the Non-Wage Portion of Individual Settlement Shares. Any payment for an Individual PAGA Payment will be allocated as one hundred percent (100%) penalties and will be reported on an IRS Form-1099, if necessary; the Settlement Administrator will not undertake any withholding with respect to the Individual PAGA Payment. Employer Taxes will be paid separately and in addition to the Gross Settlement Amount. Participating Class Members and PAGA Group Members assume full responsibility and liability for any taxes owed on any portion of their Individual Settlement Payment and/or Individual PAGA Payment.

4. **Effect of Non-Participating Class Members.** Non-Participating Class Members will not be issued an Individual Settlement Share, and their Request for Exclusion will not reduce the Gross Settlement Amount or the Net Settlement Amount. Any Non-Participating Class Member’s respective estimated Individual Settlement Share will remain a part of the Net Settlement Amount for distribution to Participating Class Members on a *pro rata* basis.

5. **Workweeks Information.** Defendants previously represented that for the period of September 16, 2015 through September 11, 2023, there were approximately 3,086 Class Members and approximately 103,252 Workweeks worked by Class Members. On December 17, 2024, Defendants confirmed that due to extraneous information and data that had inadvertently been included and analyzed by them, the number of Class Members and Workweeks provided up to and including September 11, 2023

(3,086 Class Members and approximately 103,252 Workweeks) were overstated. Defendants now represent that updated and corrected calculations reflect that for the period of September 16, 2015 through September 9, 2024 there were approximately 1,425 Class Members and approximately 98,555 Workweeks worked by Class Members. Nevertheless, the Parties agree that even with the updated, reduced number of Class Members and Workweeks, the Gross Settlement Amount remains fair and reasonable and shall remain the same.

D. Procedure for Approving Settlement.

1. Motion for Preliminary Approval of Settlement by the Court.

a. After execution of this Settlement Agreement, Plaintiff will file a motion for preliminary approval of the Settlement with the Court for an order granting preliminary approval of the Settlement, setting a date for the Final Approval Hearing, and approving the Class Notice (the “Motion for Preliminary Approval”). Any disagreement among the Parties concerning the Class Notice, the proposed orders, or other documents necessary to implement the Settlement will be referred to the mediator or the Court for resolution.

b. At the hearing on the Motion for Preliminary Approval, the Parties will jointly appear, support the granting of the motion, and submit a proposed order granting Preliminary Approval of the Settlement.

c. Should the Court decline to preliminarily approve material aspects of the Settlement or grant preliminary approval conditioned on any material modification or change to the Settlement (including, but not limited to, the scope of releases of claims or the binding effect of the Settlement on Participating Class Members or PAGA Group Members), the Parties shall work together in good faith to address any concerns raised by the Court and attempt to propose a revised Settlement for the Court’s approval.

2. Notice to Class Members. After the Court enters an order granting Preliminary Approval of the Settlement (“Order Granting Preliminary Approval”), every Class Member will be sent the Class Notice as follows:

a. No later than twenty (20) business days after the Court enters an Order Granting Preliminary Approval, Defendants will provide to the Settlement Administrator an electronic

1 database containing the Class Data. If any or all of the Class Data is unavailable to Defendants, Defendants
2 will so inform Class Counsel and the Parties will make their best efforts to reconstruct or otherwise agree
3 upon the Class Data prior to when it must be submitted to the Settlement Administrator. This information
4 will otherwise remain confidential and will not be disclosed to anyone, except as required to applicable
5 taxing authorities, or pursuant to Defendants' express written authorization or by order of the Court. All
6 Class Data will be used for settlement notification and settlement administration and will not be used for
7 any other purpose by Class Counsel.

8 b. Using best efforts to mail it as soon as possible, and in no event later than
9 ten (10) business days after receiving the Class Data, the Settlement Administrator will search the U.S.
10 Postal Service's National Change of Address database to attempt to locate updated mailing addresses for
11 Class Members (and use the updated mailing addresses that are located, in lieu of the mailing address
12 information provided by Defendants in the Class Data) and mail the Class Notice in English and Spanish
13 to all Class Members via first-class U.S. Mail. The Settlement Administrator will also perform a single
14 email distribution of the Class Notice to all email addresses available within the Class Data.

15 c. If a Class Notice is returned as undeliverable, and without a forwarding
16 address, on or before the Response Deadline, the Settlement Administrator will promptly, within five (5)
17 calendar days of receipt, search for a more current address for the Class Member by way of skip trace and
18 re-mail the Class Notice to an alternate address located through skip trace. The Settlement Administrator
19 will use the Class Data and otherwise work with Defendants to find a more current address. If a Class
20 Notice is returned as undeliverable, and with a forwarding address, on or before the Response Deadline,
21 the Settlement Administrator will promptly, within five (5) calendar days of receipt, re-mail the Class
22 Notice to the forwarding address. If the Class Notice is re-mailed, the Settlement Administrator will note
23 for its own records the date and address of each such re-mailing and notify Class Counsel and Defendants'
24 Counsel of the re-mailing, as part of a weekly status report provided to the Parties.

25 d. The Settlement Administrator must, on a weekly basis, provide written
26 reports to Class Counsel and Defendants' Counsel that, among other things, tally the number of Class
27 Notices mailed, emailed, or re-mailed, Class Notices returned undelivered, the number of Requests for
28

1 Exclusion from the Class Settlement, objections to the Class Settlement, and Workweeks Disputes it
2 receives (“Weekly Report”).

3 e. Not later than sixteen (16) court days before the date by which Plaintiff files
4 the motion for final approval of the Settlement, the Settlement Administrator will provide the Parties for
5 filing with the Court a declaration of due diligence setting forth its compliance with its obligations under
6 this Agreement and detailing the number of Requests for Exclusion it received (including the numbers of
7 valid and deficient submissions), the names of all Non-Participating Class Members, the number of
8 Workweeks Disputes received (including the numbers of valid and deficient submissions) and the outcome
9 of these disputes, the number of objections received (including the numbers of complete and deficient
10 submissions), and attaching the objections received. Prior to the Final Approval Hearing, the Settlement
11 Administrator will supplement its declaration of due diligence if any material changes occur from the date
12 of the filing of its prior declaration.

13 f. The Settlement Administrator will also host the Class Notice via a content-
14 neutral settlement website managed by the Settlement Administrator. The settlement website will provide
15 contact information for Class Counsel and the Settlement Administrator. The Settlement Administrator
16 will provide Class Counsel and Defendants’ Counsel with a preview of the proposed website. Class
17 Counsel and Defendants’ counsel must mutually approve the URL for the website and the contents of the
18 website before the website goes live and also must approve any modifications to the website.

19 **3. Objections, Workweeks Disputes, and Requests for Exclusion.** Class Members
20 may submit a Request for Exclusion from the Class Settlement, Participating Class Members may submit
21 objections to the Class Settlement (including objections to Class Counsel Fees Payment, Litigation
22 Expenses Payment, and Service Payments), and Class Members and PAGA Group Members may also
23 submit disputes as to Workweeks allocated to them, pursuant to the following procedures:

24 a. **Requests for Exclusion from the Class Settlement.** The Parties agree,
25 and the Class Notice will provide, that Class Members who wish to exclude themselves from the Class
26 Settlement must send a signed Request for Exclusion to the Settlement Administrator by mail or email,
27 postmarked no later than forty-five (45) calendar days after the Settlement Administrator mails the Class
28 Notice (“Response Deadline”). A Request for Exclusion must: (1) contain the case name and number of

1 the Action; (2) state the Class Member's full name, address, telephone number, and last four digits of his
2 or her Social Security number; (3) be signed; and (4) clearly state that the Class Member requests to be
3 excluded from the Class Settlement. If a question is raised about the authenticity of a signed Request for
4 Exclusion, the Settlement Administrator will have the right to demand additional proof of the Class
5 Member's identity. A Non-Participating Class Member will not participate in or be bound by the Class
6 Settlement or to portions of the Final Approval Order and Judgment that apply to the Class Settlement
7 (however, if a Non-Participating Class Member is a PAGA Group Member, he or she will nevertheless be
8 bound to the PAGA Settlement and the portions of the Final Approval Order and Judgment that apply to
9 the PAGA Settlement). A Class Member who does not complete and mail or email a valid and timely
10 Request for Exclusion in the manner and by the deadline specified above will automatically be deemed a
11 Participating Class Member and be bound by all terms and conditions of the Class Settlement, including
12 the release of Released Class Claims, if the Settlement is approved by the Court, and by the Final Approval
13 Order and Judgment (as it pertains to the Class Settlement), regardless of whether he or she has objected
14 to the Class Settlement. Non-Participating Class Members shall not be permitted to file objections to the
15 Class Settlement or appear at the Final Approval Hearing to voice any objections to the Class Settlement.

16 All Participating Class Members who do not submit a valid and timely Request for Exclusion will
17 be issued an Individual Settlement Share, without the need to file a claim form, and will be bound by all
18 of the terms of the Class Settlement, including without limitation, the release of the Released Class Claims
19 as set forth in this Agreement. Any Class Member who submits a valid and timely Request for Exclusion
20 is nevertheless bound to the PAGA Settlement if he or she is a PAGA Group Member, as well as any
21 judgment that may be entered by the Court if it grants Final Approval to the Settlement, as it pertains to
22 the PAGA Settlement.

23 b. **Objections to the Class Settlement.** The Parties agree, and the Class
24 Notice will provide, that only Participating Class Members may object to the Class Settlement, either in
25 writing or orally at the Final Approval Hearing. Objections in writing must be submitted to the Settlement
26 Administrator (who will provide copies to the Parties' counsel and attach copies to its declaration that is
27 filed with the Court in advance of the Final Approval Hearing) by mail or email, postmarked no later than
28 the Response Deadline. A written objection must: (1) contain the case name and number of the Action;

(2) state the Participating Class Member's full name, address, telephone number, and last four digits of his or her Social Security number; (3) be signed; (4) clearly set forth the grounds for the objection; (5) attach any documentation that the objection is based upon; and (6) identify any counsel representing the Participating Class Member with respect to the objection. In addition to submitting a written objection, or alternatively, Participating Class Members shall be entitled to be heard at the Final Approval Hearing (whether individually or through separate counsel) to orally object to the Class Settlement or any aspect thereof. A Participating Class Member who does not submit an objection in the manner and by the deadline specified above will be deemed to have waived any objection and will be foreclosed from making any objection (whether by appeal or otherwise) to the Class Settlement or any aspect thereof. Non-Participating Class Members shall have no ability to comment on or object to the Class Settlement.

c. **Workweeks Disputes.** The Parties agree, and the Class Notice will provide, that each Class Member and PAGA Group Member may dispute the number of Workweeks allocated to him or her during the Class Period and/or PAGA Period. Any dispute as to this allocation will be resolved by the Settlement Administrator. Any such dispute must be in writing and sent to the Settlement Administrator, by mail or email, postmarked no later than the Response Deadline. A written dispute ("Workweeks Dispute") must: (1) contain the case name and number of the Action; (2) state the Class Member's or PAGA Group Member's full name, address, telephone number, and last four digits of his or her Social Security number; (3) be signed; (4) clearly state that the Class Member or PAGA Group Member disputes the number of Workweeks credited to him or her and state the number of Workweeks he or she believes are correct; and (5) attach any documentation to support the dispute.

d. **Re-mailed Notice.** In the event that a Class Notice is re-mailed to a Class Member, the Response Deadline for that Class Member shall be extended by fifteen (15) calendar days from the original deadline.

4. **Right of Defendants to Reject Settlement.** If ten percent (10%) or more of the Class Members submit valid and timely Requests for Exclusion, Defendants will have the right, but not the obligation, to void the Settlement and the Parties will have no further obligations under the Settlement, including any obligation by Defendants to pay the Gross Settlement Amount, or any amounts that otherwise would have been owed under this Agreement, except that Defendants will pay the Settlement

1 Administration Expenses incurred as of the date that Defendants exercise the right to void the Settlement.
2 Defendants will notify Class Counsel in writing and the Court whether it is exercising this right to void
3 no later than seven (7) calendar days after the Settlement Administrator notifies the Parties that the number
4 of valid and timely Requests for Exclusion it has received exceeds ten percent (10%) or more of the Class
5 Members.

6 **5. No Solicitation.** The Parties and their counsel represent that neither the Parties nor
7 their respective counsel have or will solicit or otherwise encourage directly or indirectly any Class
8 Member to object to the Class Settlement, appeal from the Final Approval Order and Judgment, or submit
9 Requests for Exclusion from the Class Settlement.

10 **6. Additional Briefing and Final Approval.**

11 a. Plaintiff will file with the Court their application for the Class Counsel Fees
12 Payment, Litigation Expenses Payment, and Service Payment no later than the date on which Plaintiff
13 files the motion for final approval, and not later than sixteen (16) court days before the Final Approval
14 Hearing, and the application will be scheduled to be heard by the Court at the Final Approval Hearing.
15 Plaintiff may combine the motion seeking final approval of the settlement with the application for the
16 Class Counsel Fees Payment, Litigation Expenses Payment, and Service Payment. If any opposition is
17 filed, then not later than five (5) court days before the Final Approval Hearing, both Parties may file a
18 reply in support of the motion for Final Approval and/or application for Service Payment, Class Counsel
19 Fees Payment, and Litigation Expenses Payment.

20 b. If the Court does not grant final approval of the Settlement or grants final
21 approval conditioned on any material modification or change to the Settlement (including, but not limited
22 to, the scope of the release of claims with respect to Participating Class Members and/or PAGA Group
23 Members), then the Parties shall work together in good faith to address any concerns raised by the Court
24 and attempt to propose a revised Settlement for the Court's approval. However, an award by the Court of
25 a lesser amount than that sought by Plaintiff and Class Counsel for the Service Payment, Class Counsel
26 Fees Payment, or Litigation Expenses Payment, will not constitute a material modification to the
27 Settlement within the meaning of this Paragraph.

28 c. Upon final approval of the Settlement by the Court at or after the Final

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1 Approval Hearing, the Parties will present for the Court’s approval and entry a proposed order granting
2 final approval of the Settlement and judgment based thereon (“Final Approval Order and Judgment”).
3 After entry of the Final Approval Order and Judgment, the Court will have continuing jurisdiction over
4 the Action and the Settlement solely for purposes of (i) enforcing this Agreement, (ii) addressing
5 settlement administration matters, and (iii) addressing such post-judgment matters as may be appropriate
6 under court rules or applicable law. The entry of the judgment will be pursuant to California Rule of
7 Court 3.769(h) in a form acceptable to the Parties.

8 **7. Waiver of Right to Appeal.** Provided that the Final Approval Order and Judgment
9 is consistent with the terms and conditions of this Agreement, Plaintiff and Participating Class Members
10 who did not timely submit an objection to the Class Settlement, Defendants, and their respective counsel
11 hereby waive any and all rights to appeal from the Final Approval Order and Judgment, including all
12 rights to any post-judgment proceeding and appellate proceeding, such as, but not limited to, a motion to
13 vacate judgment, a motion for new trial, and any extraordinary writ. The waiver of appeal does not include
14 any waiver of the right to oppose any appeal, appellate proceedings, or post-judgment proceedings. If an
15 appeal is taken from the Final Approval Order and Judgment, the time for consummation of the Settlement
16 (including making payments under the Settlement) will be suspended until such time as the appeal is
17 finally resolved and the Final Approval Order and Judgment becomes final.

18 **8. Vacating, Reversal, or Material Modification of Final Approval Order and**
19 **Judgment on Appeal or Review.** If, after a notice of appeal, a petition for review, or a petition for
20 *certiorari*, or any other motion, petition, or application, the reviewing Court vacates, reverses, or modifies
21 the Final Approval Order and Judgment such that there is a material modification to the Settlement
22 (including, but not limited to, the scope of the release of claims with respect to Participating Class
23 Members and/or PAGA Group Members), and that Court’s decision is not completely reversed and the
24 Final Approval Order and Judgment is not fully affirmed on review by a higher Court, then the Parties
25 shall work together in good faith to address any concerns raised by the reviewing Court and propose a
26 revised Settlement for the approval of the Court. A vacation, reversal, or modification of the Court’s
27 award of the Service Payment or the Class Counsel Fees Payment or Litigation Expenses Payment will
28 not constitute a vacation, reversal, or material modification of the Final Approval Order and Judgment

1 within the meaning of this Paragraph, provided that Defendants' obligation to make payments under this
2 Settlement will remain limited to the Gross Settlement Amount.

3 **9. Procedure for Funding of Settlement.** Within thirty (30) calendar days after the
4 Effective Date, Defendants shall fully fund the Gross Settlement Amount, and also fund the amounts
5 necessary to fully pay their Employer Taxes to the Settlement Administrator.

6 **10. Procedure for Payment of Settlement Payments.** The Settlement Administrator
7 shall distribute the following payments: Within ten (10) business days of the funding of the Gross
8 Settlement Amount and Employer Taxes, the Settlement Administrator will mail checks for all Individual
9 Settlement Payments to Participating Class Members, Service Payment to Plaintiff, Individual PAGA
10 Payments to PAGA Group Members, LWDA Payment to the LWDA, the Settlement Administration
11 Expenses to itself (the Settlement Administrator), and Class Counsel Fees Payment and Litigation
12 Expenses Payment to Class Counsel.

13 **11. Uncashed Individual Settlement Payment and Individual PAGA Payment**
14 **Checks.** The Settlement Administrator may, at its discretion, distribute the Individual Settlement
15 Payments and Individual PAGA Payments by way of a single check that combines both payments (if
16 applicable). Each Individual Settlement Payment and Individual PAGA Payment check will be valid and
17 negotiable for one hundred and eighty (180) calendar days from the date the checks are issued, and
18 thereafter, shall be canceled. All funds associated with canceled checks will be distributed a second time
19 amongst those Participating Class Members and PAGA Members who cashed their checks the first time.
20 Any residual funds remaining following the second distribution will be transmitted to the *cy pres* Children
21 of Shelters, in accordance with California Code of Civil Procedure section 384. ~~The Parties and their~~
22 counsel each represent they do not have a financial interest in Children of Shelters or otherwise have a
23 relationship with Children of Shelters that creates or could create a conflict of interest.

24 **12.** All Participating Class Members and PAGA Group Members shall be bound by the
25 terms and conditions of this Settlement Agreement regardless of whether they cash or otherwise negotiate
26 their Individual Settlement Payment check and/or Individual PAGA Payment check or not.

27 **13. Final Report by Settlement Administrator to Court.** Within ten (10) calendar
28 days after final disbursement of all funds from the Gross Settlement Amount, the Settlement Administrator

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will serve on the Parties and file with the Court a declaration proving a final report on the disbursements of all funds from the Gross Settlement Amount.

E. Release of Claims.

1. **Release of Released Class Claims.** Upon the Effective Date, Plaintiff and each Participating Class Member will be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged the Released Parties from any and all Released Class Claims. This release and waiver, however, shall be conditional on Defendants' full payment of the Gross Settlement Amount necessary to fund all payment obligations.

2. **Release of Released PAGA Claims.** Upon the Effective Date, Plaintiff, the State of California, and all PAGA Group Members will be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged the Released Parties from any and all Released PAGA Claims. This release and waiver, however, shall be conditional on Defendants' full payment of the Gross Settlement Amount necessary to fund all payment obligations. PAGA Group Members cannot exclude themselves from the PAGA Settlement.

3. **Plaintiff's Release of Claims.** In addition, upon the Effective Date and full funding of the Gross Settlement Amount, Plaintiff will be deemed to have fully released and discharged the Released Parties from any and all claims arising from his employment with Defendants, separation of employment from Defendants, and any acts that have or could have been asserted in any legal action or proceeding against Defendants, whether known or unknown, arising under any federal, state, or local law, or statute, including, *inter alia*, those arising under the California Labor Code, Fair Labor Standards Act, Americans with Disabilities Act, Title VII of the Civil Rights Act of 1964, Employee Retirement Income Security Act, National Labor Relations Act, California Corporations Code, California Business and Professions Code, Orders of the California Industrial Welfare Commission, California Fair Employment and Housing Act, California Constitution (all as amended), and law of contract and tort, as well as for discrimination, harassment, retaliation, wrongful termination, lost wages, benefits, other employment compensation, emotional distress, medical expenses, other economic and non-economic damages, attorney fees, and costs, arising on or before the date on which the Settlement is executed. With respect to

1 those claims released by Plaintiff in an individual capacity, Plaintiff acknowledges and waives any and all
2 rights and benefits available under California Civil Code Section 1542, which provides:

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

9 Plaintiff understands and agrees that claims and facts in addition to or different from those which
10 are whether known or believed by him to exist may hereafter be discovered. It is Plaintiff's intention to
11 settle fully and release all claims he now has against the Released Parties, whether known or unknown,
12 suspected or unsuspected. The Service Payment will be paid to Plaintiff specifically in exchange for the
13 general release of the Released Parties from all claims, including those specified in this Paragraph and a
14 covenant not to sue the Released Parties. Notwithstanding the above, the general release by Plaintiff shall
15 not extend to claims for enforcement of this Settlement, for workers' compensation benefits, claims for
16 unemployment benefits, or other claims that may not be released by law.

17 **F. No Effect on Other Benefits.** Any payments made under this Settlement will not result
18 in any additional benefit payments (such as 401(k) or bonus) to Plaintiff, Participating Class Members,
19 and PAGA Group Members.

20 **G. Limitation on Public Statements About Settlement.** Plaintiff and Class Counsel
21 represent that they have not and will not issue any press, publications, or other media releases about the
22 Settlement (including, but not necessarily limited to advertising or marketing materials or on social media)
23 or have any communication with the press or media regarding the Settlement. This provision will not
24 prohibit Class Counsel from (i) communicating with Class Members after Preliminary Approval is granted
25 for the sole purpose of administering the Settlement; (ii) complying with ethical obligations; (iii)
26 submitting orders and/or information to the LWDA to comply with the PAGA statute; or (iv) referring to
27 the Action and Settlement in other litigations to support their adequacy as attorneys for a putative class or
28 to justify an award of attorneys' fees. Plaintiff and Class Counsel agree not to respond to any media

1 inquiries except to refer reporters to the papers filed with the Court. Defendants may disclose information
2 regarding the Settlement under its contractual and legal obligations.

3 H. **Miscellaneous Terms.**

4 1. **No Admission of Liability or Class Certification for Other Purposes.**

5 a. Defendants and the Released Parties deny that they have engaged in any
6 unlawful activity, have failed to comply with the law in any respect, have any liability to anyone under
7 the claims asserted in the Action, or that but for the Settlement a class should be certified in the Action.
8 This Agreement is entered into solely for the purpose of compromising highly disputed claims. Nothing
9 in this Agreement is intended or will be construed as an admission of liability or wrongdoing by
10 Defendants or the Released Parties, or an admission by Plaintiff that any of the claims were non-
11 meritorious or any defense asserted by Defendants was meritorious. This Settlement and the fact that
12 Plaintiff and Defendants were willing to settle the Action will have no bearing on, and will not be
13 admissible in connection with, any litigation (other than solely in connection with effectuating the
14 Settlement pursuant to this Agreement).

15 b. Whether or not the Final Approval Order and Judgment becomes final,
16 neither the Settlement, this Agreement, any document, statement, proceeding, or conduct related to the
17 Settlement or the Agreement, nor any reports or accounting of those matters, will be (i) construed as,
18 offered or admitted in evidence as, received as, or deemed to be evidence for any purpose adverse to
19 Plaintiff or Defendants or any of the Released Parties, including, but not limited to, evidence of a
20 presumption, concession, indication, or admission by any of the Released Parties of any liability, fault,
21 wrongdoing, omission, concession, or damage; or (ii) disclosed, referred to, or offered in evidence against
22 any of the Released Parties, in any further proceeding in the Action, or any other civil, criminal, or
23 administrative action or proceeding except for purposes of effectuating the Settlement pursuant to this
24 Agreement.

25 c. This section and all other provisions of this Agreement notwithstanding,
26 any and all provisions of this Agreement may be admitted in evidence and otherwise used in any and all
27 proceedings for the limited purpose of enforcing any or all terms of this Agreement or defending any
28 claims released or barred by this Agreement.

1 2. **Integrated Agreement.** After this Agreement is signed and delivered by all Parties
2 and their counsel, this Agreement and its exhibits will constitute the entire agreement between the Parties
3 relating to the Settlement, and it will then be deemed that no oral representations, warranties, covenants,
4 or inducements have been made to any Party concerning this Agreement or its exhibits other than the
5 representations, warranties, covenants, and inducements expressly stated in this Agreement and its
6 exhibits.

7 3. **Attorney Authorization.** The Parties and their counsel will cooperate with each
8 other and use their best efforts to affect the implementation of the Settlement. In the event the Parties are
9 unable to reach agreement on the form or content of any document needed to implement the Agreement,
10 or on any supplemental provisions that may become necessary to effectuate the terms of this Agreement,
11 the Parties will seek the assistance of a mediator for resolution.

12 4. **No Prior Assignments:** The Parties represent, covenant, and warrant that they have
13 not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber
14 to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released
15 and discharged in this Settlement.

16 5. **No Tax Advice:** Neither Class Counsel nor Defendants' Counsel intend for
17 anything contained in this Settlement to constitute advice regarding taxes or taxability, nor will anything
18 in this Settlement be relied upon as such within the meaning of United States Treasury Department
19 Circular 230 (31 CFR Part 10, as amended) or otherwise. Except as provided above, neither Defendants,
20 Employers, and Released Parties, nor their counsel, shall have any liability for any tax implications related
21 to the receipt of settlement funds herein, including by the Court-appointed third-party administrator; any
22 and all such liability and/or obligations shall be borne solely by the payee recipients of any funds to be
23 paid by Defendants and Employers herein.

24 6. **Modification of Agreement.** This Agreement, and any and all parts of it, may be
25 amended, modified, changed, or waived only by an express written instrument signed by counsel for the
26 Parties, subject to Court approval. Counsel for all Parties may amend or modify this Agreement as needed
27 without signatures from their respective clients. The Parties agree that this Agreement may be signed
28 electronically.

1 7. **Agreement Binding on Successors.** This Agreement will be binding upon, and
2 inure to the benefit of, the successors or assigns of each of the Parties.

3 8. **Applicable Law.** All terms and conditions of this Agreement and its exhibits will
4 be governed by and interpreted according to the laws of the State of California.

5 9. **Cooperation in Drafting.** The Parties have cooperated in the drafting and
6 preparation of this Agreement. This Agreement will not be construed against any Party on the basis that
7 the Party was the drafter or participated in the drafting, it being recognized that, because of the arms-
8 length negotiations between the Parties, all Parties have contributed equally to the preparation of this
9 Settlement Agreement.

10 10. **Fair Settlement.** The Parties and their respective counsel believe and warrant that
11 this Agreement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at this
12 Agreement through arms-length negotiations, taking into account all relevant factors, current and
13 potential. The Parties further acknowledge that they are each represented by competent counsel and that
14 they have had an opportunity to consult with their counsel regarding the fairness and reasonableness of
15 this Settlement Agreement.

16 11. **Use of Documents and Data.** All originals, copies, and summaries of documents
17 and data provided to Class Counsel by Defendants in connection with the mediation or other settlement
18 negotiations in this matter may be used only with respect to this Settlement, and no other purpose, and
19 may not be used in any way that violates any existing contractual agreement, statute, or rule.

20 12. **Headings.** The descriptive heading of any section or paragraph of this Agreement
21 is inserted for convenience of reference only and does not constitute a part of this Agreement.

22 13. **Invalidity of Any Provision.** Before declaring any provision of this Settlement
23 Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest extent
24 possible consistent with applicable precedents so as to define all provisions of this Settlement
25 Agreement valid and enforceable.

26 14. **All Terms Subject to Final Court Approval.** All amounts and procedures
27 described in this Settlement Agreement herein will be subject to final Court approval.
28

1 15. **Posting of the Final Approval Order and Judgment.** The Parties shall provide
2 the Settlement Administrator with a copy of the Final Approval Order and Judgment once it is entered
3 by the Court, and the Settlement Administrator shall post the Final Approval Order and Judgment on its
4 website within three (3) business days of receipt, and shall maintain the posting for sixty (60) calendar
5 days. No individualized notice of the Final Approval Order and Judgment will be required to be
6 provided to the Class.

7 16. **Notice.** All notices, demands or other communications given under this Agreement
8 will be in writing and deemed to have been duly given as of the third business day after mailing by United
9 States mail, addressed as follows:

10 *To Plaintiff and the Class:*

11 Edwin Aiwarzian
12 Arby Aiwarzian
13 Joanna Ghosh
14 Tara Zabehi
15 **LAWYERS for JUSTICE, PC**
16 450 North Brand Blvd., Suite 900
17 Glendale, California 91203
18 Tel.: (818) 265-1020
19 Fax: (818) 265-1021
20 E-Mail: edwin@calljustice.com; arby@calljustice.com; joanna@calljustice.com;
21 tara@calljustice.com

22 *To Defendants:*

23 Marie Trimble Holvick
24 Matthew Wayne
25 **Gordon Rees Scully Mansukhani LLP**
26 272 Battery Street, Suite 2000
27 San Francisco, California 94111
28 Tel: (415) 986-5900
 Fax: (415) 986-8054
 E-Mail: mholvick@grsm.com; mwayne@grsm.com;

1 17. **Execution in Counterparts.** This Agreement may be executed in one or more
2 counterparts by facsimile, electronically, or email which for purposes of this Agreement will be accepted
3 as an original. All executed counterparts and each of them will be deemed to be one and the same
4 instrument provided that counsel for the Parties will exchange between themselves signed counterparts.
5 Any executed counterpart will be admissible in evidence to prove the existence and contents of this
6 Agreement.

1 18. **Continuing Jurisdiction.** The Court shall retain continuing jurisdiction over the
2 Action under California Code of Civil Procedure section 664.6 to ensure the continuing implementation
3 of this Agreement and enforcement of the Settlement until performance in full of the terms of this
4 Settlement.

5 *[Signatures included on next page]*
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IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this Joint Stipulation of Class Action and PAGA Settlement and Release between Plaintiff and Defendants:

IT IS SO AGREED.

**REPRESENTATIVE PLAINTIFF ERICKSON
MARTINEZ**

Dated: _____, 2025

Erickson Martinez, Plaintiff

DEFENDANT BACK OF THE HOUSE, LLC

Dated: _____, 2025

Back of the House, LLC, Defendant
By:
Title:

DEFENDANT EBURGER, LLC

Dated: _____, 2025

EBurger, LLC, Defendant
By:
Title:

DEFENDANT JBURGER, LLC

Dated: _____, 2025

JBurger, LLC, Defendant
By:
Title:

DEFENDANT MISSION 98 SUPER, LLC

Dated: _____, 2025

Mission 98 Super, LLC, Defendant
By:
Title:

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Dated: _____, 2025

DEFENDANT MBURGER, LLC

MBurger, LLC, Defendant
By:
Title:

DEFENDANT 2355 TELEGRAPH AVE, LLC

Dated: _____, 2025

2355 Telegraph Ave, LLC, Defendant
By:
Title:

DEFENDANT THE VERANDA SUPER, LLC

Dated: _____, 2025

The Veranda Super, LLC, Defendant
By:
Title:

DEFENDANT 5399 PROSPECT ROAD, LLC

Dated: _____, 2025

5399 Prospect Road, LLC, Defendant
By:
Title:

DEFENDANT SUPER EMERYVILLE, LLC

Dated: _____, 2025

Super Emeryville, LLC, Defendant
By:
Title:

DEFENDANT DBURGER, LLC

Dated: _____, 2025

DBurger, LLC, Defendant
By:
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DEFENDANT METBURGER, LLC

Dated: _____, 2025

MetBurger, LLC, Defendant
By:
Title:

DEFENDANT SUPER NOVATO, LLC

Dated: _____, 2025

Super Novato, LLC, Defendant
By:
Title:

DEFENDANT SUPER LOS GATOS, LLC

Dated: _____, 2025

Super Los Gatos, LLC, Defendant
By:
Title:

DEFENDANT KBURGER, LLC

Dated: _____, 2025

KBurger, LLC, Defendant
By:
Title:

DEFENDANT ADRIANO PAGANINI

Dated: _____, 2025

Adriano Paganini, Defendant

DEFENDANT EDMONDO SARTI

Dated: _____, 2025

Edmondo Sarti, Defendant

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1 **AGREED AS TO FORM:**

2 Dated: _____, 2025

LAWYERS *for* JUSTICE, PC

3
4 By: _____

5 Joanna Ghosh
6 Tara Zabehe
7 *Attorneys for Plaintiffs*

8 Dated: _____, 2025

GORDON REES SCULLY MANSUKHANI, LLP

9 By: _____

10 Marie Trimble Holvick
11 Matthew Wayne
12 *Attorneys for Defendants*

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EXHIBIT F

NOTICE OF CLASS ACTION SETTLEMENT

JCCP Case No. 5249 Super Duper Burgers Wage and Hour Cases

PLEASE READ THIS CLASS NOTICE CAREFULLY.

You have received this Class Notice because Defendants' records indicate that you are a current or former employee of a Super Duper Burgers restaurant in California between September 16, 2015 through [date of Preliminary Approval], and a class action settlement described in this letter may affect your rights. You may be eligible to take part in the class action settlement reached in the above-referenced cases.

You do not need to take any action to receive a settlement payment and, unless you request to be excluded from the settlement, your legal rights may be affected.

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

A court authorized this notice. This is not a solicitation from a lawyer.

WHY YOU ARE GETTING THIS NOTICE : A class action settlement has been reached between Plaintiff Erickson Martinez ("Plaintiff Martinez") and Defendants Back of the House, Inc.; EBurger, LLC; JBurger, LLC; Mission 98 Super, LLC; MBurger, LLC; 2355 Telegraph Ave, LLC; The Veranda Super, LLC; 5399 Prospect Road, LLC; Super Emeryville, LLC; DBurger, LLC; MetBurger, LLC; Super Novato, LLC; Super Los Gatos, LLC; KBurger, LLC; Adriano Paganini; and Edmondo Sarti (together, "Defendants") (Plaintiff Martinez and Defendants are collectively referred to as the "Parties") in the class action cases, which have been coordinated under Judicial Council Coordination Proceeding No. 5249 (Superior Court of California, County of San Francisco Case No. CJC-22-005249); *Erickson Martinez v. Back of the House, Inc., et al.*, Case No. CGC-21-594380 pending in the Superior Court of the State of California, County of San Francisco; *Erickson Martinez v. Back of the House, Inc., et al.*, Case No. RG21113642 pending in the Superior Court of the State of California, County of Alameda; and *Magaly Olayo Lopez v. Back of the House, Inc., et al.*, Case No. CGC-19-579264 pending in the Superior Court of the State of California, County of San Francisco (together, the "Actions"), which may affect your legal rights. This class action settlement is ONLY between Plaintiff Martinez and Defendants. On [date of Preliminary Approval], the Court granted preliminary approval of the settlement and scheduled a hearing on [hearing date] at [hearing time] ("Final Approval Hearing") to determine whether or not the Court should grant final approval of the settlement.

I. IMPORTANT DEFINITIONS

"**Class**" means all current and former hourly-paid or non-exempt employees who worked for any of the Defendants or Employers at a Super Duper Burgers restaurant within the State of California at any time during the Class Period.

"**Class Member**" means a member of the Class.

"**Class Period**" means the time period from September 16, 2015 through March 4, 2025.

"**PAGA Group Member(s)**" means all current and former hourly-paid or non-exempt employees who worked for any of the Defendants or Employers at a Super Duper Burgers restaurant within the State of California at any time during the PAGA Period.

"**PAGA Period**" means the period from May 17, 2018 through March 4, 2025.

II. BACKGROUND OF THE ACTIONS

On September 16, 2019, Plaintiff Magaly Olayo Lopez ("Plaintiff Lopez") filed a Class Action Complaint ("*Lopez Complaint*") against Defendants Back of the House, Inc., Mission 98 Super, LLC, MBurger, LLC, and JBurger,

LLC in the Superior Court of the State of California for the County of San Francisco, Case No. CGC-19-579264. On December 19, 2019, Defendants Back of the House, Inc., Mission 98 Super, LLC, MBurger, LLC, and JBurger, LLC filed an Answer to the *Lopez* Complaint. On July 16, 2020, Plaintiff Lopez filed an Amendment to the *Lopez* Complaint, thereby adding the following additional Defendants: 2355 Telegraph Ave, LLC; The Veranda Super, LLC; 5399 Prospect Road, LLC; Super Emeryville, LLC; DBurger, LLC; EBurger, LLC; MetBurger, LLC; Super Novato, LLC; Super Los Gatos, LLC; and KBurger, LLC. On December 14, 2020, Defendants 2355 Telegraph Ave, LLC; The Veranda Super, LLC; 5399 Prospect Road, LLC; Super Emeryville, LLC; DBurger, LLC; EBurger, LLC; MetBurger, LLC; Super Novato, LLC; Super Los Gatos, LLC; and KBurger, LLC filed an Answer to the *Lopez* Complaint.

On August 9, 2021, Plaintiff Martinez filed a Class Action Complaint for Damages (“*Martinez* Class Complaint”) against Defendants Back of the House, Inc., EBurger, LLC, and JBurger, LLC in the Superior Court of the State of California for the County of San Francisco, Case No. CGC-21-594380 (“*Martinez* Class Action”). On September 23, 2021, Plaintiff Martinez filed a Complaint for Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, Et Seq. against Defendants Back of the House, Inc., EBurger, LLC, Adriano Paganini, and Edmondo Sarti for penalties under the California Private Attorneys General Act in the Superior Court of the State of California for the County of Alameda, Case No. RG21113642 (“*Martinez* PAGA Action”). On December 3, 2021, Defendants Back of the House, Inc., EBurger, LLC, and JBurger, LLC filed an Answer to the *Martinez* Class Action Complaint. On December 3, 2021, Defendants Back of the House, Inc., EBurger, LLC, Adriano Paganini, and Edmondo Sarti filed an Answer to the *Martinez* PAGA Complaint.

On September 15, 2022, the Court entered the Order Granting Petition for Coordination, thereby coordinating the *Lopez* Action, *Martinez* Class Action, and *Martinez* PAGA Action in the coordinated proceeding entitled Super Duper Burgers Wage and Hour Cases in the Superior Court of the State of California for the County of San Francisco, Case No. CJC-22-005249 and Judicial Council Coordination Proceeding No. 5249 (i.e., Action).

On January 13, 2023, Plaintiff Martinez and Plaintiff Lopez filed the Consolidated Class Action Complaint for Damages & Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, Et Seq. (“Operative Complaint”) against Defendants in the Action. On March 17, 2023, Defendants filed an Answer to the Operative Complaint.

Plaintiffs allege that Defendants failed to properly pay minimum and overtime wages, provide compliant meal and rest breaks and associated premiums, timely pay wages during employment and upon termination of employment and associated waiting-time penalties, provide compliant wage statements, keep requisite payroll records, reimburse business expenses, and thereby engaged in unfair business practices in violation of California Business and Professions Code section 17200, *et seq.* Plaintiffs seek, among other things, recovery of unpaid wages and meal and rest period premiums, unreimbursed business expenses, restitution, penalties, interest, and attorneys’ fees and costs.

Defendants deny all of the allegations in the Actions and deny that they violated any laws.

After investigation and analysis of the claims, the Parties engaged in good faith, arm’s-length negotiations, and, as a result, the Parties reached a settlement. The Parties have since entered into the Second Amended Joint Stipulation of Class Action and PAGA Settlement Agreement and Release (“Agreement,” “Settlement,” or “Settlement Agreement”).

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

Arby Aiwazian, Esq.
Joanna Ghosh, Esq.
Tara Zabehi, Esq.

Lawyers for Justice, PC
450 North Brand Blvd., Suite 900
Glendale, California 91203
Telephone: (818) 265-1020 / Fax: (818) 265-1021

If you are a Class Member, you do not need to take any action to receive an Individual Settlement Payment, but you have the opportunity to request exclusion from the Class Settlement (in which case you will not receive an Individual Settlement Payment), object to the Class Settlement, and/or dispute the Workweeks credited to you, if you so choose, as explained more fully in Sections III and IV below.

Because this Settlement resolves claims brought pursuant to PAGA by Plaintiff Martinez acting as a representative and as a Private Attorney General of and for the State of California and the Labor and Workforce Development Agency (“LWDA”), a PAGA Group Member cannot opt out of the release of the claims for PAGA civil penalties set forth in the Settlement Agreement. All PAGA Group Members will release the Released PAGA Claims and will be paid their respective shares of the PAGA Fund.

The Settlement represents a compromise and settlement of highly disputed claims. Nothing in the Settlement is intended to or will be construed as an admission by Defendants that the claims in the Actions have merit or that Defendants have any liability to Plaintiff Martinez, Class Members, and PAGA Group Members. Plaintiff Martinez and Defendants, and their respective counsel, have concluded and agree that, in light of the risks and uncertainties to each side of continued litigation, the Settlement is fair, reasonable, and adequate, and is in the best interest of the Class Members. The Court has made no ruling on the merits of the claims asserted in the Actions and has determined only that certification of the Class for settlement purposes is appropriate under California law.

Defendants maintain that they complied at all times with California law and deny that they did anything wrong. Defendants disputed and still dispute the claims made against them.

III. SUMMARY OF THE PROPOSED SETTLEMENT

A. Settlement Formula

The total gross settlement amount is Eight Hundred Thousand Dollars and Zero Cents (\$800,000.00) (the “Gross Settlement Amount”). The portion of the Gross Settlement Amount that is available for payment to Class Members is referred to as the “Net Settlement Amount.” The Net Settlement Amount will be the Gross Settlement Amount less the following payments, which are subject to approval by the Court: (1) attorneys’ fees in an amount not to exceed one-third (1/3) of the Gross Settlement Amount (which is presently estimated to be \$266,666.67) and reimbursement of litigation costs and expenses in an amount not to exceed Fifteen Thousand Dollars and Zero Cents (\$15,000.00) (together, “Class Counsel Fees Payment and Litigation Expenses Payment”) to Class Counsel; (2) Service Payment in an amount up to Ten Thousand Dollars and Zero Cents (\$10,000.00) to Plaintiff Martinez for his services in the Actions; (3) Fifty Thousand Dollars and Zero Cents (\$50,000.00) (“PAGA Payment”), with Seventy-Five Percent (75%) or Thirty-Seven Thousand Five Hundred Dollars and Zero Cents (\$37,500.00) of the PAGA Settlement Amount to be paid to the LWDA (“LWDA Payment”) and Twenty-Five Percent (25%) or Twelve Thousand Five Hundred Dollars and Zero Cents (\$12,500.00) (“PAGA Group Member Amount”) to be paid to PAGA Group Members; and (4) Settlement Administration expenses in an amount not to exceed Thirty-Seven Thousand Five Hundred Dollars and Zero Cents (\$37,500.00) to the Settlement Administrator (“Settlement Administration Expenses”).

Class Members are entitled to receive payment under the Settlement of their *pro rata* share of the Net Settlement Amount (“Individual Settlement Share”) based on the number of Workweeks each Class Member worked in an hourly-paid or non-exempt position at a Super Duper Burgers restaurant during the Class Period, excluding periods of time when Class Members’ employment were separated or the businesses were closed based on COVID-19 related closures (“Workweeks”).

The Settlement Administrator has divided the Net Settlement Amount by the total number of Workweeks of all Class Members during the Class Period to yield the “Estimated Workweek Value,” and multiplied each Class

Member's individual Workweeks during the Class Period by the Estimated Workweek Value to yield his or her estimated Individual Settlement Share that he or she may be eligible to receive under the Settlement (which is listed in Section III.C below). Class Members who do not submit a timely and valid Request for Exclusion by mail or email ("Participating Class Members") will be issued their payment of their final Individual Settlement Share.

Similarly, PAGA Group Members are entitled to receive payment under the Settlement of their *pro rata* share of the PAGA Group Member Amount ("Individual PAGA Payment") based on the number of Workweeks each PAGA Group Member worked in an hourly-paid or non-exempt position at a Super Duper Burgers restaurant during the PAGA Period, excluding periods of time when Class Members' work for Defendants had ceased, employment with Employers had been separated, and/or the Defendants and/or Employers' businesses were closed based on COVID-19 related closures.

The Settlement Administrator will divide the PAGA Group Member Amount by the Workweeks of all PAGA Group Members during the PAGA Period to yield the "PAGA Workweek Value", and multiply each PAGA Group Members' individual Workweeks during the PAGA Period by the PAGA Workweek Value to yield his or her Individual PAGA Payment that he or she is eligible to receive under the Settlement.

Each Individual Settlement Share will be allocated as twenty percent (20%) wages, which will be reported on an IRS Form W-2, and eighty percent (80%) penalties, interest, and non-wage damages, which will be reported on an IRS Form 1099, if applicable. Each Individual Settlement Share shall be subject to reduction for the employee's share of payroll taxes due on the wages portion of the Individual Settlement Share. The employer's share of payroll taxes and contributions in connection with the wages portion of the Individual Settlement Shares ("Employer Taxes") will be paid by Defendants separately and in addition to the Gross Settlement Amount.

Any payment for an Individual PAGA Payment will be allocated as one hundred percent (100%) penalties and will be reported on an IRS Form-1099, if necessary; the Settlement Administrator will not undertake any withholding with respect to the Individual PAGA Payment.

If the Court grants final approval of the Settlement, Individual Settlement Payments will be mailed to Participating Class Members and PAGA Group Members at the address that is on file with the Settlement Administrator. **If the address provided in this Class Notice is not correct, or if you move after you receive this Class Notice, you must provide your correct mailing address to the Settlement Administrator as soon as possible to ensure your receipt of payment that you may be entitled to under the Settlement.**

B. Your Workweeks Based on Defendants' Records

According to Defendants' records:

From September 16, 2015 through [date of Preliminary Approval] (i.e., Class Period), you are credited as having worked [] Workweeks.

If you wish to dispute the Workweeks credited to you, you must submit a written dispute ("Workweeks Dispute"), by e-mail or physical mail which must: (1) contain the case name and number of the Action; (2) state your full name, address, telephone number, and last four digits of your Social Security number; (3) be signed by you; (4) clearly state that you dispute the number of Workweeks credited to you and state the number of Workweeks you believe are correct; and (5) attach any documentation to support the dispute. The Workweeks Dispute must be submitted to the Settlement Administrator by mail or email at the specified address listed in Section V below, postmarked **no later than [Response Deadline]**.

C. Your Estimated Individual Settlement Payment

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

Under the terms of the Settlement, your Individual Settlement Share is estimated to be \$[]. The Individual Settlement Share is subject to reduction for the employee's

share of taxes and withholdings with respect to the wages portion of the Individual Settlement Share.

The settlement approval process may take multiple months. Your Individual Settlement Payment reflected in this Class Notice is only an estimate. Your actual Individual Settlement Payment may be higher or lower. Payments will be distributed only after the Court grants final approval of the Settlement and after the Settlement goes into effect.

D. Released Claims

Upon the Effective Date and full funding of the Gross Settlement Amount, Plaintiff Martinez, all Class Members who have not submitted a timely and valid Request for Exclusion (i.e., Participating Class Members), the State of California with respect to PAGA Group Members, and PAGA Group Members will be deemed to have fully, finally and forever released, settled, compromised, relinquished, discharged all Released Parties of any and all Released Class Claims and Released PAGA Claims. The Parties agree that the judgment, and release of claims provided herein shall have *res judicata* effect. The definition of Released Class Claims shall not be limited in any way by the possibility that Plaintiff Martinez or Participating Class Members may discover new facts or legal theories or legal arguments not alleged in the operative pleadings in the Actions but which might serve as an alternative basis for pursuing the same claims, causes of action, or legal theories of relief falling within the definition of Released Class Claims.

“Released Class Claims” means any and all claims, rights, demands, liabilities, and causes of action of any nature or description, under state, federal, or local law, that were alleged in the operative complaint in the Actions, or reasonably could have been alleged based on the factual allegations contained in the operative complaint in the Actions, arising during the Class Period, including claims for failure to pay all wages due (including minimum, regular, and overtime wages), failure to provide proper meal periods and to properly provide associated premium pay, failure to provide proper rest periods and associated premium pay, failure to pay all wages timely at the time of termination, failure to pay all wages timely during employment, failure to provide compliant wage statements, failure to keep requisite payroll records, and failure to indemnify necessary business expenses, in violation of California Labor Code §§ 201, 202, 203, 204, 218.5, 218.6, 226, 226.7, 510, 512, 1174, 1194, 1197, 1197.1, 1198, 2800 and 2802 and Industrial Welfare Commission Wage Orders Nos. 4-2001, 5-2001, and 7-2001, unfair business practices in violation of California Business & Professions Code § 17200 *et seq.* based on the aforementioned, and all damages, penalties, interest, and other amounts recoverable under the aforementioned claims, causes of action, or legal theories of relief. Plaintiff Martinez and Participating Class Members will release Defendants and the Released Parties from all remedies that could be claimed in connection with the Released Class Claims, including but not limited to, statutory, constitutional, contractual damages, unpaid costs, penalties, punitive damages, interest, attorneys’ fees, litigation costs, restitution, and equitable relief.

“Released PAGA Claims” means any and all causes of action that were alleged in the operative complaint in the Actions and Plaintiff Martinez’s LWDA Letter, or reasonably could have been alleged based on the factual allegations contained in the operative complaint in the Actions and Plaintiff Martinez’s LWDA Letter, arising during the PAGA Period, for civil penalties pursuant to the Private Attorneys General Act, California Labor Code § 2698, *et seq.*, for Defendants’ alleged failure to pay all wages due (including minimum, regular, and overtime wages), failure to provide proper meal periods and to properly provide associated premium pay, failure to provide proper rest periods and associated premium pay, failure to pay all wages timely at the time of termination, failure to pay all wages timely during employment, failure to provide compliant wage statements, failure to keep requisite payroll records, and failure to indemnify necessary business expenses, in violation of California Labor Code §§ 201, 202, 203, 204, 218.5, 218.6, 226, 226.7, 510, 512, 1174, 1194, 1197, 1197.1, 1198, 2800 and 2802 and Industrial Welfare Commission Wage Orders Nos. 4-2001, 5-2001, and 7-2001.

“Released Parties” means Back of the House, Inc., EBurger, LLC, JBurger, LLC, Mission 98 Super, LLC, MBurger, LLC, 2355 Telegraph Ave, LLC, The Veranda Super, LLC, 5399 Prospect Road, LLC, Super Emeryville, LLC, DBurger, LLC, MetBurger, LLC, Super Novato, LLC, Super Los Gatos, LLC, KBurger, LLC, 117 New Montgomery, LLC, 3401 California Street, LLC, Super Napa, LLC, Super Serramonte, LLC, Geary Mas, LLC, Adriano Paganini, and Edmondo Sarti, and each of their past, present and/or future parent companies, partners,

subsidiaries, affiliates, divisions, related companies, successors, and predecessors, as well as their respective past, present and future owners, officers, directors, shareholders, employees, agents, members, managers, principals, representatives, accountants, auditors, consultants, insurers and reinsurers, investors, lenders, administrators, company-sponsored employee benefit plans, assigns, joint venturers, and attorneys, both individually and in their official capacities, as well as all persons acting by, through, under, or in concert with any of these persons or entities.

E. Class Counsel Fees Payment and Litigation Expenses Payment to Class Counsel

Class Counsel will seek attorneys' fees in an amount of up to one-third (1/3) of the Gross Settlement Amount (which is presently estimated to be \$266,666.67) and reimbursement of litigation costs and expenses in an amount of up to Fifteen Thousand Dollars and Zero Cents (\$15,000.00), subject to approval by the Court. All Class Counsel Fees Payment and Litigation Expenses Payment granted by the Court will be paid from the Gross Settlement Amount. Class Counsel has been prosecuting the Actions on a contingency fee basis (that is, without being paid any money to date) and has been paying all litigation costs and expenses.

As a Class Member, you will not be separately responsible for the payment of attorney's fees or litigation costs and expenses, unless you retain your own counsel, in which event you will be responsible for your own attorney's fees and expenses

F. Service Payment to Plaintiff Martinez

Plaintiff Martinez will seek the amount of Ten Thousand Dollars and Zero Cents (\$10,000) ("Service Payment"), in recognition of his services in connection with the Actions. The Service Payment will be paid from the Gross Settlement Amount, subject to approval by the Court, and, if awarded, will be paid to Plaintiff Martinez in addition to any payment he is entitled to under the Settlement.

G. Settlement Administration Expenses to Settlement Administrator

Payment to the Settlement Administrator is estimated not to exceed Thirty-Seven Thousand and Five Hundred Dollars and Zero Cents (\$37,500.00) ("Settlement Administration Expenses") for the costs of the notice and settlement administration process, including but not limited to, the expense of notifying the Class Members of the Settlement, processing Requests for Exclusion, objections, and Workweeks Disputes, calculating Individual Settlement Shares, and distributing payments and tax forms under the Settlement, and shall be paid from the Gross Settlement Amount, subject to approval by the Court.

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

A. If You Do Nothing, You Will Participate in the Settlement

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

You will be bound by the terms of the Settlement and any judgment that may be entered by the Court based thereon, and you will be deemed to have released the Released Class Claims described in Section III.D above.

B. If You Request Exclusion from the Class Settlement, You Will Not Participate in the Class Settlement

If you do not wish to participate in the Class Settlement, you must submit a written request ("Request for Exclusion") by e-mail or physical mail, that must: (1) contain the case name and number of the Action; (2) state your full name, address, telephone number, and last four digits of your Social Security number; (3) be signed by you; and (4) clearly state that you request to be excluded from the Class Settlement. The Request for Exclusion must be submitted to the Settlement Administrator by mail or e-mail, postmarked **no later than [Response Deadline]** at the following address or email which is also listed in Section V below.

[Settlement Administrator]

[Address]

[E-mail Address]

If the Court grants final approval of the Settlement, any Class Member who submits a timely and valid Request for Exclusion from the Class Settlement will not be entitled to receive an Individual Settlement Payment from the Class Settlement, will not be bound by the Class Settlement (and the release of Released Class Claims described in Section III.D above), and will not have any right to object to, appeal, or comment on the Class Settlement. Class Members who do not submit a Request for Exclusion will be deemed Participating Class Members and will be bound by all terms of the Settlement, including those pertaining to the release of Released Class Claims described in Section III.D above, as well as the contemplated judgment to be entered by the Court, if the Court grants final approval of the Settlement. If you submit a timely and valid Request for Exclusion, you will retain your right to pursue your claims against Defendants in a separate action/proceeding.

PAGA Group Members may not opt-out of the PAGA Settlement and will still be paid their respective share of the PAGA Group Member Amount.

C. If You Object to the Class Settlement, You Remain Part of the Class and Participate in the Class Settlement

You may object to the terms of the Class Settlement only if you have not submitted a Request for Exclusion from the Class Settlement, by submitting either a written objection to the Settlement Administrator (“Objection”) by mail or e-mail, or presenting your objection orally at the Final Approval Hearing without any prior notice. You may not object to the Class Settlement if you submitted a Request for Exclusion from the Class Settlement (i.e., you **may not** submit **both** a Request for Exclusion **and** an Objection). If you submit **both** a Request for Exclusion **and** an Objection, the Settlement Administrator will honor the submission that is received **first** and disregard the other.

An Objection must either be submitted orally at the Final Approval Hearing, or, if submitted in writing prior to the Final Approval Hearing, it must: (1) contain the case name and number of the Action; (2) state your full name, address, telephone number, and last four digits of your Social Security number; (3) be signed by you; (4) clearly set forth the grounds for the Objection; (5) attach any documentation that the objection is based upon; and (6) identify any counsel representing you with respect to the objection; and (7) be returned by mail or e-mail to the Settlement Administrator at the address listed in Section VI below, postmarked **no later than** [Response Deadline].

If the Court rejects your Objection, you are still entitled to participate in the Settlement.

DEFENDANTS WILL NOT RETALIATE AGAINST ANY CLASS MEMBER FOR EXERCISING ANY OF THEIR LEGAL RIGHTS AND OPTIONS UNDER THE SETTLEMENT.

V. FINAL APPROVAL HEARING

The Court will hold a Final Approval Hearing in Department 304 of the San Francisco County Superior Court, located at 400 McAllister St., San Francisco, California 94102, on [date] at [time], to determine whether the Settlement should be finally approved as fair, reasonable, and adequate. The Court also will be asked to approve and award Class Counsel Fees Payment and Litigation Expenses Payment to Class Counsel, Service Payment to Plaintiff Martinez, and Settlement Administration Expenses to the Settlement Administrator.

The hearing may be continued without further notice to the Class Members who did not submit a written objection. The Class Members who submit a written objection shall receive notice if the Final Approval Hearing is continued. It is not necessary for you to appear at the Final Approval Hearing, although you may appear if you wish to.

If you’d like to appear remotely, please contact Plaintiff Martinez’s Counsel (contact information for Lawyers for Justice is listed above in Section II) who can then request a remote appearance on your behalf.

You can visit the Court's website for the most up-to-date information regarding the impact of COVID-19 on the operations of the Court and any requirements that may apply for accessing Court facilities: <https://sf.courts.ca.gov/>. Please note that there may be deadlines to reserve a remote appearance and reservation fees or charges may apply.

[Settlement Administrator]

[Address]

[E-mail Address]

VI. ADDITIONAL INFORMATION

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

The easiest way to read the Settlement Agreement, the Judgment, or any other Settlement document is to go to the Settlement Administrator's website at [Administrator URL].

You may also view the Settlement Agreement and documents filed in the Actions for free by visiting the civil clerk's office, located at 400 McAllister St., Room 103, San Francisco, California 94102, during business hours, or online by visiting the following website: <https://sf.courts.ca.gov/online-services/case-information>, clicking "Access Now" under Case Query and typing in the Court Case Number "CJC-22-005249."

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

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

EXHIBIT G

NOTICE OF CLASS ACTION SETTLEMENT

JCCP Case No. 5249 Super Duper Burgers Wage and Hour Cases

PLEASE READ THIS CLASS NOTICE CAREFULLY.

You have received this Class Notice because Defendants' records indicate that you are a current or former employee of a Super Duper Burgers restaurant in California between September 16, 2015 through [date of Preliminary Approval], and a class action settlement described in this letter may affect your rights. You may be eligible to take part in the class action settlement reached in the above-referenced cases.

Deleted: restaurants

You do not need to take any action to receive a settlement payment and, unless you request to be excluded from the settlement, your legal rights may be affected.

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

A court authorized this notice. This is not a solicitation from a lawyer.

WHY YOU ARE GETTING THIS NOTICE : A class action settlement has been reached between Plaintiff Erickson Martinez ("Plaintiff Martinez") and Defendants Back of the House, Inc.; EBurger, LLC; JBurger, LLC; Mission 98 Super, LLC; MBurger, LLC; 2355 Telegraph Ave, LLC; The Veranda Super, LLC; 5399 Prospect Road, LLC; Super Emeryville, LLC; DBurger, LLC; MetBurger, LLC; Super Novato, LLC; Super Los Gatos, LLC; KBurger, LLC; Adriano Paganini; and Edmondo Sarti (together, "Defendants") (Plaintiff Martinez and Defendants are collectively referred to as the "Parties") in the class action cases, which have been coordinated under Judicial Council Coordination Proceeding No. 5249 (Superior Court of California, County of San Francisco Case No. CJC-22-005249); *Erickson Martinez v. Back of the House, Inc., et al.*, Case No. CGC-21-594380 pending in the Superior Court of the State of California, County of San Francisco; *Erickson Martinez v. Back of the House, Inc., et al.*, Case No. RG21113642 pending in the Superior Court of the State of California, County of Alameda; and *Magaly Olayo Lopez v. Back of the House, Inc., et al.*, Case No. CGC-19-579264 pending in the Superior Court of the State of California, County of San Francisco (together, the "Actions"), which may affect your legal rights. This class action settlement is ONLY between Plaintiff Martinez and Defendants. On [date of Preliminary Approval], the Court granted preliminary approval of the settlement and scheduled a hearing on [hearing date] at [hearing time] ("Final Approval Hearing") to determine whether or not the Court should grant final approval of the settlement.

I. IMPORTANT DEFINITIONS

"Class" means all current and former hourly-paid or non-exempt employees who worked for any of the Defendants or Employers at a Super Duper Burgers restaurant within the State of California at any time during the Class Period.

Deleted: restaurants

"Class Member" means a member of the Class.

"Class Period" means the time period from September 16, 2015 through March 4, 2025.

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"PAGA Group Member(s)" means all current and former hourly-paid or non-exempt employees who worked for any of the Defendants or Employers at a Super Duper Burgers restaurant within the State of California at any time during the PAGA Period.

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"PAGA Period" means the period from May 17, 2018 through March 4, 2025.

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II. BACKGROUND OF THE ACTIONS

On September 16, 2019, Plaintiff Magaly Olayo Lopez ("Plaintiff Lopez") filed a Class Action Complaint ("*Lopez* Complaint") against Defendants Back of the House, Inc., Mission 98 Super, LLC, MBurger, LLC, and JBurger,

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LLC in the Superior Court of the State of California for the County of San Francisco, Case No. CGC-19-579264. On December 19, 2019, Defendants Back of the House, Inc., Mission 98 Super, LLC, MBurger, LLC, and JBurger, LLC filed an Answer to the *Lopez* Complaint. On July 16, 2020, Plaintiff Lopez filed an Amendment to the *Lopez* Complaint, thereby adding the following additional Defendants: 2355 Telegraph Ave, LLC; The Veranda Super, LLC; 5399 Prospect Road, LLC; Super Emeryville, LLC; DBurger, LLC; EBurger, LLC; MetBurger, LLC; Super Novato, LLC; Super Los Gatos, LLC; and KBurger, LLC. On December 14, 2020, Defendants 2355 Telegraph Ave, LLC; The Veranda Super, LLC; 5399 Prospect Road, LLC; Super Emeryville, LLC; DBurger, LLC; EBurger, LLC; MetBurger, LLC; Super Novato, LLC; Super Los Gatos, LLC; and KBurger, LLC filed an Answer to the *Lopez* Complaint.

On August 9, 2021, Plaintiff Martinez filed a Class Action Complaint for Damages (“*Martinez* Class Complaint”) against Defendants Back of the House, Inc., EBurger, LLC, and JBurger, LLC in the Superior Court of the State of California for the County of San Francisco, Case No. CGC-21-594380 (“*Martinez* Class Action”). On September 23, 2021, Plaintiff Martinez filed a Complaint for Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, Et Seq. against Defendants Back of the House, Inc., EBurger, LLC, Adriano Paganini, and Edmondo Sarti for penalties under the California Private Attorneys General Act in the Superior Court of the State of California for the County of Alameda, Case No. RG21113642 (“*Martinez* PAGA Action”). On December 3, 2021, Defendants Back of the House, Inc., EBurger, LLC, and JBurger, LLC filed an Answer to the *Martinez* Class Action Complaint. On December 3, 2021, Defendants Back of the House, Inc., EBurger, LLC, Adriano Paganini, and Edmondo Sarti filed an Answer to the *Martinez* PAGA Complaint.

On September 15, 2022, the Court entered the Order Granting Petition for Coordination, thereby coordinating the *Lopez* Action, *Martinez* Class Action, and *Martinez* PAGA Action in the coordinated proceeding entitled Super Duper Burgers Wage and Hour Cases in the Superior Court of the State of California for the County of San Francisco, Case No. CJC-22-005249 and Judicial Council Coordination Proceeding No. 5249 (i.e., Action).

On January 13, 2023, Plaintiff Martinez and Plaintiff Lopez filed the Consolidated Class Action Complaint for Damages & Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, Et Seq. (“Operative Complaint”) against Defendants in the Action. On March 17, 2023, Defendants filed an Answer to the Operative Complaint.

Plaintiffs allege that Defendants failed to properly pay minimum and overtime wages, provide compliant meal and rest breaks and associated premiums, timely pay wages during employment and upon termination of employment and associated waiting-time penalties, provide compliant wage statements, keep requisite payroll records, reimburse business expenses, and thereby engaged in unfair business practices in violation of California Business and Professions Code section 17200, *et seq.* Plaintiffs seek, among other things, recovery of unpaid wages and meal and rest period premiums, unreimbursed business expenses, restitution, penalties, interest, and attorneys’ fees and costs.

Defendants deny all of the allegations in the Actions and deny that they violated any laws.

After investigation and analysis of the claims, the Parties engaged in good faith, arm’s-length negotiations, and, as a result, the Parties reached a settlement. The Parties have since entered into the Second Amended Joint Stipulation of Class Action and PAGA Settlement Agreement and Release (“Agreement,” “Settlement,” or “Settlement Agreement”).

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

Arby Aiwanian, Esq.
Joanna Ghosh, Esq.
Tara Zabehi, Esq.

Lawyers for Justice, PC
450 North Brand Blvd., Suite 900
Glendale, California 91203
Telephone: (818) 265-1020 / Fax: (818) 265-1021

If you are a Class Member, you do not need to take any action to receive an Individual Settlement Payment, but you have the opportunity to request exclusion from the Class Settlement (in which case you will not receive an Individual Settlement Payment), object to the Class Settlement, and/or dispute the Workweeks credited to you, if you so choose, as explained more fully in Sections III and IV below.

Because this Settlement resolves claims brought pursuant to PAGA by Plaintiff Martinez acting as a representative and as a Private Attorney General of and for the State of California and the Labor and Workforce Development Agency ("LWDA"), a PAGA Group Member cannot opt out of the release of the claims for PAGA civil penalties set forth in the Settlement Agreement. All PAGA Group Members will release the Released PAGA Claims and will be paid their respective shares of the PAGA Fund.

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The Settlement represents a compromise and settlement of highly disputed claims. Nothing in the Settlement is intended to or will be construed as an admission by Defendants that the claims in the Actions have merit or that Defendants have any liability to Plaintiff Martinez, Class Members, and PAGA Group Members. Plaintiff Martinez and Defendants, and their respective counsel, have concluded and agree that, in light of the risks and uncertainties to each side of continued litigation, the Settlement is fair, reasonable, and adequate, and is in the best interest of the Class Members. The Court has made no ruling on the merits of the claims asserted in the Actions and has determined only that certification of the Class for settlement purposes is appropriate under California law.

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Defendants maintain that they complied at all times with California law and deny that they did anything wrong. Defendants disputed and still dispute the claims made against them.

III. SUMMARY OF THE PROPOSED SETTLEMENT

A. Settlement Formula

The total gross settlement amount is Eight Hundred Thousand Dollars and Zero Cents (\$800,000.00) (the "Gross Settlement Amount"). The portion of the Gross Settlement Amount that is available for payment to Class Members is referred to as the "Net Settlement Amount." The Net Settlement Amount will be the Gross Settlement Amount less the following payments, which are subject to approval by the Court: (1) attorneys' fees in an amount not to exceed one-third (1/3) of the Gross Settlement Amount (which is presently estimated to be \$266,666.67) and reimbursement of litigation costs and expenses in an amount not to exceed Fifteen Thousand Dollars and Zero Cents (\$15,000.00) (together, "Class Counsel Fees Payment and Litigation Expenses Payment") to Class Counsel; (2) Service Payment in an amount up to Ten Thousand Dollars and Zero Cents (\$10,000.00) to Plaintiff Martinez for his services in the Actions; (3) Fifty Thousand Dollars and Zero Cents (\$50,000.00) ("PAGA Payment"), with Seventy-Five Percent (75%) or Thirty-Seven Thousand Five Hundred Dollars and Zero Cents (\$37,500.00) of the PAGA Settlement Amount to be paid to the LWDA ("LWDA Payment") and Twenty-Five Percent (25%) or Twelve Thousand Five Hundred Dollars and Zero Cents (\$12,500.00) ("PAGA Group Member Amount") to be paid to PAGA Group Members; and (4) Settlement Administration expenses in an amount not to exceed Thirty-Seven Thousand Five Hundred Dollars and Zero Cents (\$37,500.00) to the Settlement Administrator ("Settlement Administration Expenses").

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Class Members are entitled to receive payment under the Settlement of their *pro rata* share of the Net Settlement Amount ("Individual Settlement Share") based on the number of Workweeks each Class Member worked in an hourly-paid or non-exempt position at a Super Duper Burgers restaurant during the Class Period, excluding periods of time when Class Members' employment were separated or the businesses were closed based on COVID-19 related closures ("Workweeks").

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The Settlement Administrator has divided the Net Settlement Amount by the total number of Workweeks of all Class Members during the Class Period to yield the "Estimated Workweek Value," and multiplied each Class

Member's individual Workweeks during the Class Period by the Estimated Workweek Value to yield his or her estimated Individual Settlement Share that he or she may be eligible to receive under the Settlement (which is listed in Section III.C below). Class Members who do not submit a timely and valid Request for Exclusion by mail or email ("Participating Class Members") will be issued their payment of their final Individual Settlement Share.

Similarly, PAGA Group Members are entitled to receive payment under the Settlement of their *pro rata* share of the PAGA Group Member Amount ("Individual PAGA Payment") based on the number of Workweeks each PAGA Group Member worked in an hourly-paid or non-exempt position at a Super Duper Burgers restaurant during the PAGA Period, excluding periods of time when Class Members' work for Defendants had ceased, employment with Employers had been separated, and/or the Defendants and/or Employers' businesses were closed based on COVID-19 related closures.

The Settlement Administrator will divide the PAGA Group Member Amount by the Workweeks of all PAGA Group Members during the PAGA Period to yield the "PAGA Workweek Value", and multiply each PAGA Group Members' individual Workweeks during the PAGA Period by the PAGA Workweek Value to yield his or her Individual PAGA Payment that he or she is eligible to receive under the Settlement.

Each Individual Settlement Share will be allocated as twenty percent (20%) wages, which will be reported on an IRS Form W-2, and eighty percent (80%) penalties, interest, and non-wage damages, which will be reported on an IRS Form 1099, if applicable. Each Individual Settlement Share shall be subject to reduction for the employee's share of payroll taxes due on the wages portion of the Individual Settlement Share. The employer's share of payroll taxes and contributions in connection with the wages portion of the Individual Settlement Shares ("Employer Taxes") will be paid by Defendants separately and in addition to the Gross Settlement Amount.

Any payment for an Individual PAGA Payment will be allocated as one hundred percent (100%) penalties and will be reported on an IRS Form-1099, if necessary; the Settlement Administrator will not undertake any withholding with respect to the Individual PAGA Payment.

If the Court grants final approval of the Settlement, Individual Settlement Payments will be mailed to Participating Class Members and PAGA Group Members at the address that is on file with the Settlement Administrator. **If the address provided in this Class Notice is not correct, or if you move after you receive this Class Notice, you must provide your correct mailing address to the Settlement Administrator as soon as possible to ensure your receipt of payment that you may be entitled to under the Settlement.**

B. Your Workweeks Based on Defendants' Records

According to Defendants' records:

From September 16, 2015 through [date of Preliminary Approval] (i.e., Class Period), you are credited as having worked [] Workweeks.

If you wish to dispute the Workweeks credited to you, you must submit a written dispute ("Workweeks Dispute"), by e-mail or physical mail which must: (1) contain the case name and number of the Action; (2) state your full name, address, telephone number, and last four digits of your Social Security number; (3) be signed by you; (4) clearly state that you dispute the number of Workweeks credited to you and state the number of Workweeks you believe are correct; and (5) attach any documentation to support the dispute. The Workweeks Dispute must be submitted to the Settlement Administrator by mail or email at the specified address listed in Section V below, postmarked **no later than [Response Deadline]**.

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C. Your Estimated Individual Settlement Payment

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

Under the terms of the Settlement, your Individual Settlement Share is estimated to be \$[]. The Individual Settlement Share is subject to reduction for the employee's

share of taxes and withholdings with respect to the wages portion of the Individual Settlement Share.

The settlement approval process may take multiple months. Your Individual Settlement Payment reflected in this Class Notice is only an estimate. Your actual Individual Settlement Payment may be higher or lower. Payments will be distributed only after the Court grants final approval of the Settlement and after the Settlement goes into effect.

D. Released Claims

Upon the Effective Date and full funding of the Gross Settlement Amount, Plaintiff Martinez, all Class Members who have not submitted a timely and valid Request for Exclusion (i.e., Participating Class Members), the State of California with respect to PAGA Group Members, and PAGA Group Members will be deemed to have fully, finally and forever released, settled, compromised, relinquished, discharged all Released Parties of any and all Released Class Claims and Released PAGA Claims. The Parties agree that the judgment, and release of claims provided herein shall have *res judicata* effect. The definition of Released Class Claims shall not be limited in any way by the possibility that Plaintiff Martinez or Participating Class Members may discover new facts or legal theories or legal arguments not alleged in the operative pleadings in the Actions but which might serve as an alternative basis for pursuing the same claims, causes of action, or legal theories of relief falling within the definition of Released Class Claims.

“Released Class Claims” means any and all claims, rights, demands, liabilities, and causes of action of any nature or description, under state, federal, or local law, that were alleged in the operative complaint in the Actions, or reasonably could have been alleged based on the factual allegations contained in the operative complaint in the Actions, arising during the Class Period, including claims for failure to pay all wages due (including minimum, regular, and overtime wages), failure to provide proper meal periods and to properly provide associated premium pay, failure to provide proper rest periods and associated premium pay, failure to pay all wages timely at the time of termination, failure to pay all wages timely during employment, failure to provide compliant wage statements, failure to keep requisite payroll records, and failure to indemnify necessary business expenses, in violation of California Labor Code §§ 201, 202, 203, 204, 218.5, 218.6, 226, 226.7, 510, 512, 1174, 1194, 1197, 1197.1, 1198, 2800 and 2802 and Industrial Welfare Commission Wage Orders Nos. 4-2001, 5-2001, and 7-2001, unfair business practices in violation of California Business & Professions Code § 17200 *et seq.* based on the aforementioned, and all damages, penalties, interest, and other amounts recoverable under the aforementioned claims, causes of action, or legal theories of relief. Plaintiff Martinez and Participating Class Members will release Defendants and the Released Parties from all remedies that could be claimed in connection with the Released Class Claims, including but not limited to, statutory, constitutional, contractual damages, unpaid costs, penalties, punitive damages, interest, attorneys’ fees, litigation costs, restitution, and equitable relief.

“Released PAGA Claims” means any and all causes of action that were alleged in the operative complaint in the Actions and Plaintiff Martinez’s LWDA Letter, or reasonably could have been alleged based on the factual allegations contained in the operative complaint in the Actions and Plaintiff Martinez’s LWDA Letter, arising during the PAGA Period, for civil penalties pursuant to the Private Attorneys General Act, California Labor Code § 2698, *et seq.*, for Defendants’ alleged failure to pay all wages due (including minimum, regular, and overtime wages), failure to provide proper meal periods and to properly provide associated premium pay, failure to provide proper rest periods and associated premium pay, failure to pay all wages timely at the time of termination, failure to pay all wages timely during employment, failure to provide compliant wage statements, failure to keep requisite payroll records, and failure to indemnify necessary business expenses, in violation of California Labor Code §§ 201, 202, 203, 204, 218.5, 218.6, 226, 226.7, 510, 512, 1174, 1194, 1197, 1197.1, 1198, 2800 and 2802 and Industrial Welfare Commission Wage Orders Nos. 4-2001, 5-2001, and 7-2001.

“Released Parties” means Back of the House, Inc., EBurger, LLC, JBurger, LLC, Mission 98 Super, LLC, MBurger, LLC, 2355 Telegraph Ave, LLC, The Veranda Super, LLC, 5399 Prospect Road, LLC, Super Emeryville, LLC, DBurger, LLC, MetBurger, LLC, Super Novato, LLC, Super Los Gatos, LLC, KBurger, LLC, 117 New Montgomery, LLC, 3401 California Street, LLC, Super Napa, LLC, Super Serramonte, LLC, Geary Mas, LLC, Adriano Paganini, and Edmondo Sarti, and each of their past, present and/or future parent companies, partners,

subsidiaries, affiliates, divisions, related companies, successors, and predecessors, as well as their respective past, present and future owners, officers, directors, shareholders, employees, agents, members, managers, principals, representatives, accountants, auditors, consultants, insurers and reinsurers, investors, lenders, administrators, company-sponsored employee benefit plans, assigns, joint venturers, and attorneys, both individually and in their official capacities, as well as all persons acting by, through, under, or in concert with any of these persons or entities.

E. Class Counsel Fees Payment and Litigation Expenses Payment to Class Counsel

Class Counsel will seek attorneys' fees in an amount of up to one-third (1/3) of the Gross Settlement Amount (which is presently estimated to be \$266,666.67) and reimbursement of litigation costs and expenses in an amount of up to Fifteen Thousand Dollars and Zero Cents (\$15,000.00), subject to approval by the Court. All Class Counsel Fees Payment and Litigation Expenses Payment granted by the Court will be paid from the Gross Settlement Amount. Class Counsel has been prosecuting the Actions on a contingency fee basis (that is, without being paid any money to date) and has been paying all litigation costs and expenses.

As a Class Member, you will not be separately responsible for the payment of attorney's fees or litigation costs and expenses, unless you retain your own counsel, in which event you will be responsible for your own attorney's fees and expenses

F. Service Payment to Plaintiff Martinez

Plaintiff Martinez will seek the amount of Ten Thousand Dollars and Zero Cents (\$10,000) ("Service Payment"), in recognition of his services in connection with the Actions. The Service Payment will be paid from the Gross Settlement Amount, subject to approval by the Court, and, if awarded, will be paid to Plaintiff Martinez in addition to any payment he is entitled to under the Settlement.

G. Settlement Administration Expenses to Settlement Administrator

Payment to the Settlement Administrator is estimated not to exceed Thirty-Seven Thousand and Five Hundred Dollars and Zero Cents (\$37,500.00) ("Settlement Administration Expenses") for the costs of the notice and settlement administration process, including but not limited to, the expense of notifying the Class Members of the Settlement, processing Requests for Exclusion, objections, and Workweeks Disputes, calculating Individual Settlement Shares, and distributing payments and tax forms under the Settlement, and shall be paid from the Gross Settlement Amount, subject to approval by the Court.

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

A. If You Do Nothing, You Will Participate in the Settlement

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

You will be bound by the terms of the Settlement and any judgment that may be entered by the Court based thereon, and you will be deemed to have released the Released Class Claims described in Section III.D above.

B. If You Request Exclusion from the Class Settlement, You Will Not Participate in the Class Settlement

If you do not wish to participate in the Class Settlement, you must submit a written request ("Request for Exclusion") by e-mail or physical mail, that must: (1) contain the case name and number of the Action; (2) state your full name, address, telephone number, and last four digits of your Social Security number; (3) be signed by you; and (4) clearly state that you request to be excluded from the Class Settlement. The Request for Exclusion must be submitted to the Settlement Administrator by mail or e-mail, postmarked **no later than [Response Deadline]** at the following address, ~~or email which is also listed in Section V below.~~

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[Settlement Administrator]

[Address]

[E-mail Address]

If the Court grants final approval of the Settlement, any Class Member who submits a timely and valid Request for Exclusion from the Class Settlement will not be entitled to receive an Individual Settlement Payment from the Class Settlement, will not be bound by the Class Settlement (and the release of Released Class Claims described in Section III.D above), and will not have any right to object to, appeal, or comment on the Class Settlement. Class Members who do not submit a Request for Exclusion will be deemed Participating Class Members and will be bound by all terms of the Settlement, including those pertaining to the release of Released Class Claims described in Section III.D above, as well as the contemplated judgment to be entered by the Court, if the Court grants final approval of the Settlement. If you submit a timely and valid Request for Exclusion, you will retain your right to pursue your claims against Defendants in a separate action/proceeding.

PAGA Group Members may not opt-out of the PAGA Settlement and will still be paid their respective share of the PAGA Group Member Amount.

C. If You Object to the Class Settlement, You Remain Part of the Class and Participate in the Class Settlement

You may object to the terms of the Class Settlement only if you have not submitted a Request for Exclusion from the Class Settlement, by submitting either a written objection to the Settlement Administrator (“Objection”) by mail or e-mail, or presenting your objection orally at the Final Approval Hearing without any prior notice. You may not object to the Class Settlement if you submitted a Request for Exclusion from the Class Settlement (i.e., you **may not** submit **both** a Request for Exclusion **and** an Objection). If you submit **both** a Request for Exclusion **and** an Objection, the Settlement Administrator will honor the submission that is received **first** and disregard the other.

An Objection must either be submitted orally at the Final Approval Hearing, or, if submitted in writing prior to the Final Approval Hearing, it must: (1) contain the case name and number of the Action; (2) state your full name, address, telephone number, and last four digits of your Social Security number; (3) be signed by you; (4) clearly set forth the grounds for the Objection; (5) attach any documentation that the objection is based upon; and (6) identify any counsel representing you with respect to the objection; and (7) be returned by mail or e-mail to the Settlement Administrator at the address listed in Section **VI below**, postmarked **no later than [Response Deadline]**.

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If the Court rejects your Objection, you are still entitled to participate in the Settlement.

DEFENDANTS WILL NOT RETALIATE AGAINST ANY CLASS MEMBER FOR EXERCISING ANY OF THEIR LEGAL RIGHTS AND OPTIONS UNDER THE SETTLEMENT.

V. FINAL APPROVAL HEARING

The Court will hold a Final Approval Hearing in Department 304 of the San Francisco County Superior Court, located at 400 McAllister St., San Francisco, California 94102, on **[date]** at **[time]**, to determine whether the Settlement should be finally approved as fair, reasonable, and adequate. The Court also will be asked to approve and award Class Counsel Fees Payment and Litigation Expenses Payment to Class Counsel, Service Payment to Plaintiff Martinez, and Settlement Administration Expenses to the Settlement Administrator.

The hearing may be continued without further notice to the Class Members **who did not submit a written objection. The Class Members who submit a written objection shall receive notice if the Final Approval Hearing is continued.** It is not necessary for you to appear at the Final Approval Hearing, although you may appear if you wish to.

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If you’d like to appear remotely, please contact Plaintiff Martinez’s Counsel (contact information for Lawyers for Justice is listed above in Section II) who can then request a remote appearance on your behalf.

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Please note, due to COVID-19, there are limitations on personal appearances, but telephonic appearances are available.

You can visit the Court's website for the most up-to-date information regarding the impact of COVID-19 on the operations of the Court and any requirements that may apply for accessing Court facilities: <https://sf.courts.ca.gov/>. Please note that there may be deadlines to reserve a remote appearance and reservation fees or charges may apply.

[Settlement Administrator]

[Address]

[E-mail Address]

VI. ADDITIONAL INFORMATION

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

The easiest way to read the Settlement Agreement, the Judgment, or any other Settlement document is to go to the Settlement Administrator's website at [Administrator URL].

You may also view the Settlement Agreement and documents filed in the Actions for free by visiting the civil clerk's office, located at 400 McAllister St., Room 103, San Francisco, California 94102, during business hours, or online by visiting the following website: <https://sf.courts.ca.gov/online-services/case-information>, clicking "Access Now" under Case Query and typing in the Court Case Number "CJC-22-005249."

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

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

EXHIBIT H

CASE NAME: SUPER DUPER BURGERS

Requesting Attorney: Stephen Wilson
Plaintiff or Defense: Plaintiff
Firm Name: Lawyers for Justice
Telephone: (818) 265-1020
Email: stephen@calljustice.com

Date: March 11, 2025
Prepared By: Ryan Schley, Esq.
 50 Corporate Park, Irvine CA 92606
 Ryan@CPTGroup.com
Direct Number: (949) 358-0404
Main Number: (800) 542-0900

PROJECT ASSUMPTIONS & ADMINISTRATIVE COSTS

Class Size: 1,425 Opt-Out Filing Rate: 1.5% No. of Checks Issued: 1,404 Language Translation Services: Yes Settlement Website: Interactive Website Notice Procedures: Mail & Email	Undeliverable Mail Rate: 8% Payment Option: Check Unclaimed Funds: Redistribution Postage Total: \$3,426.27 Grand Total: \$34,302.08 CPT'S DISCOUNTED FEE: \$23,500.00
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NOT TO EXCEED: \$37,500.00

The services and numbers reflected herein are estimates based on the information provided by counsel at the time of this Bid. If the actual services and numbers are different, our cost estimate will change accordingly. Client expressly acknowledges and agrees that estimated fees and costs may fluctuate and agrees to pay for any such increases to such estimates as if set forth herein.

The attached Terms and Conditions are included as part of and incorporated by reference to our cost proposal. By accepting our cost proposal for this matter, you are thereby agreeing to the Terms and Conditions.

CASE SETUP

After receiving the data, CPT will scrub all records to eliminate duplicates and anomalies; this process is designed to achieve a higher success percentage in delivering the Class Notice. Each Class Member will receive a unique mailing ID that will be utilized for all administrative purposes. CPT will setup and maintain a dedicated case email address. The Settlement website will publish the full Notice and all relevant case documents for downloading and opt-out filing. Notice to be translated into Spanish.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Project Manager: Case Intake & Review	\$95.00	7	\$665.00
Programming: Data Base Setup	\$150.00	7	\$1,050.00
Dedicated Case Email Address	\$150.00	2	\$300.00
W&H - Interactive Website	\$2,500.00	1	\$2,500.00
Spanish Translation	\$1,200.00	1	\$1,200.00
Sub Total:			\$5,715.00

DIRECT EMAIL NOTIFICATION

Counsel estimates that Defendant will provide email addresses for all Class Members. Before email notification, CPT will perform a third-party email validation scan to improve the success rate of deliverability and reduce the number of undeliverable emails.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Project Manager-Email Notice Format	\$95.00	2	\$190.00
Third-Party Email Validation	\$0.10	1,425	\$142.50
Email Notification: Setup/Establish/Formatting	\$150.00	4	\$600.00
Email Notification: Segmentation/Sending	\$150.00	6	\$900.00
Email Notification: Reporting/Monitoring	\$250.00	2	\$500.00
Email Summary Notices: Initial Notification (100%)	\$0.15	1,425	\$213.75
Updated Database: Undeliverable Email (10%)	\$0.15	143	\$21.38
Sub Total:			\$2,567.63

DIRECT MAIL NOTIFICATION

CPT will perform an address update via NCOA and, if necessary, conduct an additional skip trace in order to ensure that mail is delivered to the most current address possible. A detailed notice and a one-page opt-out form will be mailed in English and Spanish.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Project Manager: Format Documents	\$95.00	2	\$190.00
National Change of Address Search (NCOA)	\$135.00	1	\$135.00
XML Lex ID Skip Trace	\$0.85	143	\$121.55
Print & Mail Notice Packets	\$1.50	1,425	\$2,137.50
First-Class Postage (up to 2 oz.)*	\$0.97	1,425	\$1,382.25
Sub Total:			\$3,966.30

*Postage costs are subject to change at anytime. The final rate will be determined at the time of mailing.

PROCESS RETURNED UNDELIVERABLE MAIL

According to CPT's historical data, 8% of the notices are returned as undeliverable. Upon notification from USPS, CPT performs a skip trace to locate a current address. Typically, 70% of the undeliverable notice packets are eligible for remail with an updated address.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Clerical Staff	\$60.00	2	\$120.00
Update Undeliverable Mail Database	\$0.50	114	\$57.00
Skip Trace for Best Address	\$1.00	101	\$101.00
Print & Remail Notice Packets	\$1.50	80	\$120.00
First-Class Postage (up to 2 oz.)	\$0.97	80	\$77.60
Sub Total:			\$475.60

OPT-OUT PROCESSING

CPT will thoroughly examine the submissions to identify and remove any duplicates, fraudulent responses, or otherwise invalid submissions. CPT will process and verify opt-outs, objections, and other responses submitted by class members. Deficient responses will be sent a follow-up notice, offering the class member a chance to cure.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Programming: De-duplication/Scrubbing	\$150.00	6	\$900.00
Project Manager: Validate Opt-Outs	\$95.00	1	\$95.00
Clerical Staff	\$60.00	1	\$60.00
Opt-Out Processing	\$2.50	21	\$53.44
Print & Mail Deficiency/Dispute Notices	\$1.50	2	\$3.00
First-Class Postage (up to 1 oz.)	\$0.69	2	\$1.38
Review & Process Deficiency Responses	\$10.00	1	\$10.00
Sub Total:			\$1,122.82

CLASS MEMBER SUPPORT

CPT will establish a toll-free telephone number equipped with interactive voice response (IVR) capabilities and live customer support representatives. Live support will be available during regular business hours, Monday to Friday, 9:00 AM to 5:30 PM, Pacific Time (PT). The dedicated case phone number shall be operational for a maximum of 120 days following the disbursement.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Toll-Free Number Establish/Setup	\$150.00	2	\$300.00
Live Call Center Support Reps.	\$3.00	285	\$855.00
Sub Total:			\$1,155.00

SSN VERIFICATION

Authenticate Social Security Number for validity using IRS verification processes and/or IRS backup withholdings processes.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Programming: SSN Selection	\$150.00	1	\$150.00
Department Manager: Analysis & Reporting	\$95.00	3	\$285.00
IRS SSN Verification	\$0.10	1,404	\$140.36
Sub Total:			\$575.36

DISTRIBUTION SERVICES

CPT will establish a 26 CFR § 1.468B-1 compliant Qualified Settlement Fund (QSF). Upon Final Approval, CPT will perform the required settlement payment calculations, and once approved by the parties, CPT will issue a (MICR) check to all eligible claimants. CPT will also issue an IRS Form 1099 and/or IRS Form W2 when applicable. CPT utilizes the bank's Payee Positive Pay to prevent check fraud and performs monthly account reconciliations for the QSF bank account. Undeliverable checks are skip-traced to obtain a current address and are remailed accordingly. Requests for check reissues will be processed throughout the check cashing period. CPT's administration of the QSF will continue for a maximum duration of one year following the initial distribution of funds.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Programming: Calculation Totals	\$150.00	3	\$450.00
Project Supervisor: Review of Distribution	\$150.00	3	\$450.00
Project Manager: Correspondence w/Parties	\$95.00	2	\$190.00
Programming: Setup & Printing of Checks	\$150.00	4	\$600.00
Obtain EIN, Setup QSF/Bank Account	\$150.00	3	\$450.00
Print & Mail Notice, Checks & W2/1099	\$2.50	1,404	\$3,509.06
First-Class Postage (up to 1 oz.)	\$0.69	1,404	\$968.50
Project Supervisor: Account Reconciliation	\$100.00	12	\$1,200.00
Update Undeliverable Checks Database	\$0.50	70	\$35.09
Skip Trace for Best Address	\$1.00	70	\$70.18
Remail Undeliverable Checks	\$2.50	64	\$160.00
First-Class Postage (up to 1 oz.)	\$0.69	64	\$44.16
Re-Issue Checks as Required	\$5.00	57	\$285.00
First-Class Postage (up to 1 oz.)	\$0.69	57	\$39.33
Sub Total:			\$8,451.33

REDISTRIBUTION SERVICES

Upon Final Approval, CPT will perform the required settlement payment calculations, and once approved by the parties, CPT will issue a (MICR) check to all eligible claimants. CPT will also issue an IRS Form 1099 and/or IRS Form W2 when applicable. CPT utilizes the bank's Payee Positive Pay to prevent check fraud and performs monthly account reconciliations for the QSF bank account. Undeliverable checks are skip-traced to obtain a current address and are remailed accordingly. Requests for check reissues will be processed throughout the check cashing period. CPT's administration of the QSF will continue for a maximum duration of one year following the initial distribution of funds.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Programming: Calculation Totals	\$150.00	3	\$450.00
Project Supervisor: Review of Distribution	\$150.00	3	\$450.00
Project Manager: Correspondence w/Parties	\$95.00	2	\$190.00
Programming: Setup & Printing of Checks	\$150.00	4	\$600.00
Print & Mail Notice, Checks & W2/1099	\$2.50	1,263	\$3,158.16
First-Class Postage (up to 1 oz.)	\$0.69	1,263	\$871.65
Project Supervisor: Account Reconciliation	\$100.00	12	\$1,200.00
Update Undeliverable Checks Database	\$0.50	38	\$18.95
Skip Trace for Best Address	\$1.00	38	\$37.90
Remail Undeliverable Checks	\$2.50	34	\$85.00
First-Class Postage (up to 1 oz.)	\$0.69	34	\$23.46
Re-Issue Checks as Required	\$5.00	26	\$130.00
First-Class Postage (up to 1 oz.)	\$0.69	26	\$17.94
Sub Total:			\$7,233.05

TAX REPORTING & SETTLEMENT CONCLUSION

CPT prepares annual tax reporting on behalf of the QSF and Federal and State taxes in accordance with current state and federal regulations. All parties will be furnished with weekly and final reports. A declaration attesting to due process will be provided to all parties. Unclaimed funds sent to Cy Pres.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Project Supervisor: Reconcile Uncashed Chk	\$150.00	1	\$150.00
Programming: Weekly & Final Reports	\$150.00	2	\$300.00
Project Supervisor: Final Declaration	\$150.00	2	\$300.00
Project Manager: Account Files Sent to Atty	\$95.00	2	\$190.00
CA Tax Preparation*	\$600.00	1	\$600.00
Annual Tax Reporting to IRS*	\$1,000.00	1	\$1,000.00
QSF Annual Tax Reporting	\$500.00	1	\$500.00
Unclaimed Funds Sent to Cy Pres	No Fee	1	No Fee
Sub Total:			\$3,040.00

*CPT will file Federal and California taxes in accordance with current state and federal regulations. Additional charges will apply if the Settlement/Order/parties require(s) multiple state tax filings.

Total Administration Costs: \$34,302.08

Courtesy Discount: -\$10,802.08

CPT'S DISCOUNTED FLAT FEE: \$23,500.00

TERMS AND CONDITIONS

These Terms and Conditions ("Terms and Conditions") are made a part of, and incorporated by reference into, any Bid presented by CPT Group, Inc. ("CPT") to Client. Each of Client and CPT is a "**Party**" to this Agreement, and collectively, the "**Parties**".

1. Definitions.

- a) "**Affiliate**" means a party that partially (at least 50%) or fully controls, is partially or fully controlled by, or is under partial (at least 50%) or full common control with another party.
- b) "**Agreement**" means these Terms and Conditions and the Bid.
- c) "**Applicable Laws**" means all applicable local, state and federal laws, ordinances, rules and regulations.
- d) "**Approved Bank**" means any financial institution that is insured by the Federal Deposit Insurance Corporation.
- e) "**Bid**" means a proposal, statement of work, order form, and/or schedule for Services (including any and all addendums, exhibits, or amendments thereto) provided by CPT to Client.
- f) "**Case**" means the case referred to in the attached Bid and/or the particular judicial matter identified by the name of plaintiff(s) and defendant(s) on the caption of the applicable Court Order.
- g) "**Class**" means Members and putative Members collectively.
- h) "**Client**" means the party or parties engaging CPT for Services as set forth in the Bid, namely Plaintiff Counsel and/or Defense Counsel.
- i) "**Confidential Information**" means any non-public information of CPT or Client disclosed by either Party to the other Party, either directly or indirectly, in writing, orally or by inspection of tangible objects, or to which the other Party may have access, which a reasonable person would consider confidential and/or which is marked "confidential" or "proprietary" or some similar designation by the disclosing Party. Confidential Information shall also include the terms of this Agreement, except where this Agreement specifically provides for disclosure of certain items. Confidential Information shall not, however, include the existence of the Agreement or any information which the recipient can establish: (i) was or has become generally known or available or is part of the public domain without direct or indirect fault, action, or omission of the recipient; (ii) was known by the recipient prior to the time of disclosure, according to the recipient's prior written documentation; (iii) was received by the recipient from a source other than the discloser, rightfully having possession of and the right to disclose such information; or (iv) was independently developed by the recipient, where such independent development has been documented by the recipient.
- j) "**Court Order**" means a legal command or direction issued by a court, judicial office, or applicable administrative body requiring one or more Parties To The Case to carry out a legal obligation pursuant to the Case.
- k) "**Defendant**" means the named Party and/or Parties in the Case against whom action is brought.
- l) "**Defense Counsel**" means the attorney(s) of record for the Defendant(s) in the Case.
- m) "**Intellectual Property Right**" means any patent, copyright, trade or service mark, trade dress, trade name, database right, goodwill, logo, trade secret right, or any other intellectual property right or proprietary information right, in each case whether registered or unregistered, and whether arising in any jurisdiction, including without limitation all rights of registrations, applications, and renewals thereof and causes of action for infringement or misappropriation related to any of the foregoing.
- n) "**Member**" means an individual who is eligible under the Case or Class to receive a communication about their pending legal rights under the matter and/or designated amount of the Settlement, including the named Plaintiff(s) in the Case and all other putative persons or other parties in the representative action so designated or addressed therein.
- o) "**Member Content**" means all Member written document communications relating to the Case, including claim forms, opt-out forms, and/or objections, which may contain Member Data.
- p) "**Member Data**" means proprietary or personal data regarding Members under this Agreement.
- q) "**Parties To The Case**" shall mean collectively Defendant(s) and Plaintiff(s) as defined in the Settlement Agreement or Court Order.
- r) "**Plaintiff**" means the named party and/or parties in the Case who are bringing the action.
- s) "**Plaintiff Counsel**" means the attorney(s) of record for Plaintiff(s) in the Case, and/or upon certification by the Court the attorney(s) of record designated to represent the Class.
- t) "**Products**" means any and all CPT Services and work product resulting from Services.

- u) "**Qualified Settlement Fund**" or "**QSF**" means a bank account established pursuant to U.S. Department of Treasury Regulations §1468B-1.
 - v) "**Service**" means any service rendered by CPT specifically to Client, including, but not limited to: (i) notifications to Members; (ii) setting up a QSF with an Approved Bank; (iii) management of disbursement of funds from the QSF to applicable parties pursuant to the Settlement Agreement; (iv) provision of customer support relating to the Case; (v) management of Case claim forms and correspondence; and/or (vi) any administrative or consulting service.
 - w) "**Settlement Agreement**" means the contract between Parties To The Case to resolve the same, which specifies amounts to be disbursed from the Qualified Settlement Fund to attorneys, CPT, and individual Members.
 - x) "**Settlement Amount**" means the total dollar amount agreed to between Parties To The Case to resolve the Case to mutual satisfaction.
 - y) "**Software**" means any and all of CPT's software applications, including, without limitation, all updates, revisions, bug-fixes, upgrades, and enhancements thereto.
 - z) "**Transmission Methods**" means the secure authorized manner to send Member Data and/or Wire Information as specified on a schedule or exhibit hereto.
 - aa) "**Term**" means the period commencing on the date set forth on the Bid and continuing until the date of final judgment (if a settlement) or upon completion of all Services as set forth in the Bid.
 - bb) "**Wire Information**" means instructions for (i) Defense Counsel to transfer funds from Defendant to the Qualified Settlement Fund or (ii) CPT to transfer funds from the Qualified Settlement Fund to applicable parties pursuant to the Settlement Agreement.
2. **Client Obligations.** Client will ensure that it has obtained all necessary consents and approvals for CPT to access and use Member Data for the purposes permitted under this Agreement and shall only transmit Member Data and/or Wire Information to CPT via the Transmission Methods. Client shall use and maintain appropriate administrative, technical, and physical safeguards designed to protect Member Data provided under this Agreement. Client further warrants that any Member Data, Wire Information, or other content, data, materials or information it transmits shall be free of viruses, worms, Trojan horses, or other harmful or disenabling codes which could adversely affect Member Data and/or CPT. If Client is in breach of this section, CPT may suspend Services, in addition to any other rights and remedies CPT may have at law or in equity.
3. **CPT Obligations.** CPT will (i) maintain appropriate safeguards designed to protect Member Data, including regular back-ups, security and incident response protocols, and (ii) not access or disclose Member Data except (A) as compelled by law, (B) to prevent or address service or technical issues, (C) in accordance with this Agreement or the provisions of the Settlement Agreement, or (D) if otherwise permitted by Parties To The Case, Members, Plaintiff Counsel or Defense Counsel as applicable.
4. **Security.** Client and CPT shall each use reasonable administrative, technical, and physical safeguards that are reasonably designed to: (a) protect the security and confidentiality of any Member Data in its possession or control under this Agreement; (b) protect against any anticipated threats or hazards to the security or integrity of such Member Data; (c) protect against unauthorized access to or use of such Member Data that could result in substantial harm or inconvenience to any individual; and (d) protect against unauthorized access to or use of such Member Data in connection with its disposal.
- a) **Incident Notification.** In the event a Party discovers that Member Data relating to the Case is the subject of (i) any unauthorized acquisition, loss, access or use and/or (ii) an actual or suspected breach concerning such Party's systems (items (i) and/or (ii) a "**Security Incident**"), or a Party has a reasonable belief that a Security Incident has occurred or is at risk of occurring, such Party will promptly but no later than forty-eight (48) hours of its discovery of such circumstances, inform the other Parties in the event of such Security Incident, and shall utilize best efforts to assist the other Parties to mitigate the effects of such Security Incident.
 - b) **Response Procedures.** In the event of a Security Incident, the breached party shall (i) cooperate with any reasonable investigation concerning the Security Incident by the other Parties, regulators and/or law enforcement; and (ii) cooperate with the other Parties to comply with Applicable Laws concerning such Security Incident, including any notification to affected individuals. The Parties acknowledge that the breached party in any Security Incident shall be the Party responsible for

- any and all remedies and costs under Applicable Laws concerning such Security Incident, unless such breach occurred due to another Party's actions hereunder, in which instance such party shall be comparatively responsible for all remedies and costs. In no event will any Party serve notice or otherwise publicize a Security Incident without the prior written consent of the other Parties. The Parties shall reasonably cooperate and coordinate with each other to respond to the Security Incident, including with regard to the content of notification to affected individuals.
6. **Qualified Settlement Fund Account.** When the Case has a Settlement Amount CPT shall be authorized to establish one or more QSF bank accounts at an Approved Bank if and as applicable to the Services as set forth in the Bid. The amounts held at the Approved Bank under this Agreement are at the sole risk of Defendant. Without limiting the generality of the foregoing, CPT shall have no responsibility or liability for any diminution of the funds that may result from the deposit thereof at the Approved Bank, including deposit losses, credit losses, or other claims made against the Approved Bank. It is acknowledged and agreed that CPT has acted reasonably and prudently in depositing funds at an Approved Bank, and CPT is not required to conduct diligence or make any further inquiries regarding such Approved Bank.
 7. **Fees and Payment.** Pricing for Services is as stated on the Bid, and Client agrees to pay CPT in the amounts set forth on the Bid. Client will be invoiced per the schedule set forth in the Bid, and payment of fees will be due within 30 days after the date of the invoice, except where the Bid or terms of the Settlement Agreement or Court Order expressly prescribes other payment dates. All fees set forth in a Bid are in U.S. dollars, must be paid in U.S. dollars, and are exclusive of taxes and applicable transaction processing fees. Late payments hereunder will incur a late charge of 1.5% per month (or the highest rate allowable by law, whichever is lower) on the outstanding balance from the date due until the date of actual payment, which such late charge(s) may be charged against the QSF account if incurred in connection with Services provided pursuant to administration of a settlement. In addition, Services are subject to suspension for failure to timely remit payment therefor. If travel is required to effect Services, Client shall reimburse CPT for pre-approved, reasonable expenses arising from and/or relating to such travel, including, but not limited to, airfare, lodging, meals, and ground transportation. In connection with CPT's administration of a QSF, unless otherwise stated in the Settlement Agreement or Court Order concerning disbursement of unclaimed funds in the QSF account, CPT reserves the right, after one (1) year of issuance of disbursements to Members, to classify any remaining balance in such QSF account as additional administrative fees payable to CPT until such time as the QSF account balance becomes zero (\$0.00), and thereafter close such account.
 8. **Term and Termination.**
 - a) **Term.** The Term is set forth in the Bid. The Agreement may be renewed by mutual written agreement of the parties.
 - b) **Termination for Cause.** Either Party may immediately terminate this Agreement if the other Party materially breaches its obligations hereunder, and, where capable of remedy, such breach has not been materially cured within forty-five (45) days of the breaching Party's receipt of written notice describing the breach in reasonable detail.
 - c) **Bankruptcy Events.** A Party may immediately terminate this Agreement if the other Party: (i) has a receiver appointed over it or over any part of its undertakings or assets; (ii) passes a resolution for winding up (other than for a bona fide scheme of solvent amalgamation or reconstruction), or a court of competent jurisdiction makes an order to that effect and such order is not discharged or stayed within ninety (90) days; or (iii) makes a general assignment for the benefit of its creditors.
 - d) **Effect of Termination.** Immediately following termination of this Agreement, upon written request, Member Data may be retrieved via the secure FTP site in the same format in which the Member Data was originally inputted into the Software, at no additional charge. Alternatively, Member Data can be returned in a mutually agreed format at a scope and price to be agreed upon. CPT will maintain a copy of Member Data and Member Content for no more than four (4) years following the date of the final check cashing deadline for Members under the Settlement Agreement, after which time any Member Data and Member Content not retrieved will be destroyed.
 - e) **Final Payment.** If Client terminates this Agreement due to Section "Termination", Client shall pay CPT all fees owed through the termination date. If CPT terminates the Agreement in accordance with Section "Termination," Client shall pay CPT all fees invoiced through the termination date, plus all fees remaining to be invoiced during the Term, less any costs CPT would have incurred had the Agreement not been terminated.
 9. **Confidentiality.** Each Party agrees: (i) not to disclose any Confidential Information to any third parties except as mandated by law and except to those subcontractors of CPT providing Products hereunder who agree to be bound by confidentiality obligations no less stringent than those set forth in this Agreement; (ii) not to use any Confidential Information for any purposes except carrying out such Party's rights and responsibilities under this Agreement; and (iii) to keep the Confidential Information confidential using the same degree of care such Party uses to protect its own confidential information; provided, however, that such Party shall use at least reasonable care. These obligations shall survive termination of this Agreement.
 - a) **Compelled Disclosure.** If receiving Party is compelled to disclose any Confidential Information by judicial or administrative process or by other requirements of law, such Party shall (i) promptly notify the other Party, (ii) reasonably cooperate with the other Party in such Party's efforts to prevent or limit such compelled disclosure and/or obtain confidential treatment of the items requested to be disclosed, and (iii) shall disclose only that portion of such information which each Party is advised by its counsel in writing is legally required to be disclosed.
 - b) **Remedies.** If either Party breaches any of its obligations with respect to confidentiality or the unauthorized use of Confidential Information hereunder, the other Party shall be entitled to seek equitable relief to protect its interest therein, including but not limited to, injunctive relief, as well as money damages.
 10. **Intellectual Property.** CPT retains all right, title and interest (including, without limitation, all Intellectual Property Rights) in and to the Products. CPT does not claim any ownership rights to Member Data.
 11. **Indemnification.** Client agrees to indemnify, defend, and hold harmless CPT, its Affiliates, and the respective officer, directors, consultants, employees, and agents of each (collectively, "**Covered CPT Parties**") from and against any and all third party claims and causes of action, as well as related losses, liabilities, judgments, awards, settlements, damages, expenses and costs (including reasonable attorney's fees and related court costs and expenses) (collectively, "**Damages**") incurred or suffered by CPT which directly relate to or directly arise out of (i) Client's breach of this Agreement; (ii) CPT's performance of Services hereunder; (iii) the processing and/or handling of any payment by CPT; (iv) any content, instructions, information or Member Data provided by Client to CPT in connection with the Services provided by CPT hereunder. The foregoing provisions of this section shall not apply to the extent the Damages relate to or arise out of CPT's willful misconduct. To obtain indemnification, indemnitee shall: (i) give written notice of any claim promptly to indemnitor; (ii) give indemnitor, at indemnitor's option, sole control of the defense and settlement of such claim, provided that indemnitor may not, without the prior consent of indemnitee (not to be unreasonably withheld), settle any claim unless it unconditionally releases indemnitee of all liability; (iii) provide to indemnitor all available information and assistance; and (iv) not take any action that might compromise or settle such claim.
 12. **Warranties.** Each Party represents and warrants to the other Party that, as of the date hereof: (i) it has full power and authority to execute and deliver the Agreement; (ii) the Agreement has been duly authorized and executed by an appropriate employee of such Party; (iii) the Agreement is a legally valid and binding obligation of such Party; and (iv) its execution, delivery and/or performance of the Agreement does not conflict with any agreement, understanding or document to which it is a party. CPT WARRANTS THAT ANY AND ALL SERVICES PROVIDED BY IT HEREUNDER SHALL BE PERFORMED IN A PROFESSIONAL MANNER CONSISTENT WITH PREVAILING INDUSTRY STANDARDS. TO THE EXTENT PERMITTED BY APPLICABLE LAW, CPT DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE
 13. **Liability.**
 - a) **Liability Cap.** EXCEPT FOR A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, EACH PARTY'S MAXIMUM AGGREGATE LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF THE THEORY OF LIABILITY, WILL BE LIMITED TO THE TOTAL FEES PAID OR PAYABLE BY CLIENT AND/OR THE PARTIES TO THE CASE TO CPT HEREUNDER. THE EXISTENCE OF MORE THAN ONE CLAIM SHALL NOT EXPAND SUCH LIMIT. THE PARTIES ACKNOWLEDGE THAT THE FEES AGREED UPON BETWEEN CLIENT AND CPT ARE BASED IN PART ON THESE LIMITATIONS, AND THAT THESE LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ANY ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. THE FOREGOING LIMITATION SHALL NOT APPLY TO A PARTY'S PAYMENT OBLIGATIONS UNDER THE AGREEMENT.
 - b) **Exclusion of Consequential Damages.** NEITHER PARTY WILL BE LIABLE FOR LOST PROFITS, LOST REVENUE, LOST BUSINESS OPPORTUNITIES, LOSS OF DATA, INTERRUPTION OF BUSINESS, OR ANY OTHER INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
 14. **Communications.** CPT may list Client's name and logo alongside CPT's other clients on the CPT website and in marketing materials, unless and until Client revokes such permission. CPT may also list the Case name and/or number, and

certain Qualified Settlement Fund information, on the CPT website and in marketing materials, unless stated otherwise in the Settlement Agreement.

15. Miscellaneous Provisions.

- a) Governing Law; Jurisdiction. This Agreement will be governed by and construed in accordance with the laws of the State of California and the federal laws of the United States of America, without regard to conflict of law principles. CPT and Client agree that any suit, action or proceeding arising out of, or with respect to, this Agreement or any judgment entered by any court in respect thereof shall be brought exclusively in the state or federal courts of the State of California located in the County of Orange, and each of CPT and Client hereby irrevocably accepts the exclusive personal jurisdiction and venue of those courts for the purpose of any suit, action or proceeding.
- b) Force Majeure. Neither Party will be liable for any failure or delay in its performance under this Agreement due to any cause beyond its reasonable control, including without limitation acts of war, acts of God, earthquake, flood, weather conditions, embargo, riot, epidemic, acts of terrorism, acts or omissions of vendors or suppliers, equipment failures, sabotage, labor shortage or dispute, governmental act, failure of the Internet or other acts beyond such Party's reasonable control, provided that the delayed Party: (i) gives the other Party prompt notice of such cause; and (ii) uses reasonable commercial efforts to correct promptly such failure or delay in performance.
- c) Counterparts. This Agreement may be executed in any number of counterparts and electronically, each of which shall be an original but all of which together shall constitute one and the same instrument.
- d) Entire Agreement. This Agreement contains the entire understanding of the parties in respect of its subject matter and supersedes all prior agreements and understandings (oral or written) between the Parties with respect to such subject matter. The schedules and exhibits hereto constitute a part hereof as though set forth in full herein.
- e) Modifications. Any modification, amendment, or addendum to this Agreement must be in writing and signed by the Parties.
- f) Assignment. Neither Party may assign this Agreement or any of its rights, obligations, or benefits hereunder, by operation of law or otherwise, without the other Party's prior written consent; provided, however, either Party, without the consent of the other Party, may assign this Agreement to an Affiliate or to a successor (whether direct or indirect, by operation of law, and/or by way of purchase, merger, consolidation or otherwise) to all or substantially all of the business or assets of such Party, where the responsibilities or obligations of the other Party are not increased by such assignment and the rights and remedies available to the other Party are not adversely affected by such assignment. Subject to that restriction, this Agreement will be binding on, inure to the benefit of, and be enforceable against the parties and their respective successors and permitted assigns.
- g) No Third-Party Beneficiaries. The representations, warranties, and other terms contained herein are for the sole benefit of the Parties hereto and their respective successors and permitted assigns and shall not be construed as conferring any rights on any other persons.
- h) Statistical Data. Without limiting the confidentiality rights and Intellectual Property Rights protections set forth in this Agreement, CPT has the perpetual right to use aggregated, anonymized, and statistical data ("**Statistical Data**") derived from the operation of the Software, and

nothing herein shall be construed as prohibiting CPT from utilizing the Statistical Data for business and/or operating purposes, provided that CPT does not share with any third-party Statistical Data which reveals the identity of Client, Client's Class Members, or Client's Confidential Information.

- i) Export Controls. Client understands that the use of CPT's Products is subject to U.S. export controls and trade and economic sanctions laws and agrees to comply with all such Applicable Laws, including the Export Administration Regulations maintained by the U.S. Department of Commerce and the trade and economic sanctions maintained by the Treasury Department's Office of Foreign Assets Control.
- j) Severability. If any provision of this Agreement is held by a court or arbitrator of competent jurisdiction to be contrary to law, such provision shall be changed by the court or by the arbitrator and interpreted so as to best accomplish the objectives of the original provision to the fullest extent allowed by law, and the remaining provisions of this Agreement shall remain in full force and effect.
- k) Notices. Any notice or communication required or permitted to be given hereunder may be delivered by hand, deposited with an overnight courier, sent by electronic delivery, or mailed by registered or certified mail, return receipt requested and postage prepaid to the address for the other Party as set forth on the Bid or at such other address as may hereafter be furnished in writing by either Party hereto to the other Party. Such notice will be deemed to have been given as of the date it is delivered, if by personal delivery; the next business day, if deposited with an overnight courier; upon receipt of confirmation of electronic delivery (if followed up by such registered or certified mail); and five days after being so mailed.
- l) Independent Contractors. Client and CPT are independent contractors, and nothing in this Agreement shall create any partnership, joint venture, agency, franchise, sales representative or employment relationship between Client and CPT. Each Party understands that it does not have authority to make or accept any offers or make any representations on behalf of the other. Neither Party may make any statement that would contradict anything in this section.
- m) Subcontractors. CPT may use subcontractors to perform Client-specific Services; provided however, that CPT shall be responsible for its subcontractors' performance of Services under this Agreement.
- n) Headings. The headings of the sections of this Agreement are for convenience only, do not form a part hereof, and in no way limit, define, describe, modify, interpret, or construe its meaning, scope or intent.
- o) Waiver. No failure or delay on the part of either Party in exercising any right, power or remedy under this Agreement shall operate as a waiver, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise or the exercise of any other right, power, or remedy.
- p) Acceptance. If, when requested in writing by Client, CPT then provides any Service to Client, whether or not such Services were specified in the original Bid, these Terms and Conditions shall apply to the provision of such Services and be deemed accepted and approved by Client concerning such Services.
- q) Survival. Sections of the Agreement intended by their nature and content to survive termination of the Agreement shall so survive.