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11 **IN THE SUPERIOR COURT OF CALIFORNIA**

12 **COUNTY OF SAN FRANCISCO, CIVIC CENTER COURTHOUSE**

13 TREVOR NEADEAU, an individual, on behalf of
14 all those similarly situated and aggrieved
15 employees,

16 Plaintiff,

17 vs.

18 BROADWAY MANAGEMENT COMPANY,
19 LLC, a California corporation, HARRY LEWIS,
20 an individual, WILLIAM R. LEWIS III, an
21 individual, ELIZABETH CONRON, an
22 individual, LINDA STAPLETON, an individual,
23 AND JOSEPH CONRON, an individual,

24 Defendants.

Case No. CGC-22-598314

Assigned to Hon. Samuel K. Feng in Dept. 610

CLASS ACTION AND REPRESENTATIVE ACTION

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR PRELIMINARY
APPROVAL OF SETTLEMENT;
MEMORANDUM OF POINTS &
AUTHORITIES; DECLARATION OF
YESENIA L. RODRIGUEZ**

Date: February 7, 2024

Time: 9:30 a.m.

Dept.: 302

25 TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

26 PLEASE TAKE NOTICE that on February 7, 2024 at 9:30 a.m. in Department 302 of the San
27 Francisco Superior Court, Civic Center Courthouse, located at 400 McAllister St., San Francisco,
28 California 94102, Plaintiff Trevor Neadeau, on behalf of himself and all others similarly situated
(collectively, "Plaintiff"), will and hereby does move for an order of preliminary approval of the
proposed class action and PAGA settlement between Plaintiff and Defendants Broadway

1 Management Company, LLC, Harry Lewis, William R. Lewis III, Elizabeth Conron, Linda Stapleton,
2 and Joseph Conron in this action.

3 Plaintiff specifically requests that the Court determine that the proposed settlement is fair,
4 reasonable, and adequate, and enter the following orders:

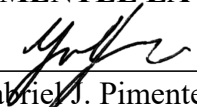
- 5 1. Grant preliminary approval of the proposed settlement;
- 6 2. Conditionally certify the following class for settlement purposes only: all persons employed
7 by Defendants in an hourly, non-exempt position in California during the Class Period. The Class
8 Period is from February 23, 2018, to the date of Preliminary Approval of the settlement by the Court.
- 9 3. Appoint Plaintiff as Class Representative;
- 10 4. Appoint Pimentel Law, P.C. as Class Counsel;
- 11 5. Approve of ILYM Group, INC. ("ILYM") as the Settlement Administrator;
- 12 6. Approve the Proposed Notice of Class Action Settlement ("Class Notice"); Establish a
13 schedule for the dissemination of the Class Notice to Class Members as well as deadlines for Class
14 Members to act; and
- 15 7. Schedule a hearing on the motion for final approval of class action settlement and motion
16 for attorneys' fees, costs, and service payments.

17 This motion is made pursuant to CIV. PROC. CODE § 382 and CAL. R. 3.769. This motion is
18 based on this notice of motion, the accompanying memorandum of points and authorities, declarations
19 filed in support thereof, the pleadings and other papers on file in this case, and such oral and
20 documentary evidence as may be presented at the hearing on the motion.

21 **PIMENTEL LAW, P.C.**

22 Dated: January 8, 2024

By: _____


Gabriel J. Pimentel, Esq.
Yesenia L. Rodriguez, Esq.
Attorneys for Plaintiff

1 **MEMORANDUM OF POINTS & AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff respectfully requests preliminary approval of the proposed settlement in this class and
4 representative action totaling \$187,850.00. If approved, the proposed settlement will provide
5 monetary payments to all current and former persons employed by Defendants in California as non-
6 exempt employees at any time during the Class Period. The proposed class is estimated to consist of
7 74 individuals. The proposed Settlement will resolve the individual, class, collective, and
8 representative claims of Plaintiff and participating Class Members against Defendants for violations
9 of California's Labor Code and Wage Orders that were alleged or could have been alleged based on
10 the same facts as those in the First Amended Complaint (FAC): (1) failure to indemnify for business
11 expenditures (LAB. CODE § 2802), (2) failure to pay overtime (LAB. CODE §§ 510, 1198), (3) failure to
12 furnish accurate wage statements and maintain accurate pay records (LAB. CODE §§ 226, 1174, 1198),
13 (4) failure to provide rest periods (LAB. CODE §§ 226.7, 1198), (5) failure to timely pay wages (LAB.
14 CODE § 204), (6) willful failure to pay wages (7) civil penalties under the Private Attorney General Act
15 (PAGA) (LAB. CODE §§ 2698, *et seq.*).

16 In consideration of this settlement, Defendants have agreed to pay a total of \$187,850.00. This
17 is not a claims-made or reversionary settlement, so Class Members are not required to opt-in, and no
18 portion of the settlement will revert to Defendants. The Settlement is the product of arms-length
19 negotiations and was reached after multiple mediations and diligent investigation and discovery,
20 including a thorough review of Defendants' employment policies, its employment and personnel
21 records and interviews with Class Members. The settlement is supported by experienced counsel who
22 carefully considered the strength and weaknesses of the claims, as well as the expense, complexity,
23 and risks associated with continued litigation. The settlement should be preliminarily approved as it
24 satisfies all criteria for approval and will provide a significant monetary recovery to Class Members
25 in light of the risks of obtaining and maintaining class certification and proving liability and damages
26 at trial. Lastly, the Class should be conditionally certified for settlement purposes because all factors
27 for certification are met.

II. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

A. Procedural History

On February 23, 2022, Plaintiff Trevor Neadeau filed a Complaint against Defendants in the Superior Court of the State of California, County of San Francisco. Plaintiff Neadeau asserted that Defendants committed the following violations of the California Labor Code:

- 1) Labor Code §§ 510 and 1198 (failure to pay overtime);
- 2) Labor Code §§ 226.7, 1198 (failure to provide rest periods);
- 3) Labor Code § 2802 (failure to indemnify for business expenditures);
- 4) Labor Code §§ 226, 1174(d), and 1198 (failure to furnish accurate itemized wage statements);
- 5) Labor Code §§ 2698 et seq. (civil penalties) (Declaration of Yesenia Rodriguez, ¶ 6, (“Rodriguez Decl.”))

On March 29, 2022, Plaintiff filed a FAC which alleged these additional causes of action: (1) failure to provide rest periods (LAB. CODE §§ 226.7, 1198), (2) failure to timely pay wages (LAB. CODE § 204), and (3) waiting time penalties (LAB. CODE §§ 201-203). The FAC is the operative complaint in this action. (Rodriguez Decl., at ¶ 7)

On December 6, 2022, the Parties participated in an all-day mediation presided over by Brandon McKelvey, a respected mediator of wage and hour representative and class actions. During the mediation, each party was represented by its respective counsel but were unable to settle the matter. (Rodriguez Decl., at ¶ 8)

On May 24, 2023, the Parties participated in a second all-day mediation presided over by experienced wage-and-hour mediator, Brandon McKelvey. The Parties were able to resolve this action at that time. (Rodriguez Decl., at ¶ 9)

B. Investigation and Discovery

Plaintiff’s counsel conducted a thorough investigation into the merits of Plaintiff’s claims and the applicable law. (Rodriguez Decl. at ¶ 10.) Prior to filing suit, Plaintiff’s counsel met, on numerous occasions, with the Plaintiff and requested and reviewed Plaintiff’s respective employment records. (Rodriguez Decl. at ¶ 11). Plaintiff’s counsel performed extensive legal research with respect to the

merits and legal basis of the claims asserted by Plaintiff and the defenses raised by Defendants. Rodriguez Decl., at ¶11.) Prior to the first mediation, Plaintiff obtained a sample of Class documents and information, including but not limited to time records and wage statements for putative class members and data demonstrating the class size, hours worked, workweeks (pay periods), hourly-rates, and total compensation of non-exempt employees in the Class. Rodriguez Decl., at ¶12.) Plaintiff propounded formal written discovery upon Defendants, which resulted in the production of various documents related to the action, such as policy documents, employee handbooks, communications, and Plaintiff's time and payroll records. (Rodriguez Decl., at ¶ 13.)

Plaintiff's counsel spent significant time and efforts reviewing Defendants' document production to determine, among other things, the legality of Defendants' written policies and the violation rates for each of the respective claims. (Rodriguez Decl., at ¶ 14.) This included review of over 1,700 pages of relevant documents. (Rodriguez Decl., at ¶ 14.) Plaintiff's counsel also reviewed and analyzed Defendants' payroll and timekeeping data, which permitted counsel to prepare a liability analysis and identify Defendants' potential exposure should Plaintiff succeed on the asserted claims at trial. (Rodriguez Decl., at ¶ 15.)

Plaintiff's counsel also reviewed confirmatory discovery, which was produced after a settlement was reached at the May 24, 2023 mediation. (Rodriguez Decl., at ¶ 16.)

The documents, information, and data obtained from Defendants was more than sufficient to analyze the Labor Code violations alleged by Plaintiff and to make an informed decision about the resolution of this case. (Rodriguez Decl., at ¶ 17.)

III. THE SETTLEMENT TERMS AND CONDITIONS

A. Settlement Class

"Class" is defined as all current and former persons employed by Defendants in an hourly, non-exempt position in California during the Class Period. The Class Period is from February 23, 2018, to the date of Preliminary Approval of the settlement by the Court. (Rodriguez Decl., at ¶ 18.)

"PAGA Members" are defined as all current and former persons employed by Defendants in an hourly, non-exempt position in California at any time from November 10, 2020 to the date of Preliminary Approval. (Rodriguez Decl., at ¶ 19.)

1 **B. Settlement Terms**

2 Defendants have agreed to pay a “Maximum Settlement Amount” of \$187,850.00, of which
3 none will revert to Defendants. (Rodriguez Decl., at ¶ 20.) The settlement amount will be used to pay
4 individual class payments, individual PAGA payments, the LWDA PAGA payment, Class counsel
5 fees, Class counsel expenses, Class representative service payment, and the Administrator’s expenses.
6 (Rodriguez Decl., at ¶ 20.) Participating Class Members need not submit a claim form or do anything
7 else to receive a settlement payment. The Maximum Settlement Amount includes prior individual
8 payments that were made to Class Members for Pick-Up Stix’s release agreements. The total of
9 previous individual payments made to Class Members is \$30,850.00. (Rodriguez Decl., at ¶ 21.)

10 Not later than 30 calendar days after the Court grants Preliminary Approval of the Settlement,
11 Defendants will deliver the Class Data to the Administrator. (Rodriguez Decl., at ¶ 22.) Defendants
12 will fund the Maximum Settlement Amount within 30 calendar days after the Effective Date.
13 (Rodriguez Decl., at ¶ 23.) The Administrator will mail checks to each Participating Class Member
14 and PAGA Member within 40 calendar days after the Effective Date (Rodriguez Decl., at ¶ 23.) 10%
15 of each Participating Class Member’s Individual Class Payment will be allocated to settlement as
16 wage claims, which will be subject to tax withholdings and reported on a IRS W-2 Form. (Rodriguez
17 Decl., at ¶ 24.) 90% of each Participating Class Member’s Individual Class Payment will be allocated
18 to settlement of claims for interest and penalties, which will not be subject to wage withholdings and
19 will be reported on IRS 1099 Form. (Rodriguez Decl., at ¶ 24.)

20 **C. Settlement Payments**

21 “Net Settlement Amount” means the amount from the Maximum Settlement Amount that is
22 available for distribution as Individual Class Awards for Participating Class Members after deducting
23 (1) the PAGA Allocation (which includes the LWDA payment and the Individual PAGA Awards),
24 (2) Plaintiff’s Enhancement Award, (3) Class Counsel’s Attorneys’ Fees and Costs, and (4)
25 Administration Expenses. The Net Settlement Amount is estimated to be \$37,310, which will be
26 distributed amongst 74 Class Members. (Rodriguez Decl., at ¶ 25.)

27 The “PAGA Allocation” totals \$9,392.50 to be paid from the Maximum Settlement Amount,
28 with \$7,044.37 being allocated as the LWDA Payment (75%) and \$2,348.13 (25%) being allocated

1 as the Individual PAGA Awards. (Rodriguez Decl., at ¶ 26.)

2 The Settlement share allocated to each Participating Class Member will differ depending on
3 whether the Class Member has received a prior individual payment for Pick-Up Stix individual release
4 agreements. If a Class Member has previously received such a payment from Defendants, the Prior
5 Individual Payment will be deducted from the Class Member's Individual Class Award. In no event
6 shall a Class Member's Individual Class Award be less than \$100.00. (Rodriguez Decl., at ¶ 27.)

7 Each Participating Class Member's settlement share will be calculated by dividing the Net
8 Settlement Amount (\$37,310) by the total number of Workweeks worked by all Participating Class
9 Members during the Class Period, then, multiplying the result by each Participating Driver Class
10 Member's Workweeks and subtracting any Prior Individual Payment, if applicable. (Rodriguez Decl.,
11 at ¶ 28)

12 "Administration Expenses" means the amount the Administrator will be paid from the
13 Maximum Settlement Amount to reimburse its reasonable fees and expenses in connection with
14 approval of the settlement. The Administration Expenses have been estimated by the Administrator
15 to be \$4,550.00. (Rodriguez Decl., at ¶ 29). The Parties have selected ILYM to serve as the Settlement
16 Administrator. *Id.*

17 "Plaintiff's Enhancement Award" means payment to Class Representative Trevor Neadeau
18 in the amount of \$15,000.00 for initiating the Action, performing the work in support of the Action,
19 undertaking the risk of liability for Defendant's expenses in the event Plaintiffs were unsuccessful in
20 the prosecution of the Action, and for the general release of all claims with a waiver of California
21 Code of Civil Procedure Section 1542. (Rodriguez Decl., at ¶ 30).

22 "Class Counsel's Attorney's Fees Payment and Costs" mean the amounts allocated to Class
23 Counsel for reimbursement of reasonable attorneys' fees and expenses, respectively, incurred to
24 prosecute the Action, as approved by the Court. (Rodriguez Decl., at ¶ 31). Class Counsel will request
25 that the Court approve an award of attorneys' fees not to exceed thirty-five percent (35%) of the
26 Maximum Settlement Amount (\$65,747.50) plus costs and expenses not to exceed \$25,000.
27 (Rodriguez Decl., at ¶ 32).

28

1 **D. Uncashed Checks**

2 For any Class Member whose Individual Class Payment check or Individual PAGA
3 Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the
4 funds represented by such checks to the California Controller's Unclaimed Property Fund in the name
5 of the Class Member thereby leaving no "unpaid residue" subject to the requirements of California
6 Code of Civil Procedure Section 384. (Rodriguez Decl., at ¶ 3, 33).

7 **E. The Release of Claims**

8 All Participating Class Members release all claims that were alleged, or reasonably could have
9 been alleged, based on the factual allegations asserted in the Operative Complaint. Participating Class
10 Members do not release any other claims, including claims for vested benefits, wrongful termination,
11 violation of the Fair Employment and Housing Act, unemployment insurance, disability, social
12 security workers' compensation, or claims based on facts occurring outside the Class Period.
13 (Rodriguez Decl., at ¶ 34). The Class Representative releases all claims that were, or reasonably could
14 have been, alleged, based on the facts contained, in the Operative Complaint and all PAGA claims
15 that were, or reasonably could have been, alleged based on facts contained in the Operative
16 Complaint. Plaintiff understands and expressly agrees that this general release extends to all claims
17 of every nature and kind whatsoever, known or unknown, suspected or unsuspected, past or present,
18 which Plaintiff has or may have against the Released Parties, and all rights under Section 1542 of the
19 California Civil Code. (Rodriguez Decl., at ¶ 35).

20 **IV. LEGAL STANDARDS**

21 **A. Class Certification**

22 Provisional certification is appropriate at the preliminary approval stage where, as here, the Court has
23 not yet certified the class and the requirements for certification are met. *Newberg on Class Actions*
24 (5th Ed. 2011-2017) §§ 13:16-13:18; *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 17941, 806;
25 *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 809-811.) It is well established in California that the
26 proponent of class certification must demonstrate: (1) a well-defined community of interest; (2) the
27 existence of an ascertainable class; and (3) that class certification is the superior alternative. *Brinker*
28 *Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1021. At the certification stage, the

1 question is whether the action is suitable for class-wide resolution, not whether the action is legally
2 or factually meritorious. *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 439-440.

3 **B. Approval of Settlements**

4 **i. Approval of Class Action Settlement**

5 California courts favor settlement, particularly in class actions and other complex actions
6 where substantial resources may be conserved by avoiding the time, costs, and rigors of protracted
7 formal litigation. *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th
8 1135, 1151.) Rule 3.769(a) of the California Rules of Court provides that the Court must review and
9 approve any settlement of class litigation. (See also *Dunk, supra*, 48 Cal.App.4th at p. 1800.) Court
10 approval of a class action settlement is a two-step process, including a preliminary review by the court
11 and a subsequent final review and approval by the court after notice has been distributed to the class
12 members for their comment or objections. (Cal. R. Court, R. 3.769(c)-(f); see also *Manual for*
13 *Complex Litigation* (4th Ed. 2004) Federal Judicial Center § 21.632.) In the event the court has not
14 yet certified the action as a class action when settlement is reached, the court must certify the class
15 according to the standards set out in Code of Civil Procedure § 382, in addition to ordering the
16 settlement notice to be distributed. (Cal. R. Court, R. 3.769(d).)

17 Courts have broad discretion to approve a proposed settlement. *Wershba v. Apple Computer,*
18 *Inc.* (2001) 91 Cal.App.4th 224, 234-235. At the preliminary approval stage, the court's review is
19 generally "limited to the extent necessary to reach a reasoned judgment that the agreement is not the
20 product of fraud or overreaching by, or collusion between, the negotiating parties, and that the
21 settlement, taken as a whole, is fair, reasonable, and adequate to all concerned." *Officers for Justice*
22 *v. Civil Serv. Comm'n* (9th Cir. 1982) 688 F.2d 615, 625. "The strength of the findings made by a
23 judge at a preliminary hearing or conference concerning a tentative settlement proposal may vary.
24 The court may find that the settlement proposal contains some merit, is within the range of
25 reasonableness required for a settlement offer or is presumptively valid subject only to objections that
26 may be raised at a final hearing." (4 Alba Conte & Herbert B. Newberg, *Newberg on Class Actions*,
27 (4th Ed. 2009) § 11.26.) Where a class action settlement is determined to be within the "range of
28 reasonableness," the court should grant preliminary approval. *Hernandez v. Vitamin Shoppe Indus.,*

1 *Inc.* (2009) 174 Cal.App.4th 1441, 1446.)

2 **ii. Approval of PAGA Settlement**

3 Pursuant to Labor Code § 2699(l)(2), a settlement of a civil action brought under the PAGA
4 statute must be submitted to the LWDA and must be approved by the court. Where a settlement
5 purports to resolve both class and PAGA claims, courts must examine the settlement as a whole and
6 the amount allocated to PAGA, including the amount distributed to the LWDA. *O'Connor v. Uber*
7 *Techs, Inc.* (2016) 201 F.Supp.3d 1110, 1134-1135. Accordingly, the PAGA settlement must be fair,
8 adequate and reasonable. *Id.*

9 **V. PROVISIONAL CERTIFICATION IS APPROPRIATE**

10 **A. The Class Should be Certified for Purposes of Settlement**

11 Pursuant to California Rules of Court, rule 3.769(d), the Court is permitted at the preliminary
12 approval stage to make an order approving certification of a provisional settlement class. The standard
13 of scrutiny applied by a court to determine the propriety of certifying a settlement class is a lesser
14 standard than that applied to a litigation class, since the case management concerns inherent in
15 determining if a litigation class should be certified need not be addressed with respect to a settlement
16 class where trial is not anticipated. *Dunk, supra*, 48 Cal.App.4th at p. 1807, n. 19; see also *Officers*
17 *for Justice, supra*, 688 F.2d at p. 633 “[C]ertification issues raised by class action litigation that is
18 resolved short of a decision on the merits must be viewed in a different light.”.) Additionally, the
19 court’s fairness review adequately protects the absent class members. For the reasons discussed
20 below, and for settlement purposes only, Plaintiffs request that this Court provisionally certify the
21 Settlement Class pursuant to Code of Civil Procedure § 382.

22 **i. There is a Well-Defined Community of Interest**

23 A community of interest is established by the preponderance of common issues of law and
24 fact. “The community of interest requirement involves three factors: (1) predominant common
25 questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3)
26 class representatives who can adequately represent the class.” *Linder, supra*, 23 Cal.4th 429 at p. 435

27 **a. Common Issues of Law and Fact Predominate**

28 “The predominance requirement presents an ‘ultimate question’ of whether ‘the issues which

1 may be jointly tried, when compared with those requiring separate adjudication, are so numerous or
2 substantial that the maintenance of a class action would be advantageous to the judicial process and
3 to the litigants.” *Brinker Restaurant Corp. v. Sup. Ct.*, 53 Cal.4th 1004, 1021 (2012). Here, the
4 common question, from which most liability flows, is whether employees were reimbursed for
5 business expenditures. Based on that common question, Defendants’ liability extends to payment of
6 wait-time penalties, failure to timely pay penalties, and wage statement violations. Additionally,
7 common questions of fact predominate to class members regarding their meal period, rest period, and
8 overtime claims. Class members’ claims would be adjudicated using Defendants’ practices and
9 policies, which applied uniformly to all class members. Thus, common issues of law and fact
10 predominate.

11 **b. Plaintiff’s Claims are Typical of the Claims of the Class**

12 “It has never been the law in California that the class representative must
13 have *identical* interests with the class members. The only requirements are that common questions of
14 law and fact *predominate* and that the class representative be *similarly* situated.” *B.W.I. Custom*
15 *Kitchen v. Owens-Illinois, Inc.*, 191 Cal.App.3d 1341, 1347 (1987). “A class action is not
16 inappropriate simply because each member of the class may at some point be required to make an
17 individual showing as to his or her eligibility for recovery or as to the amount of his or her
18 damages.” *Classen v. Weller*, 145 Cal.App.3d 27, 46 (1983). Here, Plaintiff’s claims are typical of
19 the Class because he was employed by Defendants in California as a Building and Maintenance
20 Technician and was subject to the same policies and procedures applicable to the Class during the
21 Class Period. (Rodriguez Decl., at ¶ 36).

22 **c. The Adequacy Requirement is Met**

23 “Adequacy of representation depends on whether the plaintiff’s attorney is qualified to
24 conduct the proposed litigation and the plaintiff’s interests are not antagonistic to the interests of the
25 class.” *McGhee v. Bank of America*, 60 Cal.App.3d 442, 450 (1976). There is no indication that
26 Plaintiff’s counsel is unqualified to represent the Class or lacking in ability. Further, counsel is
27 experienced in litigating representative wage actions. (Rodriguez Decl., at ¶ 37). Also, Plaintiff’s
28 claims are typical of the Class. As such, there are no apparent interests which would be antagonistic

1 to those of the Class. *Id.* Indeed, Plaintiff has worked closely with Class Counsel and assisted at every
2 stage, provided relevant documents and information, and remained actively involved throughout the
3 litigation. (Rodriguez Decl., at ¶ 38). Class Counsel thoroughly investigated the claims raised in this
4 action, the underlying case law, Defendants’ defenses, and meticulously reviewed the information
5 and documents exchanged, formally and informally, prior to attending mediation. (Rodriguez Decl.,
6 at ¶ 39). Thus, Plaintiff and Class Counsel have and will continue to adequately represent the interest
7 of the Settlement Class.

8 **ii. There is an Ascertainable and Sufficiently Numerous Class**

9 “Class members are ‘ascertainable’ where they may be readily identified without
10 unreasonable expense or time by reference to official records.” *Rose v. City of Hayward*, 126
11 Cal.App.3d 926, 932 (1981). “No set number is required as a matter of law for the maintenance of a
12 class action. Thus, our Supreme Court has upheld a class representing the 10 beneficiaries of a trust
13 in an action for removal of the trustees. Similarly, in *Hebbard*, a class action on behalf of a minimum
14 of 28 beneficiaries of a trust alleging improper conduct by trustees was not inappropriate on the theory
15 that the class was too small.” *Rose*, 126 Cal.App.3d at 934. The proposed Class consists of
16 approximately 74 members. (Rodriguez Decl., at ¶ 40). Under *Rose*, this satisfies the numerosity
17 requirement. The class is also ascertainable as they can all be identified by reference to Defendants
18 employment records. (Rodriguez Decl., at ¶ 40). Additionally, Defendants will be able to provide
19 Class Members full names, last known mailing address, social security number, job title, and the
20 number of workweeks employed during the Class and PAGA period. (Rodriguez Decl., at ¶ 40).

21 **VI. PRELIMINARY APPROVAL OF THE SETTLEMENT IS APPROPRIATE**

22 **A. Legal Standard for Granting Preliminary Approval of Class Settlement**

23 In granting preliminary approval of a class settlement, the court considers whether the
24 agreement, “taken as a whole, is fair, reasonable and adequate to all concerned.” *Wershba v. Apple*
25 *Computer Inc.*, 91 Cal.App.4th 224, 244-45 (2001). “The trial court possesses a broad discretion to
26 determine the fairness of the settlement, a discretion exercised through the application of a handful of
27 identified criteria. Both the federal circuit courts and our Court of Appeal have adopted a mix of
28 relevant considerations, including [1] the strength of plaintiffs’ case; [2] the risk, expense, complexity

1 and likely duration of further litigation; [3] the risk of maintaining class action status through trial; [4]
2 the amount offered in settlement; [5] the extent of discovery completed and the stage of the
3 proceedings; [6] the experience and views of counsel and [7] the reaction of the class members to the
4 proposed settlement. The list of factors is not exhaustive and should be tailored to each case. [Thus],
5 a presumption of fairness exists where: (1) the settlement is reached through arm's-length bargaining;
6 (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3)
7 counsel is experienced in similar litigation; and (4) the percentage of objectors is small.” *7-Eleven*
8 *Owners For Fair Franchising v. Southland Corp.*, 85 Cal.App.4th 1135, 1146 (2000).

9 **i. The Settlement is a Product of Arm-Length and Informed**
10 **Negotiations**

11 “What transpires in settlement negotiations is highly relevant to the assessment of a proposed
12 settlement's fairness.” *State of California v. Levi Strauss Co.*, 41 Cal.3d 460, 482 (1986). “The court
13 undoubtedly should give considerable weight to the competency and integrity of counsel and the
14 involvement of a neutral mediator in assuring itself that a settlement agreement represents an arm's-
15 length transaction entered without self-dealing or other potential misconduct. An agreement reached
16 under these circumstances presumably will be fair to all concerned, particularly when few of the
17 affected class members express objections” *Clark v. American Residential Services LLC*, 175
18 Cal.App.4th 785, 800 (2009).

19 Here, the settlement is the product of adversarial, arm's-length negotiations. (Rodriguez Decl.,
20 at ¶ 41). Indeed, Plaintiff's counsel did not discuss settlement until after receipt of information and
21 documents necessary to conduct an informed evaluation of the case. (Rodriguez Decl., at ¶ 41). It was
22 only after receipt of informal discovery and investigation that Plaintiff finally engaged in mediation.
23 (Rodriguez Decl., at ¶ 41). Further, the parties' negotiations were informed. Indeed, all settlement
24 negotiations were facilitated by a qualified wage and hour mediator, Brnadon McKelvey. Also,
25 Plaintiff's counsel, who specializes in the area of representative wage and hour actions, considered
26 the legal authorities relevant to this case and was in possession of all information necessary to
27 understand the relative strengths and weaknesses of Plaintiff's claims. *Id.* It was only after such
28 investigation, discovery, preparation and negotiations that a compromise of this action was obtained.

1 *Id.* Based on the foregoing, the settlement was a product of an informed and adversarial arm's-length
2 negotiation.

3 **ii. The Settlement is a Product of Informed Investigation and**
4 **Discovery**

5 "That no class action can be settled until the last particle of discovery has been completed and
6 analyzed is not the law. In the context of class action settlements, formal discovery is not a necessary
7 ticket to the bargaining table where the parties had sufficient information to make an informed
8 decision about settlement." *7-Eleven Owners For Fair Franchising.*, 85 Cal.App.4th at 1150.

9 Plaintiff's counsel conducted sufficient research, investigation, analysis and discovery on the
10 core issues in this case, which ultimately resulted in receipt of written employment policies, Plaintiff's
11 employment records, and time records and wage statements for a sample of putative class members.
12 Plaintiff's counsel reviewed relevant documents, which allowed Plaintiffs' counsel to evaluate the
13 merits of Plaintiff's claims. (Rodriguez Decl. at ¶ 42). Additionally, Plaintiff's counsel evaluated data
14 demonstrating the class size, hours worked, workweeks (pay periods), hourly-rates, and total
15 compensation of non-exempt employees in the Class. (Rodriguez Decl., at ¶ 43.) Plaintiff propounded
16 formal written discovery on Defendants, which resulted in the production of various documents
17 related to the action, such as policy documents, employee handbooks, and Plaintiff's time and payroll
18 records. (Rodriguez Decl., at ¶ 44.)

19 **iii. Class Counsel is Sufficiently Experienced to Support Preliminary**
20 **Approval**

21 Throughout this litigation, Class Members have been represented by well-qualified counsel
22 who have years of experience in wage and hour class action litigation. (Rodriguez Decl., at ¶ 45.)
23 Plaintiff's counsel relied on their extensive experience when negotiating the Settlement. (Rodriguez
24 Decl., at ¶ 45.) Plaintiff's counsel has litigated dozens of representative wage and hours cases,
25 including class actions. (Rodriguez Decl., at ¶ 45.) Further, Plaintiff's counsel is a member of various
26 consumer advocate organizations, including the Consumer Attorneys Association of Los Angeles
27 (CAALA) and California Employment Lawyers Association (CELA). (Rodriguez Decl., at ¶ 46.)
28 Plaintiff's counsel regularly attends conferences, seminars and conventions offered by Plaintiff

1 attorneys organizations and stays informed on new developments in employment law through various
2 law publications. *Id.* Class Counsel is sufficiently experienced, qualified and familiar with the
3 applicable law to make an informed judgment on the fairness of the settlement. As such, the settlement
4 is fair, adequate and reasonable, taking into account all relevant factors.

5 **B. The Settlement Provides Substantial Monetary Relief to the Class in Light of the**
6 **Risk and Expense of Further Litigation**

7 **i. The Settlement Is Within the Range of Reasonableness**

8 The reasonableness is determined with an “understanding of the amount that is in controversy
9 and the realistic range of outcomes of the litigation.” *Kullar v. Foot Locker Retail*, 168 Cal.App.4th
10 116, 120 (2008). A settlement is fair if the “consideration being paid for the release of those claims
11 represents a reasonable compromise.” *Munoz v. BCI Coca-Cola Bottling Co.*, 186 Cal.App.4th 399,
12 408 (2010). “Neither the trial court nor this court is to reach any ultimate conclusions on the contested
13 issues of fact and law which underlie the merits of the dispute, for it is the very uncertainty of outcome
14 in litigation and avoidance of wasteful and expensive litigation that induce consensual settlements. In
15 other words, the settlement or fairness hearing is not to be turned into a trial or rehearsal for trial on
16 the merits.” *7-Eleven Owners For Fair Franchising*, 85 Cal.App.4th at 1145. “We emphasize that the
17 merits of the underlying class claims are not a basis for upsetting the settlement of a class action. The
18 proposed settlement is not to be judged against a hypothetical or speculative measure of what might
19 have been achieved had plaintiffs prevailed at trial.” *Wershba*, 91 Cal.App.4th at 246.

20 “The court must stop short of the detailed and thorough investigation that it would undertake
21 if it were actually trying the case.” *Clark*, 175 Cal.App.4th at 799. “A settlement need not obtain 100
22 percent of the damages sought in order to be fair and reasonable. (See *Rebney v. Wells Fargo Bank*,
23 *supra*, 220 Cal.App.3d at p. 1139 [settlements found to be fair and reasonable even though monetary
24 relief provided was ‘relatively paltry’]; *City of Detroit v. Grinnell Corp.*, *supra*, 495 F.2d at p.
25 455 [settlement amounted to only ‘a fraction of the potential recovery’].) Compromise is inherent and
26 necessary in the settlement process. Thus, even if the relief afforded by the proposed settlement is
27 substantially narrower than it would be if the suits were to be successfully litigated, this is no bar to a
28 class settlement because the public interest may indeed be served by a voluntary settlement in which

1 each side gives ground in the interest of avoiding litigation.” *Wershba*, 91 Cal.App.4th at 250.

2 (1) *Failure to Indemnify Claim:*

3 Plaintiff alleged that Defendants failed to reimburse technician class members for necessary
4 business expenses. These class members were required to supply their own tools, which were
5 necessary to perform their jobs but were not reimbursed for the purchase of those hand tools.
6 Declaration of Trevor Neadeau (“Neadeau Decl. ¶ 3”). Plaintiff’s individual claim for reimbursement
7 of “hand tools and equipment,” as defined by the DLSE Manual, totaled \$900. Neadeau Decl. ¶ 4.
8 This figure represents the approximate amount that Plaintiff contends would be necessary for any
9 technician performing building maintenance duties to perform their positions. *Id.* Thus, assuming the
10 average amount recoverable for the Class Members, which includes non-technicians, is \$900, the
11 maximum value of this claim would be \$ \$66,600. (Rodriguez Decl., at ¶ 47.) This amount was
12 calculated by using Plaintiff’s individual tool reimbursement claim of \$900 and multiplying it by the
13 number of class members during the class period (74 class members), totaling \$66,600. (Rodriguez
14 Decl., at ¶ 47.)

15 Defendants deny that class members are owed any reimbursement of business expenses and
16 maintain that tools were provided to technicians and that Defendants maintained accounts at various
17 hardware stores where its employees could charge expenses to those existing accounts. Based on
18 interviews of Defendants’ employees, there was a consensus that Defendant did supply *some* of the
19 tools necessary to perform building maintenance duties (Rodriguez Decl., at ¶ 48.) Defendants also
20 contend that any tools purchased by Class Members prior to their employment at Broadway
21 Management Company, LLC would have been eligible for full reimbursement upon receipt of
22 reimbursement requests. (Rodriguez Decl., at ¶ 48.) Thus, the \$66,600 maximum amount recoverable
23 under this claim was challenged and subject to reduction by the number of Class Members who were
24 not Technicians nor eligible for any kind of business expenses. As such, Plaintiff believes the amount
25 the Class could reasonably expect to be awarded at trial on this claim is \$15,300. *Id.* Plaintiff believes
26 this amount would have been recovered because Technicians would have testified and would have
27 confirmed that not all tools were provided by Defendants.

1 (2) *Failure to Pay Overtime Claim:*

2 Plaintiff alleges that he was not compensated for hours spent on-call. Thus, assuming the on-
3 call time worked by Building Maintenance Technicians is compensable, Defendants failed to
4 compensate them fully for overtime hours worked. As a Technician, Plaintiff worked about 366
5 overtime hours when factoring the on-call time where he was waiting to be dispatched to an after-
6 hour emergency. (“Neadeau Decl. ¶¶ 5-6.”). Thus, taking the average rate of technicians of \$21 per
7 hour and the average overtime rate of \$31.50, the recoverable overtime hours for Technicians is
8 \$10,584 for every two-week period spent on-call. As the on-call overtime hours only applied to
9 Building Maintenance Technicians who were on-call (13 total Technicians), assuming Plaintiff’s
10 individual overtime claim is the average claim for the other class members, the maximum value of
11 this claim would be \$137,592.00. (Rodriguez Decl., at ¶ 50.) This amount was calculated by taking
12 the average of the overtime claim technicians (\$10,584.00) and multiplying it by the total number of
13 Technician class members who worked on-call (13 members) which resulted in the maximum value
14 of the overtime claim-\$137,592.00. (Rodriguez Decl., at ¶ 50.)

15 Defendants maintain that time spent on-call waiting to be dispatched to an after-hour
16 emergency was not compensable. As such, its employees were paid additional wages for on-call hours
17 when they were dispatched to service an after-hour emergency. Plaintiff admits he was compensated
18 for additional time spent responding to after-hour emergency calls while on-call but was not
19 compensated for the time waiting to be dispatched. (Rodriguez Decl., at ¶ 51.) The success of
20 Plaintiff’s overtime claims hinges on whether Technician Class Members are entitled to compensation
21 for the time waiting to be dispatched while on-call. *Id.* Even though Defendants maintain that hours
22 spent waiting on-call to respond to emergency calls are not compensable, Plaintiff’s testimony would
23 have established the requisite level of control needed to make the time waiting to be dispatched
24 compensable. Thus, Plaintiff believes the amount the Class could reasonably expect to be awarded at
25 trial on this claim is –\$137,592.00.

26 (3) *Failure to Furnish Accurate Wage Statements Claim:*

27 The premise of the wage statement claim is that Defendants failed to list the correct number
28 of overtime hours worked because they failed to compensate its employees for overtime hours worked

1 while waiting to be dispatched to an after-hour emergency call. However, if Plaintiff fails to prove
2 that they are entitled to compensation for time spent during on-call shifts, then many of the overtime
3 hours claimed by the class are not compensable, and therefore don't count as hours worked under the
4 Labor Code.

5 Here, if Plaintiff is successful on his overtime claim, then, the maximum value of the wage
6 statement claim would be \$114,350. (Rodriguez Decl., at ¶ 52.) The maximum value was calculated
7 by taking the total number of workweeks worked by all Class Members (12,234 workweeks) and
8 multiplying it by the \$50 penalty, not to exceed an aggregate penalty of \$4,000 per employee. *Id.*
9 However, Non-Technician Class Members were not required to work on-call and thus were not
10 subject to the same error on their wage statement. (Rodriguez Decl., at ¶ 52.) As such, a more accurate
11 maximum value of the wage statement claim is \$20,583, which was calculated by taking the \$50
12 penalty and multiplying it by the total number of workweeks (2,827), worked by the Technician Class
13 Members (13) who were subject to overtime violations. *Id.*

14 *(4) Failure to Provide Rest Period Claim:*

15 During Plaintiff's employment, Defendants' practices and policies made it difficult for
16 Plaintiff to take compliant rest periods. (Neadeau Decl. ¶ 7). Using the average hourly rate of \$18.28
17 as a basis for calculating the damages for Defendants' alleged failure to provide rest periods, assuming
18 2 rest period violations occurred during each pay period and multiplying it by approximately 12,234
19 workweeks, this class claim had a maximum value of \$447,275.04 (Rodriguez Decl., at ¶ 53.)
20 Defendants maintain that they had compliant rest period policies and that in fact employees were
21 given an opportunity to take their rest periods. In light of the conflicting evidence regarding whether
22 employees were permitted to take rest periods and difficulties associated with proving it on a class
23 wide basis, the amount that the Class could reasonably expect to be awarded at trial is \$223,637.52,
24 which reflects the 50/50 chance that Class Members would have been successful on their rest period
25 claim at trial. This figure could also be reduced further given Plaintiff's investigation did not discover
26 evidence that the rest period violations were pervasive among non-technician class members and
27 evidence that many, if not all, of the non-exempt employees controlled their own break times. Thus,
28 given the possibility that a trier of fact would have believed the testimony that the rest period

1 violations only applied to Building Maintenance Technicians, then, a more realistic value of the claim
2 would be \$62,618.50, which was calculated by applying the percentage of total technician class
3 members (28%) to the expected award at trial of \$223,637.52. (Rodriguez Decl., at ¶ 54.)

4 (5) *Waiting Time Penalties Claim:*

5 Plaintiff's cause of action for wait-time penalties alleges that Defendants' failure to pay
6 eligible employees the correct overtime rates was willful, thereby entitling each of them to waiting
7 time penalties under Labor Code § 201-203. As such, this claim is derivative of the failure to pay
8 overtime wages claim. However, because of the derivative nature of the claim and obstacles to
9 recovery on those claims, the waiting time penalties claim must be discounted. (Rodriguez Decl., at
10 ¶ 55.) Here, because the average hourly rate of the Class Members was \$18.28, and the 30-day
11 maximum was reached as to each of the approximately 9 Technician Class Members whose
12 employment with Broadway Management has terminated, the maximum value of this claim would
13 have been approximately \$26,323.30. (Rodriguez Decl., at ¶ 55.) This amount was calculated by
14 taking the average number of hours worked in a month (160) and multiplying it by the average hourly
15 rate of pay for technician class members-equaling \$2,924.80 and multiplying it by the total number
16 of employees whose employment has terminated (9). *Id.* Defendants have a viable defense their
17 conduct was not willful but rather they were acting under an incorrect understanding of the law. Based
18 on this, there is a 50/50 likelihood that Plaintiff would succeed on this claim at trial, so the amount
19 that the Class could reasonably expect to be awarded at trial on this claim is \$13,161.65.

20 (6) *PAGA Claim:*

21 Defendants' records estimate that there are 52 Aggrieved Employees, who worked a total of
22 1,514 PAGA Pay Periods. (Rodriguez Decl., at ¶ 56.) The PAGA claim seeks penalties for
23 Defendant's alleged violations of Labor Code §§ 510, 226.7, 2802, 226, 201-203 and 204. *Id.* "The
24 civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial
25 violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each
26 subsequent violation." LAB. CODE § 2699 (f) (2). Assessing a \$100 penalty for each of the 1,514
27 PAGA Pay Periods, the maximum total of PAGA penalties for each Labor Code violation equals
28 \$151,400. (Rodriguez Decl., at ¶ 56.) Then, multiplying the maximum amount of PAGA penalties

1 per Labor Code violation \$151,400 by the total number of Labor Code violations (6), the maximum
2 PAGA penalties should Plaintiffs succeed on all their PAGA claims totals \$908,400. (Rodriguez
3 Decl., at ¶ 57.) Considering the weight of the evidence, clarity of applicable law and relative strength
4 and weaknesses of the claims and defenses, Defendants would likely have been found liable for
5 committing Labor Code § 2802 violations. However, it is likely that the Court would exercise its
6 discretion to lower the amount in penalties and further reduce the amount in penalties by not allowing
7 “stacking” of multiple violations during each pay period. As such, a more accurate total of the PAGA
8 penalties to be awarded at trial is \$100,000. (Rodriguez Decl., at ¶ 57.)

9 Here, the settlement allocates \$9,392.50 to PAGA penalties. (Rodriguez Decl., at ¶ 57.) This
10 sum was agreed upon by taking into consideration that the maximum PAGA penalties are most likely
11 \$100,000 and on the basis had a larger allocation been made to PAGA penalties, Class Members
12 would have received less compensation for class claims. *Id.* Courts have routinely approved allocation
13 of far smaller amounts to PAGA penalties in class action settlements involving exponentially larger
14 sums than in this case. *See Nordstrom Commi. Cases*, 186 Cal.App.4th 576, 580, 589 (2010) (no abuse
15 discretion in approving settlement of class action that allocated \$6.405 million to class members and
16 zero to PAGA claim). As such, the amount allocated to penalties is appropriate and best serves the
17 interests of the Class.

18 **ii. The Scope of Released Claims Is Appropriately Limited**

19 The released claims share a reasonable nexus with the alleged violations in both substance and
20 time. Here, the Class Members’ release covers only the claims and time period alleged in the FAC. It
21 only releases claims that were pled in the FAC, or that could have been pled, and excludes unrelated
22 claims such as wrongful termination, harassment and workers’ compensation. (See Rodriguez Decl.,
23 at ¶¶ 34-35.). While the Class Representatives will execute a broader individual general release of all
24 claims. *Id.*

25 **iii. The Settlement Provides for Reasonable Attorneys’ Fees and Costs**

26 “Courts recognize two methods for calculating attorney fees in civil class actions: the
27 lodestar/multiplier method and the percentage of recovery method. California case law permits fee
28 awards in the absence of detailed time sheets.” *Wershba*, 91 Cal.App.4th at 254-55.

1 “When class action litigation establishes a monetary fund for the benefit of the class members,
2 and the trial court in its equitable powers awards class counsel a fee out of that fund, the court may
3 determine the amount of a reasonable fee by choosing an appropriate percentage of the fund
4 created. The recognized advantages of the percentage method—including relative ease of calculation,
5 alignment of incentives between counsel and the class, a better approximation of market conditions in
6 a contingency case, and the encouragement it provides counsel to seek an early settlement and avoid
7 unnecessarily prolonging the litigation—convince us the percentage method is a valuable tool that
8 should not be denied our trial courts.” *Laffitte*, 1 Cal.5th at 503.

9 “The percentage of the fund method more accurately reflects the results achieved. The lodestar
10 method has been ... criticized for discouraging early settlement and consuming too large an amount
11 of judicial resources in its application. The percentage method is easy to calculate; it establishes
12 reasonable expectations on the part of plaintiffs’ attorneys as to their expected recovery; and it
13 encourages early settlement, which avoids protracted litigation. Where the class settlement is for a
14 very large amount, a percentage fee may be criticized as providing counsel a windfall in relation to
15 the amount of work performed.” *Laffitte*, 1 Cal.5th at 561-62. “Some courts have approved fee awards
16 representing a small percentage of the fund in cases involving very large settlements, the so-called
17 ‘megafunds,’ in view of the ‘windfall’ that would otherwise accrue to counsel.” *Id.* at 566.

18 “Although many courts in common-fund cases permit use of either a percentage-of-the-fund
19 approach or a lodestar ... most courts and commentators now believe that the percentage method is
20 superior. Critics of the lodestar method note, for example, the difficulty in applying the method and
21 cite the undesirable incentives created by that approach—i.e., a financial incentive to extend the
22 litigation so that the attorneys can accrue additional hours (and thus, additional fees). Moreover, some
23 courts and commentators have criticized the lodestar method because it gives counsel less of an
24 incentive to maximize the recovery for the class.” *Laffitte*, 1 Cal.5th at 565.

25 Defendants have agreed not to oppose any request up to \$62,618.50, which is 35% of the
26 maximum settlement amount. (Rodriguez Decl., at ¶ 57.). At the final fairness hearing, Plaintiff’s
27 counsel will request attorney’s fees of 35% of the common fund (\$62,618.50) plus up to \$25,000 in
28 costs. (Rodriguez Decl., at ¶ 58.) Here, the “percentage-of-the-fund” approach is the superior method

1 of compensating counsel for the monetary benefit conferred on the Class because it most accurately
2 reflects the results achieved in this action. The 35% requested fee is reasonable because it is within
3 the range that is typically negotiated for wage litigation in the marketplace. *Id.* If a smaller percentage
4 is awarded, the class would reap a windfall because they would receive a substantial monetary benefit
5 without ever having to invest the time and energy of pursuing suit individually at a below-market rate.

6 **iv. Plaintiff Seeks a Reasonable Service Award**

7 “Since without a named plaintiff there can be no class action, such compensation may be
8 necessary to induce him to participate in the suit.” *Clark*, 175 Cal.App.4th at 804. “It is established
9 that named plaintiffs are eligible for reasonable incentive payments to compensate them for the
10 expense or risk they have incurred in conferring a benefit on other members of the class.” *Munoz*, 186
11 Cal.App.4th at 412. For purposes of preliminary approval, the requested \$15,000 for Plaintiff is fair
12 in light of Plaintiff’s personal investment of time, risk he undertook in this litigation for the benefit
13 of the class and personal sacrifice of executing a broader release than the Class. (Rodriguez Decl., at
14 ¶ 59.)

15 By being the named representative, Plaintiff put his name forward on public record at the risk
16 of present or potential employers choosing not to hire him. *Id.* Plaintiff also ran the risk of being liable
17 for Defendants’ attorneys’ fees and costs as a result of the fee shifting provisions of the Labor Code.
18 (See e.g., Labor Code §§ 218.5, 226.) Plaintiff spent a significant time reviewing documents,
19 communicating with counsel, assisting with the preparation of the LWDA letters, complaints, and
20 other pleadings. *Id.* Thus, the \$15,000 sought by Plaintiff is reasonable.

21 **VII. THE PROPOSED CLASS NOTICE TO CLASS MEMBERS IS ADEQUATE**

22 **A. The Class Notice is Accurate and Informative**

23 “Rule 3.769 requires class representatives to notify class members of a pending settlement on
24 the merits and provide them with the opportunity to object at the final settlement fairness hearing.
25 Rule 3.771(b) requires that notice of a pending judgment be provided to class members, and rule
26 3.769(f) provides that notice of the final approval hearing must be given to the class members in the
27 manner specified by the court. The notice must contain an explanation of the proposed settlement and
28 procedures for class members to follow in filing written objections to it and in arranging to appear at

1 the settlement hearing and state any objections to the proposed settlement.” *Hernandez*, 4
2 Cal.5that267.

3 “The notice given to the class must fairly apprise the class members of the terms of the
4 proposed compromise and of the options open to dissenting class members. The purpose of a class
5 notice in the context of a settlement is to give class members sufficient information to decide whether
6 they should accept the benefits offered, opt out and pursue their own remedies, or object to the
7 settlement. As a general rule, class notice must strike a balance between thoroughness and the need
8 to avoid unduly complicating the content of the notice and confusing class members. Here again the
9 trial court has broad discretion. The court has virtually complete discretion regarding notice to class
10 members.” *Wershba*, 91 Cal.App.4th at 251-52.

11 The Class Notice provides all information necessary to make an informed decision about the
12 settlement. Exhibit 2. It summarizes the lawsuit, including the parties’ contentions and denials, the
13 proceedings to date, and explains the terms of the settlement in plain language. (Rodriguez Decl., at
14 ¶ 60). It also informs the Class of their rights, including to object, be excluded from the settlement or
15 do nothing and receive a share of the settlement. *Id.* It also explains the consequences of exercising
16 these options. *Id.* The Class Notice makes clear that each Class Member will receive a payment unless
17 he or she opts out and explains the process for doing so. *Id.* As such, the Class Notice is accurate and
18 informative.

19 The Class Administrator will send to all Class Members identified in the Class Data, via first
20 class USPS mail, substantially in the form attached as Exhibit 3 (Class Notice). Additionally, a
21 returned Class Notice will be forwarded only once per Class Member by the Administrator. If there
22 is no forwarding address, the Administrator will do a skip-trace search for a more recent address
23 associated with the Class Member whose Notice Packet was returned, and re-mail the Notice Packet
24 within five (5) calendar days; this search and re-mailing will be performed only once per Class
25 Member by the Administrator. (Rodriguez Decl., at ¶ 61)

26 **VIII. CONCLUSION**

27 Based on the foregoing, Plaintiff respectfully requests that the Court grant preliminary
28 approval of the class settlement

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PIMENTEL LAW, P.C.

Dated: January 8, 2024

By: 
Gabriel J. Pimentel, Esq.
Yesenia L. Rodriguez, Esq.
Attorneys for Plaintiff

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1. I am an attorney at law duly licensed to practice before the State Courts of California, and the attorney of record for Plaintiff in the above-entitled action.
2. I have personal knowledge of all facts contained within this declaration, except those that are stated upon information and belief.
3. If called to testify to any fact contained within this declaration, I would and could be competent to do so.
4. The terms and conditions of the settlement are set forth in the Class Action and Private Attorneys General Act (“PAGA”) Settlement Agreement (“Settlement Agreement”), a true and correct copy of which is attached hereto as Exhibit 1.
5. The proposed “Class Notice,” subject to court’s approval, is attached to the Settlement Agreement as Exhibit A. A true and correct copy of the Class Notice is attached hereto as Exhibit 2.

6. On February 23, 2022, Plaintiff Trevor Neadeau filed a Complaint against Defendants in the Superior Court of the State of California, County of San Francisco. Plaintiff Neadeau asserted that Defendants committed the following violations of the California Labor Code: 1) Labor Code §§ 510 and 1198 (failure to pay overtime); 2) Labor Code §§ 226.7, 1198 (failure to provide rest periods); 3) Labor Code § 2802 (failure to indemnify for business expenditures); 4) Labor Code §§ 226, 1174(d), and 1198 (failure to furnish accurate itemized wage statements); 5) Labor Code §§ 2698 et seq. (civil penalties).

8. On December 6, 2022, the Parties participated in an all-day mediation presided over by Brandon McKelvey, a respected mediator of wage and hour representative and class actions. During the mediation, each party was represented by its respective counsel but were unable to settle the matter.

9. On May 24, 2023, the Parties participated in a second all-day mediation presided over by experienced wage-and-hour mediator, Brandon McKelvey. The Parties were able to resolve this action at that time.

1 **Investigation and Discovery**

2 10. Plaintiff's counsel conducted a thorough investigation into the merits of Plaintiff's
3 claims and the applicable law.

4 11. Prior to filing suit, Plaintiff's counsel met, on numerous occasions, with the Plaintiff and
5 requested and reviewed Plaintiff's respective employment records. Plaintiff's counsel performed
6 extensive legal research with respect to the merits and legal basis of the claims asserted by Plaintiff
and the defenses raised by Defendants.

7 12. Prior to the first mediation, Plaintiff obtained a sample of Class documents and
8 information, including but not limited to time records and wage statements for putative class members
9 and data demonstrating the class size, hours worked, workweeks (pay periods), hourly-rates, and total
10 compensation of non-exempt employees in the Class.

11 13. Plaintiff propounded formal written discovery upon Defendants, which resulted in the
12 production of various documents related to the action, such as policy documents, employee
handbooks, communications, and Plaintiff's time and payroll records.

13 14. Plaintiff's counsel spent significant time and efforts reviewing Defendants' document
14 production to determine, among other things, the legality of Defendants' written policies and the
15 violation rates for each of the respective claims. This included review of over 1,700 pages of relevant
16 documents.

17 15. Plaintiff's counsel also reviewed and analyzed Defendants' payroll and timekeeping
18 data, which permitted counsel to prepare a liability analysis and identify Defendants' potential
exposure should Plaintiff succeed on the asserted claims at trial.

19 16. Plaintiff's counsel also reviewed confirmatory discovery, which was produced after a
20 settlement was reached at the May 24, 2023 mediation.

21 17. The documents, information, and data obtained from Defendants was more than
22 sufficient to analyze the Labor Code violations alleged by Plaintiff and to make an informed decision
23 about the resolution of this case.

24 **Settlement Terms and Conditions**

25 18. "Class" is defined as all current and former persons employed by Defendants in an
26 hourly, non-exempt position in California during the Class Period. The Class Period is from February
23, 2018, to the date of Preliminary Approval of the settlement by the Court.

27 19. "PAGA Members" are defined as all current and former persons employed by
28 Defendants in an hourly, non-exempt position in California at any time from November 10, 2020 to
the date of Preliminary Approval.

1 20. Defendants have agreed to pay a “Maximum Settlement Amount” of \$187,850.00, of
2 which none will revert to Defendants. The settlement amount will be used to pay individual class
3 payments, individual PAGA payments, the LWDA PAGA payment, Class counsel fees, Class counsel
4 expenses, Class representative service payment, and the Administrator’s expenses.

5 21. Participating Class Members need not submit a claim form or do anything else to
6 receive a settlement payment. The Maximum Settlement Amount includes prior individual payments
7 that were made to Class Members for Pick-Up Stix’s release agreements. The total of previous
8 individual payments made to Class Members is \$30,850.00.

9 22. Not later than 30 calendar days after the Court grants Preliminary Approval of the
10 Settlement, Defendants will deliver the Class Data to the Administrator.

11 **Allocation of Settlement Payments for Tax Purposes**

12 23. Defendants will fund the Maximum Settlement Amount within 30 calendar days after
13 the Effective Date. The Administrator will mail checks to each Participating Class Member and PAGA
14 Member within 40 calendar days after the Effective Date.

15 24. 10% of each Participating Class Member’s Individual Class Payment will be allocated
16 to settlement as wage claims, which will be subject to tax withholdings and reported on a IRS W-2
17 Form. 90% of each Participating Class Member’s Individual Class Payment will be allocated to
18 settlement of claims for interest and penalties, which will not be subject to wage withholdings and
19 will be reported on IRS 1099 Form.

20 25. “Net Settlement Amount” means the amount from the Maximum Settlement Amount
21 that is available for distribution as Individual Class Awards for Participating Class Members after
22 deducting (1) the PAGA Allocation (which includes the LWDA payment and the Individual PAGA
23 Awards), (2) Plaintiff’s Enhancement Award, (3) Class Counsel’s Attorneys’ Fees and Costs, and (4)
24 Administration Expenses. The Net Settlement Amount is estimated to be \$37,310, which will be
25 distributed amongst 74 Class Members.

26 **Estimated Recovery by the Class Members**

27 26. The "PAGA Allocation" totals \$9,392.50 to be paid from the Maximum Settlement
28 Amount, with \$7,044.37 being allocated as the LWDA Payment (75%) and \$2,348.13 (25%) being
allocated as the Individual PAGA Awards.

 27. The Settlement share allocated to each Participating Class Member will differ
depending on whether the Class Member has received a prior individual payment for Pick-Up Stix
individual release agreements. If a Class Member has previously received such a payment from

1 Defendants, the Prior Individual Payment will be deducted from the Class Member's Individual Class
2 Award. In no event shall a Class Member's Individual Class Award be less than \$100.00.

3 28. Each Participating Class Member's settlement share will be calculated by dividing the
4 Net Settlement Amount (\$37,310) by the total number of Workweeks worked by all Participating
5 Class Members during the Class Period, then, multiplying the result by each Participating Driver Class
6 Member's Workweeks and subtracting any Prior Individual Payment, if applicable.

7 **Miscellaneous Payments**

8 29. "Administration Expenses" means the amount the Administrator will be paid from the
9 Maximum Settlement Amount to reimburse its reasonable fees and expenses in connection with
10 approval of the settlement. The Administration Expenses have been estimated by the Administrator
11 to be \$4,550.00. The Parties have selected ILYM to serve as the Settlement Administrator.

12 30. "Plaintiff's Enhancement Award" means payment to Class Representative Trevor
13 Neadeau in the amount of \$15,000.00 for initiating the Action, performing the work in support of the
14 Action, undertaking the risk of liability for Defendant's expenses in the event Plaintiffs were
15 unsuccessful in the prosecution of the Action, and for the general release of all claims with a waiver
16 of California Code of Civil Procedure Section 1542.

17 31. "Class Counsel's Attorney's Fees Payment and Costs" mean the amounts allocated to
18 Class Counsel for reimbursement of reasonable attorneys' fees and expenses, respectively, incurred
19 to prosecute the Action, as approved by the Court.

20 32. Class Counsel will request that the Court approve an award of attorneys' fees not to
21 exceed thirty-five percent (35%) of the Maximum Settlement Amount (\$65,747.50) plus costs and
22 expenses not to exceed \$25,000.

23 **Uncashed Checks**

24 33. For any Class Member whose Individual Class Payment check or Individual PAGA
25 Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the
26 funds represented by such checks to the California Controller's Unclaimed Property Fund in the name
27 of the Class Member thereby leaving no "unpaid residue" subject to the requirements of California
28 Code of Civil Procedure Section 384.

Release of Claims

34. All Participating Class Members release all claims that were alleged, or reasonably
could have been alleged, based on the factual allegations asserted in the Operative Complaint.
Participating Class Members do not release any other claims, including claims for vested benefits,
wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance,

1 disability, social security workers' compensation, or claims based on facts occurring outside the Class
2 Period.

3 35. The Class Representatives release all claims that were, or reasonably could have been,
4 alleged, based on the facts contained, in the Operative Complaint and all PAGA claims that were, or
5 reasonably could have been, alleged based on facts contained in the Operative Complaint. Plaintiff
6 understands and expressly agrees that this general release extends to all claims of every nature and
7 kind whatsoever, known or unknown, suspected or unsuspected, past or present, which Plaintiff has
8 or may have against the Released Parties, and all rights under Section 1542 of the California Civil
9 Code.

9 **Class Certification**

10 36. Plaintiff's claims are typical of the Class because he was employed by Defendants in
11 California as a Building and Maintenance Technician and was subject to the same policies and
12 procedures applicable to the Class during the Class Period.

13 37. There is no indication that Plaintiff's counsel is unqualified to represent the Class or
14 lacking in ability. Further, counsel is experienced in litigating representative wage actions. Plaintiff's
15 claims are typical of the Class. As such, there are no apparent interests which would be antagonistic
16 to those of the Class.

17 38. Plaintiff has worked closely with Class Counsel and assisted at every stage, provided
18 relevant documents and information, and remained actively involved throughout the litigation.

19 39. Class Counsel thoroughly investigated the claims raised in this action, the underlying
20 case law, Defendants' defenses, and meticulously reviewed the information and documents
21 exchanged, formally and informally, prior to attending mediation.

22 40. The proposed Class consists of approximately 74 members. The class is also
23 ascertainable as they can all be identified by reference to Defendants employment records. Defendants
24 will be able to provide Class Members full names, last known mailing address, social security number,
25 job title, and the number of workweeks employed during the Class and PAGA period.

26 41. The settlement is the product of adversarial, arm's-length negotiations. Plaintiff's
27 counsel did not discuss settlement until after receipt of information and documents necessary to
28 conduct an informed evaluation of the case. It was only after receipt of informal discovery and
investigation that Plaintiff finally engaged in mediation. The parties' negotiations were informed.
Indeed, all settlement negotiations were facilitated by a qualified wage and hour mediator, Brnaden
McKelvey. Also, Plaintiff's counsel, who specializes in the area of representative wage and hour
actions, considered the legal authorities relevant to this case and was in possession of all information

1 necessary to understand the relative strengths and weaknesses of Plaintiff's claims. It was only after
2 such investigation, discovery, preparation and negotiations that a compromise of this action was
3 obtained.

4 42. Plaintiff's counsel conducted sufficient research, investigation, analysis and discovery
5 on the core issues in this case, which ultimately resulted in receipt of written employment policies,
6 Plaintiff's employment records, time records and wage statements for all putative class members.
7 Plaintiff's counsel reviewed relevant documents, which allowed Plaintiff's counsel to evaluate the
8 merits of Plaintiff's claims.

9 43. Plaintiff's counsel evaluated data demonstrating the class size, hours worked,
10 workweeks (pay periods), hourly-rates, and total compensation of non-exempt employees in the Class.

11 44. Plaintiff propounded formal written discovery on Defendants, which resulted in the
12 production of various documents related to the action, such as policy documents, employee
13 handbooks, and Plaintiff's time and payroll records.

14 45. Throughout this litigation, Class Members have been represented by well-qualified
15 counsel who have years of experience in wage and hour class action litigation. Plaintiff's counsel
16 relied on their extensive experience when negotiating the Settlement. Plaintiff's counsel has litigated
17 dozens of representative wage and hours cases, including class actions.

18 46. I am a member of various consumer advocate organizations, including the Consumer
19 Attorneys Association of Los Angeles (CAALA) and California Employment Lawyers Association
20 (CELA). I regularly attend conferences, seminars and conventions offered by Plaintiff attorneys
21 organizations and stay informed on new developments in employment law through various law
22 publications.

23 **Amount of Damages if Claims Were Entirely Successful at Trial**

24 47. *Failure to Indemnify Claim:* assuming the average amount recoverable for the Class
25 Members, which includes non-technicians, is \$900, the maximum value of this claim would be
26 \$66,600. This amount was calculated by using Plaintiff's individual tool reimbursement claim of \$900
27 and multiplying it by the number of class members during the class period (74 class members),
28 totaling \$66,600.

48. Defendants deny that class members are owed any reimbursement of business
expenses and maintain that tools were provided to technicians and that Defendants maintained
accounts at various hardware stores where its employees could charge expenses to those existing

1 accounts. Based on interviews of Defendants' employees, there was a consensus that Defendant did
2 supply *some* of the tools necessary to perform building maintenance duties. Defendants also contend
3 that any tools purchased by Class Members prior to their employment at Broadway Management
4 Company, LLC would have been eligible for full reimbursement upon receipt of reimbursement
5 requests.

6 49. Thus, the \$66,600 maximum amount recoverable under this claim was challenged and
7 subject to reduction by the number of Class Members who were not Technicians nor eligible for any
8 kind of business expenses. As such, Plaintiff believes the amount the Class could reasonably expect
9 to be awarded at trial on this claim is \$15,300. Plaintiff believes this amount would have been
10 recovered because Technicians would have testified and would have confirmed that not all tools were
11 provided by Defendants.

12 50. *Failure to Pay Overtime Claim:* taking the average rate of technicians of \$21 per hour
13 and the average overtime rate of \$31.50, the recoverable overtime hours for Technicians is \$10,584
14 for every two-week period spent on-call. As the on-call overtime hours only applied to Building
15 Maintenance Technicians who were on-call (13 total Technicians), assuming Plaintiff's individual
16 overtime claim is the average claim for the other class members, the maximum value of this claim
17 would be \$137,592.00. This amount was calculated by taking the average of the overtime claim
18 technicians (\$10,584.00) and multiplying it by the total number of Technician class members who
19 worked on-call (13 members) which resulted in the maximum value of the overtime claim-
20 \$137,592.00.

21 51. Defendants maintain that time spent on-call waiting to be dispatched to an after-hour
22 emergency was not compensable. As such, its employees were paid additional wages for on-call hours
23 when they were dispatched to service an after-hour emergency. Plaintiff admits he was compensated
24 for additional time spent responding to after-hour emergency calls while on-call but was not
25 compensated for the time waiting to be dispatched.

26 52. *Failure to Furnish Accurate Wage Statements Claim:* if Plaintiff is successful on his
27 overtime claim, then, the maximum value of the wage statement claim would be \$114,350. The
28 maximum value was calculated by taking the total number of workweeks worked by all Class

Members (12,234 workweeks) and multiplying it by the \$50 penalty, not to exceed an aggregate penalty of \$4,000 per employee. However, Non-Technician Class Members were not required to work on-call and thus were not subject to the same error on their wage statement. As such, a more accurate maximum value of the wage statement claim is \$20,583, which was calculated by taking the \$50 penalty and multiplying it by the total number of workweeks (2,827 workweeks) worked by the Technician Class Members (13 Technicians) who were subject to overtime violations.

53. *Failure to Provide Rest Period Claim:* Using the average hourly rate of \$18.28 as a basis for calculating the damages for Defendants' alleged failure to provide rest periods, assuming 2 rest period violations occurred during each pay period and multiplying it by approximately 12,234 workweeks, this class claim had a maximum value of \$447,275.04.

54. Defendants maintain that they had compliant rest period policies and that in fact employees were given an opportunity to take their rest periods. In light of the conflicting evidence regarding whether employees were permitted to take rest periods and difficulties associated with proving it on a class wide basis, the amount that the Class could reasonably expect to be awarded at trial is \$223,637.52, which reflects the 50/50 chance that Class Members would have been successful on their rest period claim at trial. This figure could also be reduced further given Plaintiff's investigation did not discover evidence that the rest period violations were pervasive among non-technician class members and evidence that many, if not all, of the non-exempt employees controlled their own break times. Thus, given the possibility that a trier of fact would have believed the testimony that the rest period violations only applied to Building Maintenance Technicians, then, a more realistic value of the claim would be \$62,618.50, which was calculated by applying the percentage of total technician class members (28%) to the expected award at trial of \$223,637.52.

55. *Waiting Time Penalties Claim:* Plaintiff's cause of action for wait-time penalties alleges that Defendants' failure to pay eligible employees the correct overtime rates was willful, thereby entitling each of them to waiting time penalties under Labor Code § 201-203. As such, this claim is derivative of the failure to pay overtime wages claim. However, because of the derivative nature of the claim and obstacles to recovery on those claims, the waiting time penalties claim must be discounted. Here, because the average hourly rate of the Class Members was \$18.28, and the 30-

1 day maximum was reached as to each of the approximately 9 Technician Class Members whose
2 employment with Broadway Management has terminated, the maximum value of this claim would
3 have been approximately \$26,323.30. This amount was calculated by taking the average number of
4 hours worked in a month (160 hours) and multiplying it by the average hourly rate of pay for
5 technician class members (\$18.28)-equaling \$2,924.80 and multiplying it by the total number of
6 employees whose employment has terminated (9).

7 Defendants have a viable defense their conduct was not willful but rather they were acting
8 under an incorrect understanding of the law. Based on this, there is a 50/50 likelihood that Plaintiff
9 would succeed on this claim at trial, so the amount that the Class could reasonably expect to be
10 awarded at trial on this claim is \$13,161.65.

11 56. *PAGA Claim:* Defendants' records estimate that there are 52 Aggrieved Employees,
12 who worked a total of 1,514 PAGA Pay Periods. The PAGA claim seeks penalties for Defendant's
13 alleged violations of Labor Code §§ 510, 226.7, 2802, 226, 201-203 and 204. Assessing a \$100
14 penalty for each of the 1,514 PAGA Pay Periods, the maximum total of PAGA penalties for each
15 Labor Code violation equals \$151,400. Then, multiplying the maximum amount of PAGA penalties
16 per Labor Code violation (\$151,400) by the total number of Labor Code violations (6), the maximum
17 PAGA penalties should Plaintiffs succeed on all their PAGA claims totals \$908,400.

18 57. Considering the weight of the evidence, clarity of applicable law and relative strength
19 and weaknesses of the claims and defenses, Defendants would likely have been found liable for
20 committing Labor Code § 2802 violations. However, it is likely that the Court would exercise its
21 discretion to lower the amount in penalties and further reduce the amount in penalties by not allowing
22 "stacking" of multiple violations during each pay period. As such, a more accurate total of the PAGA
23 penalties to be awarded at trial is \$100,000.

24 The settlement allocates \$9,392.50 to PAGA penalties. This sum was agreed upon by taking
25 into consideration that the maximum PAGA penalties are most likely \$100,000 and on the basis had
26 a larger allocation been made to PAGA penalties, Class Members would have received less
27 compensation for class claims. Courts have routinely approved allocation of far smaller amounts to
28 PAGA penalties in class action settlements involving exponentially larger sums than in this case. *See*

1 *Nordstrom Commi. Cases*, 186 Cal.App.4th 576, 580, 589 (2010) (no abuse discretion in approving
2 settlement of class action that allocated \$6.405 million to class members and zero to PAGA claim.

3 **Attorney's Fees**

4 57. Defendants have agreed not to oppose any request up to \$62,618.50, which is 35% of
5 the maximum settlement amount.

6 58. At the final fairness hearing, Plaintiff's counsel will request attorney's fees of 35% of
7 the common fund (\$62,618.50) plus up to \$25,000 in costs. Here, the "percentage-of-the-fund"
8 approach is the superior method of compensating counsel for the monetary benefit conferred on the
9 Class because it most accurately reflects the results achieved in this action. The 35% requested fee is
10 reasonable because it is within the range that is typically negotiated for wage litigation in the
11 marketplace.

12 **Service Award for Plaintiff**

13 59. For purposes of preliminary approval, the requested \$15,000 for Plaintiff is fair in light
14 of Plaintiffs' personal investment of time, risk he undertook in this litigation for the benefit of the
15 class and personal sacrifice of executing a broader release than the Class. By being the named
16 representative Plaintiff put his name forward on public record at the risk of present or potential
17 employers choosing not to hire him. Plaintiff also ran the risk of being liable for Defendants'
18 attorneys' fees and costs as a result of the fee shifting provisions of the Labor Code. (See e.g., Labor
19 Code §§ 218.5, 226.) Plaintiff spent a significant time reviewing documents, communicating with
20 counsel, assisting with the preparation of the LWDA letters, complaints, and other pleadings.

21 **Class Notice**

22 60. The Class Notice provides all information necessary to make an informed decision
23 about the settlement. Exhibit 2. It summarizes the lawsuit, including the parties' contentions and
24 denials, the proceedings to date, and explains the terms of the settlement in plain language. It also
25 informs the Class of their rights, including to object, be excluded from the settlement or do nothing
26 and receive a share of the settlement. It also explains the consequences of exercising these options.
27 The Class Notice makes clear that each Class Member will receive a payment unless he or she opts
28 out and explains the process for doing so.

1 61. The Class Administrator will send to all Class Members identified in the Class Data,
2 via first class USPS mail, substantially in the form attached as Exhibit 2 (Class Notice). Additionally,
3 a returned Class Notice will be forwarded only once per Class Member by the Administrator. If there
4 is no forwarding address, the Administrator will do a skip-trace search for a more recent address
5 associated with the Class Member whose Notice Packet was returned, and re-mail the Notice Packet
6 within five (5) calendar days; this search and re-mailing will be performed only once per Class
7 Member by the Administrator.

8 **Notice of Settlement Agreement to LWDA**

9 62. Attached hereto as Exhibit 3 is a true and correct copy of the confirmation of the
10 submission of the Class Action and Private Attorneys General Act (“PAGA”) Settlement Agreement
11 (“Settlement Agreement”), which was uploaded onto the LWDA website on January 8, 2024.

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

14 Dated: January 8, 2024

By: _____

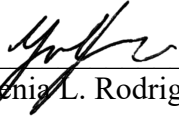

Yesenia L. Rodriguez

EXHIBIT 1

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Joseph Conron

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

TREVOR NEADEAU, an individual, on behalf
of all those similarly situated and aggrieved
employees,

Plaintiffs,

vs.

BROADWAY MANAGEMENT COMPANY,
LLC, a California corporation, HARRY
LEWIS, an individual, WILLIAM R. LEWIS
III, an individual, ELIZABETH CONRON, an
individual, LINDA STAPLETON, an
individual, AND JOSEPH CONRON,

Defendants.

) Case No. CGC-22-598314

) **JOINT STIPULATION OF CLASS AND**
) **PAGA SETTLEMENT**

) Action Filed: February 23, 2022

**JOINT STIPULATION OF CLASS AND PAGA
SETTLEMENT**

1 This Joint Stipulation of Class and PAGA Settlement is made by and between Plaintiff
2 Trevor Neadeau, on behalf of himself, the Class and the State of California pursuant to the Private
3 Attorneys General Act, on the one hand, and Defendants Broadway Management Company, LLC,
4 Harry Lewis, William R. Lewis III, Elizabeth Conron, Linda Stapleton, and Joseph Conron, on the
5 other hand.

6 In consideration of the mutual covenants, promises, and agreements set forth in this Joint
7 Stipulation of Class and PAGA Settlement, the Parties agree, subject to the Court's approval, to the
8 resolution of the Action, the Released Claims, and the Released PAGA Claims, subject to the
9 following terms and conditions.

10 **DEFINITIONS**

11 1. **"Action"** means the civil action titled *Trevor Neadeau v. Broadway Management*
12 *Company, LLC, Harry Lewis, William R. Lewis III, Elizabeth Conron, Linda Stapleton, and Joseph*
13 *Conron*, San Francisco County Superior Court No. CGC-22-598314.

14 2. **"Administration Expenses"** means the amount to be paid to the Administrator from
15 the Maximum Settlement Amount for its services in administering the settlement.

16 3. **"Administrator"** means ILYM, or any other third-party class action administrator
17 agreed to by the Parties and approved by the Court for the purposes of administering this
18 Settlement.

19 4. **"Agreement"** and **"Settlement"** means this Joint Stipulation of Class and PAGA
20 Settlement.

21 5. **"Class and PAGA Members"** means all Class Members and/or PAGA Members.

22 6. **"Class Counsel"** means Gabriel J. Pimentel and Yesenia L. Rodriguez of the law
23 firm Pimentel Law, P.C.

24 7. **"Class Counsel's Attorneys' Fees and Costs"** means the Court-approved
25 attorneys' fees, expenses, and costs incurred by Class Counsel for Class Counsel's litigation and
26 resolution of the Action, to compensate Class Counsel for their legal work in connection with the
27 Action, including their pre-filing investigation, their filing of the Action, all related litigation
28 activities, all Settlement work, all post-Settlement compliance procedures, and related litigation

1 expenses billed in connection with the Action.

2 8. **“Class Data”** means Class Members’ name, last-known mailing address, Social
3 Security Number, number of PAGA Period pay periods and/or Class Period work weeks.

4 9. **“Class Members”** and **“Class”** means all persons employed by Defendants in an
5 hourly, non-exempt position in California during the Class Period.

6 10. **“Class Period”** means from February 23, 2018 through Preliminary Approval.

7 11. **“Court”** refers to the court having jurisdiction over the Action, which is presently
8 the San Francisco County Superior Court.

9 12. **“Defendants”** means Broadway Management Company, LLC, Harry Lewis,
10 William R. Lewis III, Elizabeth Conron, Linda Stapleton, and Joseph Conron.

11 13. **“Defense Counsel”** means Joel Van Parys and Mayra Sandoval of the law firm CDF
12 Labor Law LLP.

13 14. **“Dispute Deadline”** means thirty (30) calendar days after the Administrator mails
14 the Class Notice to Class Members.

15 15. **“Effective Date”** means the date the Court grants Final Approval of the Settlement
16 and Judgment in the absence of any objection or intervention to the Settlement. If an objection or
17 intervention to the Settlement is filed and not later withdrawn, the Effective Date is the later of the
18 following events: (i) when the period for filing any appeal, writ or other appellate proceeding
19 opposing the Settlement has elapsed without any appeal, writ or other appellate proceeding having
20 been filed; or (ii) any appeal, writ or other appellate proceeding opposing the Settlement has been
21 dismissed finally and conclusively with no right to pursue further remedies or relief; or any appeal,
22 writ or other appellate proceeding has upheld the Court’s final order with no right to pursue further
23 remedies or relief. In this regard, in the event an objection or intervention is filed and not later
24 withdrawn, the Parties hereby state their intention that the Settlement will not become effective
25 until the Court’s order granting final approval of the Settlement is completely final, and there is no
26 further recourse by any appellant or objector who seeks to contest the finality of the Settlement.

27 16. **“Final Approval Motion”** means Plaintiff’s motion for final approval of the
28 Settlement and judgment.

1 24. **“PAGA”** means California’s Labor Code Private Attorneys General Act, Cal. Lab.
2 Code § 2699, et seq.

3 25. **“PAGA Allocation”** means, subject to Court approval, the allocation of Nine Thousand
4 Three Hundred and Ninety-Two Dollars and Fifty Cents (\$9,392.50) of the Maximum Settlement Amount
5 as PAGA penalties.

6 26. **“PAGA Pay Periods”** refers to the number of pay periods a PAGA Member
7 worked for Defendants as a non-exempt or hourly-paid employee in California during the PAGA
8 Period. Each PAGA Member will be credited with at least one (1) PAGA Pay Period.

9 27. **“PAGA Period”** means from November 10, 2020 through Preliminary Approval.

10 28. **“PAGA Class”** and **“PAGA Member(s)”** means all persons employed by
11 Defendants in an hourly, non-exempt position in California during the PAGA Period.

12 29. **“Participating Class Member(s)”** means all Class Members who do not opt out of
13 the Settlement.

14 30. **“Parties”** means Plaintiff and Defendants collectively.

15 31. **“Plaintiff”** and **“Class Representative”** means Trevor Neadeau on behalf of
16 himself and each of his heirs, representatives, successors, assigns, and attorneys.

17 32. **“Plaintiff’s Enhancement Award”** means, subject to Court approval, Fifteen
18 Thousand Dollars (\$15,000.00) of the Maximum Settlement Amount for Plaintiff in recognition of his
19 effort and work in prosecuting the Action and in consideration for an individual general release of
20 all claims with a waiver of California Code of Civil Procedure Section 1542.

21 33. **“Preliminary Approval”** means the Court’s Order Granting Preliminary Approval
22 of the Settlement.

23 34. **“Preliminary Approval Motion”** means Plaintiff’s motion for preliminary
24 approval of the Settlement.

25 35. **“Prior Paid Amount”** means the amount of Thirty Thousand Eight Hundred and
26 Fifty Dollars (\$30,850.00) that Defendants already paid to certain Class Members for *Pick-Up Stix*
27 individual release agreements. Parties agree that Defendants will only be obligated to fund the
28 Maximum Settlement Amount minus the Prior Paid Amount. To the extent a Class Member already

received payment from Defendants in exchange for an individual release agreement, the gross amount of said payment) is referred to as “Prior Individual Payment Amount.”

36. **“Released Claims”** means all claims under the California Labor Code, Wage Orders, regulations, and/or any other provisions of state or federal law against the Released Parties that were alleged in the Action and those that reasonably could have been alleged in the Action based on Plaintiff’s factual allegations asserted in the Action and any amendments thereto, including, without limitation, all claims for (1) off-the-clock work, (2) meal period auto-deduction, (3) unpaid minimum wages, (4) unpaid regular wages, (5) unpaid overtime, (7) unpaid double time, (8) regular rate of pay, (9) meal periods and meal period premiums, (10) rest breaks and rest break premiums, (11) wage statements, (12) failure to keep records, (13) timely payment of wages at separation, (14) failure to reimburse reasonable business expenses, (15) violation of Unfair Competition Law, and any other Labor Code violations that were alleged in the Action, or that could have been alleged in the Action based on the facts alleged in the Action, which includes, but is not limited to, alleged violations of Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 227.3, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, Code of Civil Procedure section 1021.5, Business and Professions Code section 17200, *et seq.* during the Class Period.

37. **“Released PAGA Claims”** means all claims for civil penalties under the California Labor Code, Wage Orders, regulations, and/or any other provisions of state and federal law against the Released Parties that were alleged in the Action and that reasonably could have been alleged in the Action based on the factual allegations contained in the operative complaints in the Action and any amendments thereto, including, without limitation, all claims for civil penalties under PAGA (Labor Code § 2698 *et seq.*) related to (1) off-the-clock work, (2) meal period auto-deduction, (3) unpaid minimum wages, (4) unpaid regular wages, (5) unpaid overtime, (6) unpaid double time, (7) regular rate of pay, (8) meal periods and meal period premiums, (9) rest breaks and rest break premiums, (10) wage statements, (11) failure to keep records, (12) timely payment of wages at separation, (13) failure to reimburse reasonable business expenses, and any other Labor Code violations that were alleged in the Action, or that could have been alleged in the Action based on

the facts alleged in the Action, which includes, but is not limited to, alleged violations of Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 227.3, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, during the PAGA Period.

38. **“Released Parties”** means (i) Defendants, (ii) Defendants’ past and present direct and indirect parents; (iii) the respective past and present direct and indirect subsidiaries and affiliates of any of the foregoing; (iv) the past and present shareholders, directors, officers, agents, employees, attorneys, insurers, members, partners, managers, contractors, agents, consultants, representatives, administrators, fiduciaries, benefit plans, transferees, predecessors, successors and assigns of any of the foregoing; and (v) any individual or entity which could be jointly liable with any of the foregoing.

39. **“Request(s) for Exclusion”** refers to a Class Member’s written request to be excluded (i.e., opt-out) from the Settlement.

40. **“Response Deadline”** means sixty (60) calendar days after the Administrator mails the Class Notice to Class Members.

41. **“Workweek(s)”** refers to the number of weeks a Class Member worked for Defendants as a non-exempt or hourly-paid employee in California during the Class Period, excluding any week(s) during which the Class Member did not work or was on a leave of absence. Each Class Member will be credited with at least one (1) Workweek.

42. **“Workweek Dispute(s)”** refers to a Class Member’s written dispute of the pre-printed information in the Class Notice as to his or her Workweeks and/or PAGA Pay Periods.

FACTUAL BACKGROUND

43. Plaintiff filed a letter with the LWDA on November 10, 2021 alleging various wage and hour violations by Defendants.

44. On February 23, 2022, Plaintiff filed a civil complaint in San Francisco County Superior Court alleging the following claims: (1) Failure to Pay Overtime; (2) Failure to Provide Uninterrupted Rest Periods; (3) Failure to Reimburse for Business Expenditures; (4) Failure to Furnish Itemized Wage Statements and Maintain Accurate Pay Records.

45. On March 29, 2022, Plaintiff filed the operative first amended complaint entitled

1 First Amended Class Action Complaint, San Francisco County Superior Court Case No. CGC-22-
2 598314, alleging the following claims: (1) Failure to Indemnify for Necessary Expenditures; (2)
3 Failure to Pay Overtime; (3) Failure to Furnish Compliant Wage Statements and Maintain Accurate
4 Pay Records; (4) Failure to Provide Rest Periods; (5) Failure to Timely Pay Wages; (6) Willful
5 Failure to Pay Wages; (7) Civil Penalties in Violation of Labor Code §§ 2698 *et. seq.*

6 46. Plaintiff has not filed a motion for class certification in the Action, nor has a date
7 been set by the Court for the filing of such a motion.

8 47. The Action has been actively litigated. There have been on-going investigations, and
9 there has been an exchange of extensive documentation and information.

10 48. On December 6, 2022, the Parties participated in a mediation with well-respected
11 mediator Brandon McKelvey. The Parties did not settle that day. They continued to exchange
12 additional information and on May 24, 2023 held a second day of mediation with Brandon
13 McKelvey and reached a settlement of the claims in the Action as specified in this Agreement.

14 **INADMISSIBILITY OF SETTLEMENT AGREEMENT/DENIAL OF LIABILITY**

15 49. **No Determination on the Merits.** There has been no determination on the merits
16 of the Action, but, in order to avoid additional cost and the uncertainty of litigation, it is the desire
17 of the Parties to fully, finally, and forever settle, compromise, discharge, and release of any and all
18 disputes and claims against the Released Parties arising from or related to the Action.

19 50. **Defendants Denies Liability and Wrongdoing.** This Agreement represents a full
20 and good-faith compromise and settlement of highly disputed claims. Nothing in this Agreement
21 or any statement or conduct in furtherance of the Settlement is intended or will be construed as an
22 admission by Defendants that Plaintiff's claims in the Action have merit or that Defendants have
23 any liability to Plaintiff, any Class Members, or any PAGA Members. Defendants deny any
24 liability and wrongdoing of any kind associated with the alleged claims. Defendants further deny
25 that, for any purpose other than settling the Action, the Action is appropriate for class or
26 representative treatment. Defendants contend that they have complied with California and Federal
27 employment laws at all times and that employees have been paid all wages owed.

28 ///

CLASS CERTIFICATION FOR SETTLEMENT PURPOSES

51. Solely for purposes of settling the Action, the Parties stipulate that the requisites for class certification with respect to the Class Members are met. The Parties stipulate that certification for settlement purposes is in no way an admission that class certification is proper for litigation purposes, and that evidence of this limited stipulation for settlement purposes will not be deemed admissible in this or any other proceeding. More specifically, the Parties stipulate that, solely for settlement purposes:

A. The Class is ascertainable and so numerous as to make it impracticable to join all Class Members;

B. With respect to the Class, common questions of law and fact predominate over questions affecting any individual member in the Class, including, but not limited to: whether Defendants paid proper wages and overtime to the Class; whether Defendants provided compliant meal periods and associated premium pay to the Class; whether Defendants provided compliant rest periods and associated premium pay to the Class; whether Defendants timely paid compensation and associated waiting time penalties; whether Defendants provided accurate itemized wage statements to the Class; whether Defendants maintained accurate payroll records with respect to the Class; whether Defendants properly reimbursed business expenses to the Class; and whether Defendants engaged in unlawful or unfair business practices affecting the Class in violation of the California Business & Professions Code;

C. Plaintiff's claims are typical of the claims of the Class Members;

D. Plaintiff and Class Counsel will fairly and adequately protect the interests of the Class; and

E. A class action is superior to other available means for the fair and efficient adjudication of the controversy, as the prosecution of separate actions by individual members of the Class would create the risk of inconsistent or varying adjudications, which would establish incompatible standards of conduct.

52. Class Counsel has conducted a thorough investigation into the facts of the Action, including an extensive review of relevant documents, and has diligently pursued an investigation of

1 the claims of the Class against Defendants. Based on its own independent investigation and
2 evaluation, Class Counsel is of the opinion that the Settlement with Defendants for the
3 consideration and on the terms set forth in this Settlement Agreement is fair, reasonable, and
4 adequate and is in the best interest of the Class in light of all known facts and circumstances,
5 including the risk of significant delay, the risk the Class will not be certified by the Court, defenses
6 asserted by Defendants, and numerous potential appellate issues. Defendants and Defense Counsel
7 also agree that the Settlement is fair and in the best interest of the Class.

8 **SETTLEMENT AMOUNT**

9 53. **Maximum Settlement Amount.** In consideration for the resolution and release of
10 claims provided for by this Settlement, Defendants will pay the Maximum Settlement Amount of
11 One Hundred Eighty Seven Thousand Eight Hundred and Fifty Dollars (\$ 187,850.00), which is
12 inclusive of all amounts Defendants are required to pay under the Settlement except as provided in
13 Paragraph 53 below. The Maximum Settlement Amount is non-reversionary and will be used for
14 the payment of the following:

15 A. **Administration Expenses.** The Administrator will be paid for the costs of
16 administration of the Settlement from the Maximum Settlement Amount. The Administration
17 Expenses have been estimated by the Administrator to be approximately Four Thousand and Five
18 Hundred and Fifty Dollars (\$4,550.00).

19 B. **Class Counsel's Attorneys' Fees and Costs.** Defendants agree not to oppose
20 or object to any application or motion by Class Counsel for attorneys' fees not to exceed Thirty
21 Five percent (35%) of the Maximum Settlement Amount, which is Sixty Five Thousand Seven
22 Hundred Forty Seven Dollars and Fifty Cents (\$65,747.50), plus reasonable costs and expenses not
23 to exceed Twenty Five Thousand Dollars (\$25,000), subject to approval by the Court. This
24 Agreement is not contingent upon the Court awarding Class Counsel any particular amount in
25 attorneys' fees and costs. If the Court reduces or does not approve the requested Class Counsel's
26 Attorneys' Fees and Costs, the Agreement will remain binding on the Parties. Any amount
27 requested by Class Counsel for the Class Counsel's Attorneys' Fees and Costs and not granted by
28 the Court will be added to the Net Settlement Amount and be distributed as provided in this

1 Agreement. The Administrator will issue an IRS Form 1099-MISC to Class Counsel for the
2 payments made pursuant to this paragraph.

3 C. Plaintiff's Enhancement Award. The Parties agree to the designation of
4 Plaintiff Trevor Neadeau as the Class Representative. Defendants agree not to oppose or object to
5 any application or motion by Class Counsel for an enhancement award not to exceed Fifteen
6 Thousand Dollars (\$15,000.00) of the Maximum Settlement Amount for Plaintiff in recognition of his
7 effort and work in prosecuting the Action and in consideration for an individual general release of
8 all claims with a waiver of California Code of Civil Procedure Section 1542. Plaintiff's
9 Enhancement Award is a part of, and is to be deducted from, the Maximum Settlement Amount. If
10 the Court approves an enhancement award to Plaintiff in an amount less than that set forth above,
11 the difference between the amount set forth above and the amount approved by the Court will be
12 added to the Net Settlement Amount and distributed as provided in this Agreement. In addition to
13 the Court-approved Plaintiff's Enhancement Award, Plaintiff will receive his pro-rata Individual
14 Class Award and pro-rata Individual PAGA Award. Plaintiff's Enhancement Award will be paid
15 within 30 days after the Effective Date of the Settlement. The Administrator will issue IRS Forms
16 1099-MISC for the Plaintiff's Enhancement Award. Plaintiff assumes full responsibility and
17 liability for taxes owed on Plaintiff's Enhancement Award.

18 D. PAGA Allocation. Subject to Court approval, the Parties agree to allocate Nine
19 Thousand Three Hundred Ninety-Two Dollars and Fifty Cents (\$9,392.50) of the Maximum Settlement
20 Amount as PAGA penalties. The PAGA Allocation will be distributed as follows:

21 i. LWDA Payment. Subject to Court approval of the PAGA
22 Allocation, and per California Labor Code section 2699(i), the Administrator will mail the LWDA
23 Payment to the LWDA along with a copy the Order Granting Final Approval of the Settlement and
24 Judgment to:

25 Department of Industrial Relations
26 Accounting Unit
27 455 Golden Gate Avenue, 10th Floor
28 San Francisco, CA 94102

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1 ii. Individual PAGA Awards. Subject to Court approval of the PAGA
2 Allocation, and per California Labor Code section 2699(i), the Administrator will distribute Individual
3 PAGA Awards to PAGA Members on a pro-rata basis based on the number of pay periods worked by
4 all PAGA Members during the PAGA Period. The Administrator will calculate the number of pay
5 periods worked by the PAGA Members during the PAGA Period, and the amount to be paid to
6 PAGA Members per pay period based on information to be provided by Defendants. When making
7 Individual PAGA Award disbursements to Class Members, the Administrator may pay an Individual
8 PAGA Award and an Individual Class Award as one sum, concurrently, to the extent appropriate. The
9 PAGA Allocation is included in and will not increase the Maximum Settlement Amount. The
10 Administrator will issue IRS Forms 1099-MISC to PAGA Members for their Individual PAGA
11 Awards.

12 E. Net Settlement Amount. The Administrator will distribute the Net Settlement
13 Amount as Individual Class Awards to Participating Class Members. The Individual Class Awards to
14 Participating Class Members are calculated on a pro-rata basis based on the number of Workweeks
15 worked by all Participating Class Members during the Class Period based on the Class Data
16 provided by Defendants. Defendants have already made Prior Individual Payments to certain Class
17 Members for Pick-Up Stix individual release agreements. If a Class Member has previously
18 received such a payment from Defendants, the Prior Individual Payment will be deducted from the
19 Class Member's Individual Class Award. In no event shall a Class Member's Individual Class
20 Award be less than \$100.00. Each Individual Class Award to a Participating Class Member will be
21 attributed 10% as wages and 90% as penalties and interest. The Administrator will report the
22 portions paid as penalties and interest via IRS 1099 form, along with the Class Members' PAGA
23 Payments (if applicable), and will report portions attributed to wages via IRS form W-2.
24 Participating Class Members are responsible for their share of the payroll taxes, which will be
25 deducted by the Administrator from their Individual Class Awards.

26 54. **Escalator Clause.** Defendants estimated for purposes of mediation that during the
27 Class Period there were 69 Class Members with an associated 12,234 workweeks. If the number of work
28 weeks during the Class Period exceeds 13,457 (i.e., an increase greater than 10% of the 12,234 estimated

workweeks), the Maximum Settlement Amount will increase proportionally according to the number of additional workweeks above 13,457, or Defendant shall have the option of ending the Class Period on the date the workweeks exceeded 13,457..

55. **Taxability of Settlement Payments.** Plaintiff, Class Counsel, Participating Class Members, and the PAGA Members are each solely responsible for correctly characterizing any payments made pursuant to this Agreement for tax purposes and for paying any taxes on the amounts received. Defendants make no representations as to the taxability of any portions of the settlement payments, and it is understood and agreed that Defendants have made no such representations. Neither Class Counsel nor Defense Counsel intend anything in this Agreement to constitute advice regarding taxes or taxability; nothing in this Agreement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.

56. **Settlement Awards Do Not Trigger Additional Benefits.** It is expressly understood and agreed that the receipt of any payment pursuant to this Agreement will not entitle any Participating Class Member, PAGA Member, or Plaintiff to additional compensation or benefits under any company bonus, contest or other compensation or benefit plan or agreement in place during the period covered by the Agreement, nor will it entitle them to any increased retirement, 401(k) benefits or matching benefits, or deferred compensation benefits. It is the intent of the Parties that the payments provided for in this Agreement are the sole payments to be made by Defendants to the Participating Class Members, PAGA Members, and Plaintiff in connection with this Agreement, and that they are not entitled to any new or additional compensation or benefits as a result of having received the payments provided for in this Agreement (notwithstanding any contrary language or agreement in any benefit or compensation plan document that might have been in effect during the period covered by this Agreement).

RELEASES

57. **Release By Participating Class Members.** As of the Effective Date, Plaintiff and all Participating Class Members fully, finally, and forever release, compromise, and discharge the Released Parties from the Released Claims for the Class Period.

1 58. **Settlement Terms Bind All Class Members Who Do Not Opt-Out.** Any Class
2 Member who does not affirmatively opt-out of the Settlement by submitting a valid and timely
3 Request for Exclusion will be deemed a Participating Class Member and will be bound by all terms
4 of the Agreement, including those pertaining to the Released Claims, as well as the Final Approval
5 Order and Judgment that may be entered by the Court if it grants final approval to the Settlement.

6 59. **Release By PAGA Members and State of California.** As of the Effective Date,
7 Plaintiff, all PAGA Members, and the State of California fully, finally, and forever release,
8 compromise, and discharge the Released Parties from the Released PAGA Claims for the PAGA
9 Period. This release is binding on the State of California, which includes the LWDA and its
10 departments, divisions, commissions, boards, agencies, and employees, and any of Defendants'
11 current or former employees who may seek to represent the State of California to recover civil
12 penalties pursuant to PAGA based on alleged violations of the Released PAGA Claims during the
13 PAGA Period.

14 60. **No Right to Opt Out of PAGA Release.** The Parties agree that there is no
15 statutory right for any PAGA Member to opt out or otherwise exclude himself or herself from the
16 Agreement.

17 61. **General Release by Plaintiff.** As of the Effective Date, Plaintiff fully, finally, and
18 forever releases, compromises, and discharges the Released Parties from all causes of action,
19 claims, judgments, obligations, damages or liabilities of whatever kind and character. Plaintiff
20 understands and expressly agrees that this general release extends to all claims of every nature and
21 kind whatsoever, known or unknown, suspected or unsuspected, past or present, which Plaintiff has
22 or may have against the Released Parties, and all rights under Section 1542 of the California Civil
23 Code are hereby expressly waived. That Section reads as follows:

24 **A general release does not extend to claims that the creditor or**
25 **releasing party does not know or suspect to exist in his or her**
26 **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.

27 Plaintiff acknowledges that he has read this general release, including the waiver of California
28 Civil Code section 1542, and that he has consulted counsel about the general release and

specifically about the waiver of section 1542, and that he understands the general release and the section 1542 waiver, and freely and knowingly enters into this Agreement. Plaintiff acknowledges that he may later discover facts different from or in addition to those Plaintiff knows or now believes to be true with respect to the matters released or described in this Agreement, and Plaintiff agrees that the general release will remain effective in all respects notwithstanding any later discovery of any such different or additional facts.

62. **Labor Code § 206.5 Inapplicable.** It is acknowledged that all individual settlement awards made pursuant to this Agreement are on disputed claims and that Plaintiff, each Participating Class Member, and each PAGA Member will be deemed to have acknowledged and agreed that California Labor Code § 206.5 is not applicable. That section provides:

An employer shall not require the execution of a release of a claim or right on account of wages due, or to become due, or made as an advance on wages to be earned, unless payment of those wages has been made. A release required or executed in violation of the provisions of this section shall be null and void as between the employer and the employee. Violation of this section by the employer is a misdemeanor.

PROCEDURE FOR PRELIMINARY COURT APPROVAL OF AGREEMENT

63. **Seeking Preliminary Approval.** Plaintiff will promptly submit this Agreement to the Court in support of Plaintiff's Motion for Preliminary Approval of the Settlement. Plaintiff agrees to provide Defendants the opportunity to review, and to seriously consider Defendant's comments before filing Plaintiff's Motion for Preliminary Approval. Plaintiff will apply to the Court for the entry of an order preliminarily approving the Settlement, substantially in the following form and as attached hereto as **Exhibit A**, which provides, *inter alia*, for:

A. Scheduling a Final Approval Hearing on the question of whether the Settlement, including payment of Attorneys' Fees and Costs, Settlement Administration Costs, and Enhancement Awards should be finally approved as fair, reasonable and adequate;

B. Certifying the Settlement Class, designating Plaintiff as the Class Representative, and designating Plaintiff's counsel as Class Counsel;

C. Approving as to form and content the Class Notice;

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1 D. Approving the manner and method for Class Members to request exclusion
2 from the Settlement, object to the Settlement, and/or dispute the Workweeks credited to them, as
3 contained herein and within the Class Notice;

4 E. Directing the mailing of the Notice Packet by First Class U.S. mail to the
5 Class Members; and

6 F. Preliminarily approving the Settlement subject only to the objections of
7 Class Members and final review by the Court.

8 64. **Submission of Settlement to LWDA.** This Agreement is subject to and
9 conditioned upon obtaining Court approval under Labor Code Section 2699(l)(2). At the same time
10 Plaintiff files with the Court the Preliminary Approval Motion accompanied with this Agreement,
11 Class Counsel will submit the Agreement to the LWDA through its on-line procedures, and will
12 provide Defense Counsel with a copy of the LWDA's acknowledgment of receipt of the
13 Agreement.

14 **CLASS NOTICE AND SETTLEMENT ADMINISTRATION**

15 65. **Class Data.** Within 30 calendar days after Preliminary Approval, Defendants will
16 provide the Class Data to the Administrator. The Class Data will be based on Defendant's payroll
17 and other business records and will be provided in a format reasonably acceptable to the Settlement
18 Administrator. The Parties agree the Class Members' contact information and Social Security
19 numbers will be used only by the Administrator for the sole purpose of effectuating the Settlement,
20 and will not be provided to Plaintiff or Class Counsel at any time or in any form. The
21 Administrator will take reasonable steps to protect the confidential and private information of the
22 Class Members. To the extent Class Counsel possesses or comes to possess the Class Members'
23 contact information and/or social security numbers, Class Counsel will immediately return all such
24 information (including copies and data or information derived therefrom), will not retain copies of
25 such information, and will not maintain or use such information for any purpose.

26 66. **NCOA Check.** Prior to mailing of Class Notices, the Administrator will run a
27 check of the Class Members' addresses that are contained in the Class Data against those on file with
28 the U.S. Postal Service's National Change of Address ("NCOA") List; this check will be performed

only once per Class Member by the Settlement Administrator.

67. **Class Notice.** Within 45 calendar days after Preliminary Approval, the Administrator will send by first-class mail a Class Notice to each Class Member in substantially the form attached hereto as **Exhibit B**, and as approved by the Court. The Class Notice will include the following information on Class Members' rights to respond to the Class Notice:

A. **Workweek Disputes.** A Class Member may dispute the pre-printed information on the Class Notice as to their Workweeks and/or PAGA Pay Periods by submitting a timely written Workweek Dispute to the Administrator. The Workweek Dispute must be signed, dated, and mailed by First Class U.S. Mail, or the equivalent, to the Administrator. All Workweek Disputes must be postmarked no later than the Dispute Deadline. Unless a disputing Class Member submits documentary evidence in support of his or her dispute, the Defendants' records will be determinative. All Workweek Disputes will be resolved and decided by the Administrator, and the Administrator's decision on all disputes will be final and binding. The date of the postmark on the Workweek Dispute return envelope will be the exclusive means used to determine whether a Workweek Dispute has been timely submitted. No Workweek Dispute will be honored if it is postmarked after the Dispute Deadline unless the Parties mutually agree to accept the untimely dispute.

B. **Opting Out of the Settlement.** Any Class Member may exclude themselves, if they do not wish to participate in the Settlement, by submitting a timely written Request for Exclusion to the Administrator. The Request for Exclusion must contain: the individual's full name, signature with date, the case name and number of the Action; and a clear statement indicating that he or she desires to be excluded from the Settlement. The Request for Exclusion must be signed, dated, and mailed by First Class U.S. Mail, or the equivalent, to the Administrator. All Requests for Exclusion must be postmarked no later than the Response Deadline. Any individual who submits a Request for Exclusion will not be allowed to object to the terms of the Settlement.

C. **Objecting to the Settlement.** Any Class Member who does not exclude himself/herself from the Settlement (i.e., a Participating Class Member) may object to the terms of

the Settlement by filing a written objection with the Court and mailing a copy to the Settlement Administrator, no later than the Response Deadline. A written objection must contain: the Participating Class Member's full name, signature with date, the case name and number of the Action, a clear statement indicating that he or she objects to the Settlement, each specific reason in support of the objection along with any legal support for each objection, a clear statement indicating whether he or she is represented by counsel and whether he or she intends to appear at the Final Approval Hearing. Alternatively, any Participating Class Member may object orally at the Final Approval Hearing. If the Court rejects the objection, the individual will nevertheless be bound by the terms of the Settlement. At no time will any of the Parties or their counsel seek to solicit or otherwise encourage Participating Class Members to submit written objections to the Settlement Agreement or appeal from the Final Approval Order and Judgment. Class Counsel will not represent any Class Members with respect to any such objections to this Settlement.

68. **Non-Deliverable Class Notices.** Class Notices returned to the Administrator as non-deliverable before the Response Deadline will be re-sent to the forwarding address, if any, on the returned envelope. A returned Class Notice will be forwarded only once per Class Member by the Administrator. If there is no forwarding address, the Administrator will do a skip-trace search for a more recent address associated with the Class Member whose Notice Packet was returned, and re-mail the Notice Packet within five (5) calendar days; this search and re-mailing will be performed only once per Class Member by the Administrator. If a Class Member's notice is re-mailed, the Class Member will have fifteen (15) calendar days from the re-mailing, or sixty (60) calendar days from the date of the initial mailing, whichever is later, in which to postmark objections or submit a Request for Exclusion. Upon completion of these steps by the Administrator, Defendants and the Administrator are deemed to have satisfied their obligations to provide the Class Notice to Class Members. Irrespective of whether or not a Class Member receives a Class Notice, they will remain a Class Member and will be bound by all the terms of the Settlement and the contemplated Final Approval Order and Judgment, unless they submit a valid and timely Request for Exclusion. The cost of all Return Envelopes or deficiency notices are a part of the Administration Expenses to be paid out of the Maximum Settlement Amount.

69. **Right to Rescission.** If more than ten percent (10%) of Class Members opt out of the Settlement by submitting valid and timely Requests for Exclusion, Defendants have the right (but need not) in their sole discretion to rescind and void the Settlement, before final approval by the Court, by providing written notice to Class Counsel at least ten (10) calendar days after the Administrator furnishes Defendants with the number and percentage of valid and timely Requests for Exclusion following the expiration of the Response Deadline. If Defendants exercise this option, Defendants will pay all Settlement Administration Costs incurred through such date. If the Settlement is rescinded pursuant to this provision, this Settlement will be considered null and void, neither the Settlement or any of the related negotiations or proceedings will have any force or effect and no party will be bound by any of its terms, and all Parties to this Settlement will stand in the same position, without prejudice, as if the Settlement had been neither entered into nor filed with the Court.

PROCEDURE FOR FINAL COURT APPROVAL OF AGREEMENT

70. **Seeking Final Approval.** Plaintiff will prepare and file a motion for final approval of the Settlement. Plaintiff agrees to provide Defendants the opportunity to review the Final Approval Motion, and to seriously consider Defendants' comments before filing the Final Approval Motion. In conjunction with the Final Approval Motion, Class Counsel will submit a proposed Final Approval Order and Judgment, in substantially the form attached hereto as **Exhibit C**, that provides, *inter alia*, as follows:

A. Making final the conditional certification of the Class for settlement purposes only;

B. Approving the Settlement, adjudging the terms thereof to be fair, reasonable and adequate, and directing consummation of its terms and provisions;

C. Approving an award of Attorneys' Fees and Costs to Class Counsel;

D. Approving the Enhancement Award to the Class Representative;

E. Approving the Administration Expenses to be paid to the Administrator;

F. Approving the PAGA Allocation and LWDA Payment to the LWDA;

G. Entry of judgment in the Action with continuing jurisdiction of the Court in

conformity with California Rules of Court Rule 3.769 and California Code of Civil Procedure Section 664.6 as necessary to enforce the terms of the Agreement.

71. **Declaration of Due Diligence.** In connection with and in support of Plaintiff's Final Approval Motion, Class Counsel will file with the Court a declaration by the Settlement Administrator of due diligence and proof of mailing with regard to the mailing of the Class Notice to Class Members.

72. **Submission of Judgment to LWDA.** Within 10 calendar days after Class Counsel's receipt of the Court's approval of the Agreement and entry of a signed Final Approval Order and Judgment, Class Counsel will submit the Final Approval Order and Judgment to the LWDA through its on-line procedures, and will provide Defense Counsel with a copy of the LWDA's acknowledgment of receipt of the Final Approval Order and Judgment.

SETTLEMENT FUNDING AND PAYMENTS DISBURSEMENTS

73. **Accounting of Disbursement.** Within 15 calendar days after the Effective Date, the Administrator will provide Defendants with payment instructions and a report listing the amount of all payments to be made.

74. **Payment of Maximum Settlement Amount.** Within 30 calendar days after the Effective Date, Defendants, on behalf of the Released Parties, will pay to the Administrator the Maximum Settlement Amount less the Prior Paid Amount. The Administrator will establish a Qualified Settlement Fund ("QSF") for purposes of disbursing the Maximum Settlement Amount per the terms of this Agreement. The Administrator will undertake all required withholding, remittances, reporting of taxes, and issuance of the appropriate tax forms for payments required under this Agreement in accordance with local, state, and federal laws.

75. **Disbursement of Maximum Settlement Amount.** Within 40 calendar days after the Effective Date, the Administrator will disburse the Maximum Settlement Amount as specified in this Agreement and as approved by the Court in the Final Approval Order and Judgment. The Administrator will be responsible for making payment of any court-approved Class Counsel's Attorneys' Fee and Costs, any court-approved Plaintiff's Enhancement Award to the Class Representative, Administration Expenses, the LWDA Payment, issuing the Individual Class

Awards to Participating Class Members, issuing Individual PAGA Awards to PAGA Members, and meeting any reporting obligations.

76. **Default on Payment.** Defendants' failure to timely pay to the Administrator the Maximum Settlement Amount will be considered a default. In the event Defendants fail to timely fund the Maximum Settlement Amount, the Administrator will provide notice to Class Counsel and Defendants' counsel within three (3) business days of the missed payment. Thereafter, Defendants will have seven (7) calendar days to cure the default and tender payment to the Administrator.

77. **Individual Class and PAGA Award Disbursements.** The Administrator will distribute Individual Class Awards, subject to applicable taxes and withholdings, and Individual PAGA Awards by way of check(s) mailed to the Participating Class Member and/or PAGA Member at the last known address that the Settlement Administrator has on file. Settlement award checks will remain valid and negotiable for one hundred and eighty (180) calendar days from the date of their issuance. If a settlement award check is returned to the Administrator, the Administrator will make all reasonable efforts to re-mail it to the Class and/or PAGA Member at his or her correct address. Upon the deadline to cash the settlement award checks, the checks will automatically be cancelled by the Administrator if not cashed within that time and the funds associated with such cancelled checks will be transmitted to the California State Controller's Office's Unclaimed Property Division to be held as unclaimed funds in the Class and/or PAGA Member's name. A Class and/or PAGA Member whose settlement award check(s) are cancelled remains subject to the Settlement, the releases of claims, and the Court's Final Approval Order and Judgment. The checks provided to Class and/or PAGA Members will prominently state the expiration date or a statement that the checks will expire in 180 calendar days, or alternatively, such a statement may be made in a letter accompanying the check. Lost or expired settlement award checks will not be reissued, except for good cause and as mutually agreed by the Parties in writing. No person will have any claim against Defendants, Released Parties, Defense Counsel, the Class Representative, any Class Member, any PAGA Member, Class Counsel, or the Administrator based on distributions and payments made in accordance with this Agreement.

78. **Declaration of Compliance.** Within one hundred ninety (190) days from the date

1 of issuance of settlement award checks, the Administrator will provide a declaration of compliance
2 with the terms of the Agreement and detailing proof of payment and the numbers of cashed and
3 uncashed checks (without disclosing or identifying information of Class Members). Class Counsel
4 will file the Administrator's declaration of compliance with the Court, as ordered by the Court.

5 **MISCELLANEOUS PROVISIONS**

6 79. **Stay of Discovery.** To effectuate the terms of the Settlement, the Parties agree all
7 formal and informal discovery is stayed pending final Court approval of the Settlement.

8 80. **Limited Public Comment.** With the exception of court filings and notice to the
9 LWDA, the Class Representative and Class Counsel will not make: (1) any comments to the public
10 or the media; (2) engage in any mass communications or other publicity, including, but not limited
11 to, social media, and (3) public disclosure of the terms of this Settlement (including, but not limited
12 to, the Maximum Settlement Amount), the negotiations leading to this Settlement, and all
13 documents related to the Settlement. The Parties will use their best efforts to reach agreement on all
14 Court filings. Class Counsel will take all steps necessary to ensure that Plaintiff is aware of, and
15 will ensure that Plaintiff adheres to, the restriction against public comment of the Settlement. Class
16 Counsel further agrees to cease all affirmative mass communication (oral and written) with the
17 Class Members, other than through Court-approved notices. This provision does not prevent Class
18 Counsel from communicating with any Class Members who may contact Class Counsel. Also,
19 nothing in this Agreement restricts Class Counsel from disclosing and including all publicly
20 available information regarding this case and the settlement in any documents filed with any court
21 and/or judicial submissions (e.g., CV's, declarations regarding adequacy or experience, etc.).

22 81. **Media Communications / No Attorney Advertising.** The Parties will not initiate
23 any communications (directly or indirectly) with the media regarding the Action. Notwithstanding
24 the foregoing, the Class Representative and Class Counsel may, in response to a communication
25 initiated by the media, direct the inquiring media member to the public records of the Action on file
26 with the Court and respond only with "The matter has been resolved." Class Counsel will take all
27 steps necessary to ensure that Plaintiff is aware of, and will ensure that Plaintiff adheres to, the
28 restriction against any media comment on the Settlement and its terms. Class Counsel also agrees

1 that their law firm will not specifically refer to this case, this settlement, or the names of Released
2 Parties in any advertising or promotional material of any kind on their website, on any social media
3 platform, or in any other written or electronic communications of any kind or nature.

4 82. **No Assignment of Claims.** The Parties and their counsel represent, covenant and
5 warrant that they have not directly or indirectly, assigned, transferred, encumbered or purported to
6 assign, transfer or encumber to any person or entity any portion of any liability, claim, demand,
7 action, cause of action or right herein released and discharged except as set forth herein.

8 83. **Construction.** The Parties agree that the terms and conditions of this Agreement
9 are the result of lengthy, intensive arms-length negotiations between the Parties and this Agreement
10 will not be construed in favor of or against any party by reason of the extent to which any party or
11 his, her, or its counsel participated in the drafting of this Agreement.

12 84. **No Admission.** Nothing contained in this Agreement, nor the consummation of this
13 Agreement, is to be construed or deemed an admission of liability, culpability, negligence or
14 wrongdoing on the part of Plaintiff, Defendants, or Released Parties. Each of the Parties hereto has
15 entered into this Agreement solely with the intention to avoid further disputes and litigation with
16 the attendant inconvenience and expenses.

17 85. **Captions and Interpretations.** Paragraph titles or captions contained herein are
18 inserted as a matter of convenience and for reference, and in no way define, limit, extend or
19 describe the scope of this Agreement or any provision of it.

20 86. **Modification and Waiver.** This Agreement may not be changed, altered or
21 modified, except in writing specifically referencing this Agreement, signed by the Parties, and
22 approved by the Court. No rights under this Agreement may be waived except in writing
23 specifically referencing this Agreement, signed by the waiving Party or Parties.

24 87. **Notice to Counsel.** Unless otherwise specifically provided herein, all notices,
25 demands, or other communications provided for in this Agreement will be in writing and will be
26 both emailed and mailed by United States registered or certified mail, return receipt requested,
27 addressed as follows:

28 ///

Class Counsel:

Gabriel J. Pimentel
GJP@PimentelLaw.com
Yesenia L. Rodriguez
YLR@PimentelLaw.com
Pimentel Law, P.C.
30 N. Raymond Avenue, Suite 211
Pasadena, CA 91103

Defense Counsel:

Joel Van Parys
jvanparys@cdflaborlaw.com
Mayra Sandoval,
msandoval@cdflaborlaw.com
CDF Labor Law LLP
900 University Avenue, Suite 200
Sacramento, CA 95825

88. **Mutual Full Cooperation.** The Parties agree to fully cooperate with each other to accomplish the terms of this Agreement, including, but not limited to, execution of such documents and taking such other action as reasonably may be necessary to implement the terms of this Agreement. The Parties will use their best efforts, including all efforts contemplated by this Agreement and any other efforts that may become necessary by order of the Court, or otherwise, to effectuate this Agreement and the terms set forth herein. As soon as practicable after execution of this Agreement, Class Counsel will, with the assistance and cooperation of Defendants and Defense Counsel, take all necessary steps to secure the Court's approval of this Agreement. If the Court does not issue an order approving the Agreement under the specific terms requested, the Parties agree to meet and confer to address the Court's concerns in good faith and determine whether resolution of the claims encompassed by the Agreement can be obtained in a manner consistent with the Court's concerns. The Parties, Class Counsel, and Defense Counsel agree that they will not attempt to encourage or discourage Class Members from filing Requests for Exclusion.

89. **Disputes.** Should any dispute(s) arise among the Parties or their respective counsel regarding the implementation or interpretation of this Agreement that they are unable to resolve cooperatively, the Parties agree to submit any such dispute(s) to mediator Brandon McKelvey. To the extent any Party seeks to enforce any of the terms of this Agreement in Court or before the Court, the prevailing party will be entitled to recover reasonable attorneys' fees and costs.

90. **Parties' Authority.** It is agreed that because the Class and PAGA Members are so numerous, it is impossible or impractical to have each Class and PAGA Member execute this Agreement. The Class Notice will advise all Class and PAGA Members of the binding nature of the releases of claims provided for by the Settlement, and that the releases will have the same force

and effect as if this Agreement were executed by each Participating Class Member and PAGA Member. The signatories to this Agreement represent that they are fully authorized to enter into this Agreement and bind the Parties to its terms and conditions.

91. **Agreement Binding on Successors.** This Agreement is binding on and inures to the benefit of the Parties, and the Released Parties and their respective heirs, trustees, executors, administrators, successors and assigns.

92. **Integration Clause.** This Agreement contains the entire agreement between the Parties relating to any and all matters addressed in the Agreement, and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written and whether by a party or such party's legal counsel, are merged herein.

93. **Attorneys' Fees and Costs.** Except as expressly provided in this Agreement, Defendants and Plaintiffs will each bear their own attorney's fees and costs.

94. **Counterparts.** This Agreement may be executed in counterparts and by original or electronic signatures consistent with the Uniform Electronic Transactions Act (Civil Code § 1633.1-1633.17) sent via PDF through email, and when each party has signed and delivered at least one such counterpart, each counterpart, including e-mail and PDF versions, will be deemed an original and, when taken together with other signed counterparts, will constitute one Agreement binding upon and effective as to all Parties.

95. **Extension of Deadlines.** If the date by which any court filing, mailing, or deadline is to occur per the terms and conditions of this Agreement falls on a Saturday, Sunday, or legal holiday in the State of California, the date of the court filing, mailing, or deadline is extended to the next following day which is not a Saturday, Sunday, or legal holiday in the State of California.

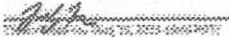
96. **California Law.** All terms of this Agreement will be governed by and interpreted according to the laws of the State of California.

97. **Voluntary Agreement.** The Parties expressly declare and represent that they have read this Agreement and have consulted with counsel, or had the opportunity to consult with counsel, regarding the meaning of the provisions, terms, and conditions contained in this Agreement. The Parties further expressly declare and represent that they fully understand the

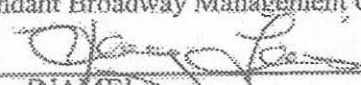
1 content and effect of this Agreement, that they approve and accept its terms and conditions, and
2 that the Agreement is executed freely and voluntarily.

3 IN WITNESS WHEREOF, the Parties knowingly and voluntarily execute this Agreement
4 as of the date(s) set forth below:

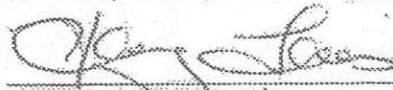
5 Dated: Aug 29, 2023


Plaintiff Trevor Neadeau

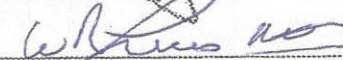
6
7
8 Dated: 9/22/23

Defendant Broadway Management Company, LLC
By: 
[NAME]
[TITLE] Partner
Broadway Management Company, LLC

9
10
11 Dated: 9/22/23


Defendant Harry Lewis

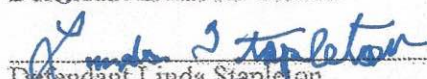
12 Dated: 9/26/2023


Defendant William R. Lewis III

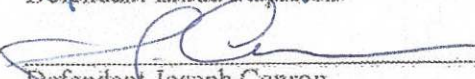
13
14 Dated: 9/27/23


Defendant Elizabeth Conron

15 Dated: 9/27/23


Defendant Linda Stapleton

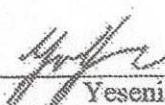
16
17 Dated: 9/27/23


Defendant Joseph Conron

18
19 AGREED AS TO FORM AND CONTENT:

20 Dated: 8/16/23

PIMENTEL LAW, P.C.

21 By: 
22 Yesenia L. Rodriguez
23 Attorneys for Plaintiff
Trevor Neadeau

24 Dated: 10/02/2023

CDF LABOR LAW LLP

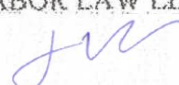
25 By: 
26 Joel Van Parys
27 Attorneys for Defendants
Broadway Management Company, LLC, Harry Lewis,
28 William R. Lewis III, Elizabeth Conron, Linda Stapleton, and
Joseph Conron

EXHIBIT 2

<<First Name>> <<Last Name>>

<<Address 1>>

<<Address 2>>

**NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE
FOR FINAL COURT APPROVAL**

Trevor Neadeau v. Broadway Management Company, LLC, Harry Lewis, William R. Lewis III, Elizabeth Conron, Linda Stapleton, and Joseph Conron
San Francisco County Superior Court No. CGC-22-598314

**PLEASE READ THIS NOTICE CAREFULLY. THIS NOTICE RELATES TO A
SETTLEMENT OF CLASS ACTION AND PAGA LITIGATION.**

I. BACKGROUND OF THE CASE

On February 23, 2022, former employee Trevor Neadeau (“Plaintiff”) filed a lawsuit alleging wage and hour violations and seeking penalties under the California Private Attorney General Act (“PAGA”) against Broadway Management Company, LLC, Harry Lewis, William R. Lewis III, Elizabeth Conron, Linda Stapleton, and Joseph Conron (“Defendants”) (Plaintiff and Defendants are collectively referred to as the “Parties”). The lawsuit was filed in Superior Court of the State of California for San Francisco County (“Court”), Case No. CGC-22-598314 (the “Action”).

The Action alleges Defendants failed to pay wages for (1) Failure to Indemnify for Necessary Expenditures; (2) Failure to Pay Overtime; (3) Failure to Furnish Compliant Wage Statements and Maintain Accurate Pay Records; (4) Failure to Provide Rest Periods; (5) Failure to Timely Pay Wages; (6) Willful Failure to Pay Wages; (7) Civil Penalties in Violation of Labor Code §§ 2698 et. seq.

Defendants strongly deny all claims, strongly deny that Plaintiff and the Class Members are entitled to any recovery, and assert affirmative defenses in response to Plaintiff’s claims.

The Action has been actively litigated. There have been on-going investigations, and an exchange of extensive documentation and information. Furthermore, the Parties have engaged in arms-length private mediation before a well-respected mediator. Based upon the negotiations, and all known facts and circumstances, including the various risks and uncertainties related to legal actions, the Parties reached a class-wide Settlement based upon the recommendation of the mediator. By settling, the Parties will avoid the risks associated with a lengthy litigation process. Despite agreeing to and supporting the Settlement, Defendants continue to deny all allegations and claims.

The Parties have entered into a Joint Stipulation of Class and PAGA Settlement (“Settlement,” or “Agreement”), which has been preliminarily approved by the Court. The Settlement has been reached between the Parties on behalf of:

- (1) all persons employed by Defendants in an hourly, non-exempt position in California during the Class Period (defined as _____ through _____) (“Class Members”); and
- (2) all persons employed by Defendants in an hourly, non-exempt position in California during the PAGA Period (defined as _____ through _____) (“PAGA Members”)

II. ESTIMATED INDIVIDUAL AWARD

You have received this notice because Defendants' records indicate you are a Class Member and/or PAGA Member. This notice is to advise you of how you can participate in or be excluded from the Settlement.

Based on Defendants' records, your Individual Class Award is estimated to be \$_____ (less applicable withholdings) and your Individual PAGA Award is estimated to be \$_____. The actual amount you may receive may be more or less than the amount estimated depending on the number of Class Members who choose to exclude themselves from the Settlement, the actual number of Workweeks worked by Participating Class Members, and on the distributions approved and allocated by the Court. If no amount is stated for your Individual PAGA Award, then you are not eligible for an Individual PAGA Award under the Settlement because you didn't work during the PAGA Period.

The above estimates are based on Defendants' records showing that you worked _____ workweeks during the Class Period, and you worked _____ pay periods during the PAGA Period.

The Court has already preliminarily approved the proposed Settlement and approved this Notice. The Court has not yet decided whether to grant final approval. Your legal rights are affected whether or not you act. At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement. The Court will also decide whether to enter a judgment that approves the releases of claims by Class Members and PAGA Members in accordance with the terms of the Settlement.

III. SUMMARY OF SETTLEMENT

1. Under the terms of the Settlement, Defendants agree to pay the Maximum Settlement Amount of One Hundred Eighty Seven Thousand Eight Hundred and Fifty Dollars (\$187,850), which is inclusive of all amounts Defendants are required to pay under the Settlement, including all Individual Class Awards to Participating Class Members, all Individual PAGA Awards to PAGA Members, the LWDA Payment, Plaintiff's Enhancement Award, Class Counsel's Attorneys' Fees and Costs, amounts already paid to certain Class Members in exchange for their individual release, and Administration Expenses. The entire Maximum Settlement Amount will be fully paid out and no portion of the Maximum Settlement Amount will revert back to Defendants.

2. At the Final Approval Hearing, Plaintiff and/or Class Counsel will ask the Court to approve the following deductions from the Maximum Settlement Amount, the amounts of which will be decided by the Court at the Final Approval Hearing:

a. Up to \$4,550.00 in Administration Expenses to the Administrator for costs of administration of the Settlement.

b. Up to \$9,392.50 as allocated as PAGA penalties, 75% of which will be paid to the LWDA and 25% of which will be distributed as Individual PAGA Awards to PAGA Members on a pro-rata basis based on the number of pay periods worked by all PAGA Members during the PAGA Period.

c. Up to \$65,747.50 (35% of the Maximum Settlement Amount) to Class Counsel for attorneys' fees and up to \$25,000.00 for litigation costs and expenses. To date, Class Counsel have worked and incurred expenses on the Action without payment.

d. Up to \$15,000.00 as Plaintiff's Enhancement Award for Plaintiff in recognition of his effort and work in prosecuting the Action and in exchange for an individual general release of all claims.

3. After making the above deductions in amounts approved by the Court the Administrator will distribute the remaining amount (the “Net Settlement Amount”) as Individual Class Awards to Participating Class Members. The Individual Class Awards to Participating Class Members are calculated on a pro-rata basis based on the number of Workweeks worked by all Participating Class Members during the Class Period based on the Class Data provided by Defendants.

4. Each Individual Class Award to a Participating Class Member will be attributed 10% as wages and 90% as penalties and interest. The Administrator will report the portions paid as penalties and interest via IRS 1099 form, along with the Class Members’ PAGA Payments (if applicable), and will report portions attributed to wages via IRS form W-2. The Administrator will pay employer payroll taxes owed on the wage portion of Individual Class Awards. The Administrator will deduct employee payroll taxes from the wage portion of Individual Class Awards. Although the Parties have agreed to these allocations, neither side is giving you any advice on whether your payment(s) are taxable or how much you might owe in taxes. You are solely responsible for correctly characterizing any payments made pursuant to the Settlement for tax purposes and for paying any taxes on the amounts received. You should consult a tax advisor if you have any questions about the tax consequences of the Settlement.

5. Releases of Claims. Upon Final Approval being granted by the Court, every Class Member who does not opt out of the Settlement (i.e., Participating Class Member), will release Defendants and the Released Parties from the Released Claims as described below. Additionally, every PAGA Member will release Defendants and the Released Parties from the Released PAGA Claims as described below. In other words, if you are a Class Member and you do not exclude yourself from the Settlement Class, you will be deemed to have entered into the release and to have released the below-described Released Claims. If the Settlement is not approved by the Court or does not become final for some other reason, the Action will continue as though the Settlement never occurred and without prejudice to any Party.

a. “Released Parties” means (i) Defendants, (ii) Defendants’ past and present direct and indirect parents; (iii) the respective past and present direct and indirect subsidiaries and affiliates of any of the foregoing; (iv) the past and present shareholders, directors, officers, agents, employees, attorneys, insurers, members, partners, managers, contractors, agents, consultants, representatives, administrators, fiduciaries, benefit plans, transferees, predecessors, successors and assigns of any of the foregoing; and (v) any individual or entity which could be jointly liable with any of the foregoing.

b. Release By Participating Class Members. As of the Effective Date, Plaintiff and all Participating Class Members fully, finally, and forever release, compromise, and discharge the Released Parties from all claims under the California Labor Code, Wage Orders, regulations, and/or any other provisions of state or federal law against the Released Parties that were alleged in the Action and those that reasonably could have been alleged in the Action based on Plaintiff’s factual allegations asserted in the Action and any amendments thereto, including, without limitation, all claims for (1) off-the-clock work, (2) meal period auto-deduction, (3) unpaid minimum wages, (4) unpaid regular wages, (5) unpaid overtime, (7) unpaid double time, (8) regular rate of pay, (9) meal periods and meal period premiums, (10) rest breaks and rest break premiums, (11) wage statements, (12) failure to keep records, (13) timely payment of wages at separation, (14) violation of Unfair Competition Law, and any other Labor Code violations that were alleged in the Action, or that could have been alleged in the Action based on the facts alleged in the Action, which includes, but is not limited to, alleged violations of Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 227.3, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, Code of Civil Procedure section 1021.5, Business and Professions Code section 17200, *et seq.* during the Class Period (February 23, 2018 through _____).

c. Release By PAGA Members and State of California. As of the Effective Date, Plaintiff, all PAGA Members, and the State of California fully, finally, and forever release, compromise, and discharge the Released Parties from all claims for civil penalties under the California Labor Code, Wage Orders, regulations, and/or any other provisions of state and federal law against the Released Parties that were alleged in the Action and that reasonably could have been alleged in the Action based on the factual allegations contained in the operative complaints in the Action and any amendments thereto, including, without limitation, all claims for civil penalties under PAGA (Labor Code § 2698 *et seq.*) related to (1) off-the-clock work, (2) meal period auto-deduction, (3) unpaid minimum wages, (4) unpaid regular wages, (5) unpaid overtime, (7) unpaid double time, (8) regular rate of pay, (9) meal periods and meal period premiums, (10) rest breaks and rest break premiums, (11) wage statements, (12) failure to keep records, (13) timely payment of wages at separation, and any other Labor Code violations that were alleged in the Action, or that could have been alleged in the Action based on the facts alleged in the Action, which includes, but is not limited to, alleged violations of Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 227.3, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, during the PAGA Period (November 10, 2020 through _____).

IV. YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

If you worked for Defendants during the Class Period and/or the PAGA Period, your options under the Settlement are as follows:

Do Nothing	If you do nothing, you will be a Participating Class Member, eligible for an Individual Class Award and an Individual PAGA Award (if applicable). In exchange, you will give up your right to assert the Released Claims against the Defendants and the Released Parties (defined above), and if applicable, the Released PAGA Claims. Your check(s) will be sent to the same address as this notice. If you move or change your mailing address be sure to notify the Administrator as soon as possible.
You can exclude yourself (i.e., opt-out) of the Class Settlement but not the PAGA Settlement Response Deadline is [DATE]	If you do not wish to participate in the Settlement, you can opt-out by sending the Administrator a written Request for Exclusion. The Request for Exclusion must contain: your full name, signature with date, the case name and number of the Action; and a clear statement indicating that you want to be excluded from the Settlement. The Request for Exclusion must be signed, dated, and mailed by First Class U.S. Mail, or the equivalent, to the Administrator. All Requests for Exclusion must be postmarked no later than the Response Deadline. Any individual who submits a Request for Exclusion will not be allowed to object to the terms of the Settlement.
Participating Class Members can object to the Class Settlement but not the PAGA Settlement Response Deadline is [DATE]	Any Class Member who does not exclude himself/herself from the Settlement (i.e., a Participating Class Member) may object to the terms of the Settlement by filing a written objection with the Court and mailing a copy to the Administrator, no later than the Response Deadline. A written objection must contain: your full name, signature with date, the case name and number of the Action, a clear statement indicating that you object to the Settlement, each specific reason in support of the objection along with any legal support for each objection, a clear statement indicating whether you are represented by counsel and whether you intend to appear at the

	Final Approval Hearing. If the Court rejects the objection, you will nevertheless be bound by the terms of the Settlement.
Participating Class Members can participate in the Final Approval Hearing	The Court's Final Approval Hearing is scheduled to take place on [DATE] at [TIME] in Department 24 of the Superior Court of California for the County of Stanislaus located at 801 10th Street, Modesto, California 95354. You don't have to attend, but you have the right to appear (or hire an attorney to appear on your behalf at your own cost) at the Final Approval Hearing. If you do not exclude yourself from the settlement, you may object orally at the Final Approval Hearing. You (or your attorney) should be ready to tell the Court what you object to, why you object, and any facts and legal support for your objection. If the Court rejects the objection, you will nevertheless be bound by the terms of the Settlement. It's possible the Court will reschedule the Final Approval Hearing. Check the Court's website for the most current information or contact Class Counsel to verify the date and time of the Final Approval Hearing.
You can dispute the calculation of your Workweeks / Pay Periods Dispute Deadline is [DATE]	The number of Class Period workweeks and/or PAGA Period Pay Periods you worked based on Defendants' records are stated above. If you disagree with either of these numbers, you can dispute them by submitting a timely written Workweek Dispute to the Administrator. The Workweek Dispute must be signed, dated, and mailed by First Class U.S. Mail, or the equivalent, to the Administrator. All Workweek Disputes must be postmarked no later than the Dispute Deadline. Unless you submit documentary evidence in support of your dispute, Defendants' records will be determinative. All Workweek Disputes will be resolved and decided by the Administrator, and the Administrator's decision on all disputes will be final and binding.

V. HOW TO CONTACT THE ADMINISTRATOR

[ADMINISTRATOR]

[ADDRESS 1]

[ADDRESS 2]

Telephone: [NUMBER]

VI. ADDITIONAL INFORMATION

The above is a summary of the basic terms of the Settlement. For the precise terms and conditions of the Settlement, you should consult the detailed "Joint Stipulation of Class Action and PAGA Settlement" which is on file with the Clerk of the Court and can be accessed at <<website address>>. The pleadings and other records in this Action, including the Settlement, may be examined at any time during regular business hours at the Office of the Clerk of the _____ County Superior Court at _____, California _____.

If you want additional information about this Action and its proceedings, you can contact the Administrator or Class Counsel in this Action:

Yesenia L. Rodriguez
PIMENTEL LAW, P.C.
30 N. Raymond Avenue, Suite 211
Pasadena, CA 91103
Telephone: (626) 765-9800
Email: YLR@PimentelLaw.com

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

BY ORDER OF THE SUPERIOR COURT.

EXHIBIT 3

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 30 N. Raymond Ave., Suite 211, Pasadena, CA 91103.

On January 9, 2024, I served the foregoing document described as **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS SETTLEMENT** on the interested parties in this action as follows:

☐ By placing true copies enclosed in a sealed envelope addressed to each addressee as follows:

☒ Electronically to from my email address, YLR@PimentelLaw.com on the persons identified below at the following electronic service address:
jvanparys@cdflaborlaw.com; mspring@cdflaborlaw.com;
ekastern@cdflaborlaw.com; msandoval@cdflaborlaw.com;

CDF LABOR LAW LLP
Mark S. Spring
Joel Van Parys, Esq.
900 University Avenue, Suite 200
Sacramento, CA 95825

*Counsel for Defendants Broadway
Management Company, LLC, Harry Lewis,
William R. Lewis III, Elizabeth Conron,
Linda Stapleton, and Joseph Conron*

☐ BY MAIL:

☐ I deposited each envelope in the mail at Pasadena, California, with postage thereon fully prepaid.

☐ I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses above. I placed the envelope or package for collection and overnight delivery at an office or regularly utilized drop box of the overnight delivery carrier.

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

Yesenia L. Rodriguez



Executed on January 9, 2024 at Pasadena, California.