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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SONOMA

GABRIEL SAGER and ELIZABETH ADAMS, individually, on behalf of all others similarly situated, and on behalf of the State of California and other aggrieved persons, *Plaintiffs*, v. SUMMIT FOOD SERVICE, LLC, a limited liability company; and DOES 1 through 10, inclusive, *Defendants*.	CASE NO.: SCV-270486 *Assigned to Hon. Christopher M. Honigsberg* **CLASS & REPRESENTATIVE ACTION** **PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT; DECLARATIONS IN SUPPORT THEREOF; [PROPOSED] ORDER** **Hearing Information:** Date: Time: Dept.: 18

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TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on the Court's next available hearing date and time the matter may be heard by the Honorable Christopher M. Honigsberg in Courtroom 18 of the Sonoma County Superior Court in the State of California, located at 3055 Clevland Avenue, Santa Rosa, California 95403, Plaintiffs Gabriel Sager and Elizabeth Adams, individually and on behalf of all others similarly situated, will move the Court for entry of an Order granting preliminary approval of the Parties' Class Action and PAGA Settlement Agreement and Release ("Settlement Agreement" and/or "Settlement"), including:

1. Certifying the Class for purposes of settlement only;
2. Preliminarily appointing Plaintiffs Gabriel Sager and Elizabeth Adams as Class Representatives for purposes of settlement only;
3. Appointing Justin Marquez, Benjamin H. Haber, and Arrash T. Fattahi of Wilshire Law Firm, PLC, Mehrdad Bokhour of Bokhour Law Group, P.C. and Joshua Falakassa of Falakassa Law, P.C., collectively as Class Counsel for purposes of settlement only;
4. Preliminarily approving the Settlement as fair, adequate, and reasonable, based upon the terms set forth in the Settlement Agreement;
5. Directing distribution of the Notice Packet, including notice of the opportunity to exclude oneself from, or object to, the Settlement; and
6. Setting a date for a final fairness hearing to determine, following dissemination of the Notice Packet, whether to grant final approval of the Settlement.

This motion is based upon the accompanying Memorandum of Points and Authorities; the Declarations of Justin Marquez, Mehrdad Bokhour, and Joshua Falakassa in support thereof; the Settlement Agreement; the proposed Order; all other records, pleadings, and papers filed; and upon such other evidence or argument as may be presented to the Court at the hearing.

Dated: October 21, 2024, **WILSHIRE LAW FIRM**

BY: */s/ Arrash T. Fattahi*
Justin F. Marquez
Benjamin H. Haber
Arrash T. Fattahi
Attorneys for Plaintiff Sager and the Putative Class

Dated: October 21, 2024, **BOKHOUR LAW GROUP, P.C.**
FALAKASSA LAW, P.C.

BY: */s/ Mehrdad Bokhour*
Mehrdad Bokhour, Esq.
Joshua Falakassa, Esq.
Attorneys for Plaintiff Adams and the Putative Class

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I. INTRODUCTION

Through this motion, Plaintiffs Gabriel Sager and Elizabeth Adams ("Plaintiffs"), individually and on behalf of all others similarly situated, seek preliminary approval of a $312,500 wage-and-hour class and PAGA action settlement (the "Settlement Amount") between the Settlement Class Members and Defendant Summit Food Service, LLC ("Defendant").

Specifically, Plaintiffs seek to represent all individuals employed by Defendant as non-exempt hourly employees in California from March 29, 2018, through September 1, 2023 (the "Class Period"). Likewise, Plaintiffs seek to represent all aggrieved employees employed by Defendant as non-exempt hourly employees in California from April 8, 2021, until September 1, 2023 (the "PAGA Period").

Under the terms of the Settlement Agreement,[1] Defendant will not oppose Class Counsel's request for a reasonable award of Attorneys' Fees, not to exceed one-third of the Settlement Amount, Class Counsel's reasonable litigation Costs, not to exceed $25,000, Settlement Administration Costs, not to exceed $10,000, PAGA penalties of $10,000 (of which $7,500 or 75% will be paid to the LWDA and the remaining $2,500 or 25% will be paid to the Settlement Class Members), and a Class Representative Award to Plaintiffs not to exceed $10,000 to Plaintiffs, as follows:

	Total Amount
Gross Settlement Amount	$312,500
Attorneys' Fees (33.33%)	$104,166.67
Litigation Costs	$25,000
Administrator Costs	$10,000
PAGA payment to LWDA (75% of 10k allocation)	$7,500
PAGA payment to aggrieved employees	$2,500
Plaintiffs' Class Representative Award (not to exceed 10k each)	$20,000
Net Settlement Amount	**$143,333.33**

[1] The Class Action and PAGA Settlement Agreement is attached as Exhibit "A" to the Declaration of Mehrdad Bokhour ("Bokhour Decl.") submitted herewith and referred to as the "Settlement Agreement" or, at times, the "Settlement." The proposed class Notice Packet is attached to the Bokhour Declaration as Exhibit "B."

As of approximately June 2, 2023, the Settlement Class included approximately 196 non-exempt employees who worked for Defendant in California since March 29, 2018. Plaintiffs contend that regardless of their roles, all non-exempt employees worked under the same workplace policies and scheduling practices. The Settlement Agreement provides that the Individual Settlement Amounts will be paid pro-rata based on the number of pay periods worked during the Class Period. Assuming a total class size of 196 Settlement Class Members, the average payment to each Settlement Class Member will be approximately **$731.29**. Of course, those with more pay periods stand to recover proportionally more. (Bokhour Decl. ¶ 9.)

The Settlement is non-reversionary, and Settlement Class Members will not be required to submit claim forms to receive payment, but each Settlement Class Member will receive the Notice Packet containing information about his/her share, the opportunity to dispute the number of pay periods worked by the Settlement Class Member, and the opportunity to opt-out or object to the Settlement. All Settlement Class Members who do not affirmatively opt-out will receive a settlement check upon the Court granting final approval. (Bokhour Decl. ¶ 10.)

Because the Settlement is fair and reasonable and was negotiated at arm's length by experienced counsel and an experienced mediator following a sufficient exchange of information and documents before mediation, it should be preliminarily approved. Plaintiffs respectfully request that the Court enter an order preliminarily approving the Settlement, conditionally certifying the Settlement Class under Code of Civil Procedure § 382 for settlement purposes, approving the proposed Notice Packet, appointing Plaintiffs' counsel as Class Counsel, appointing Phoenix Class Action Administration Solutions as the Settlement Administrator, and scheduling a hearing for the final approval of the Settlement. (Bokhour Decl. ¶ 11.)

II. BACKGROUND

A. THE PARTIES AND THE PROPOSED SETTLEMENT CLASS

Defendant manages one of the nation's largest corrections-focused operations, specializing in culinary and commissary services. Plaintiffs were employed by Defendant as non-exempt employees. Plaintiffs allege that they experienced the same unlawful policies and practices as other Class Members. Plaintiffs contend that other Class Members were responsible for all aspects of Defendant's services across the State of California.

The putative Class consists of current and former non-exempt employees employed by Defendant in California at any time from March 29, 2018 through September 1, 2023. (S.A. ¶¶ A(1.7), A(1.37).)

B. PROCEDURAL HISTORY

On March 29, 2022, Plaintiff Sager filed his class action complaint in Sonoma Superior Court alleging various violations of the California Labor Code. (Declaration of Justin F. Marquez in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement ("Marquez Decl."), ¶ 2.) On or about June 23, 2022, Plaintiff Adams filed her class action complaint in Placer Superior Court County, alleging various violations of the California Labor Code. On July 2, 2024, Plaintiff Sager subsequently filed a First Amended Class & Represnetative Action Complaint to consolidate both actions. (Bokhour Decl. ¶ 12; Marquez Decl., ¶ 2.)

Defendant retained counsel, denied the allegations, and vowed to vigorously defend against the allegations. The Parties conducted a thorough investigation into the facts of the Action. This investigation included extensive informal discovery, meet and confer efforts, as well as Defendant's disclosure of information and materials in informal discovery for the mediation. The discovery and disclosures included, amongst other things, Defendant's written wage-and-hour policies/procedures and payroll and timekeeping records for Settlement Class Members and Aggrieved Employees. Class Counsel is both knowledgeable about and has done extensive research with respect to the applicable law and potential defenses to the claims of the Settlement Class Members and Aggrieved Employees. Class Counsel has diligently investigated the Class Members' claims against Defendant. Based on the data and information disclosed, and on Class Counsel's own independent investigation and evaluation, Class Counsel is of the opinion that the settlement with Defendant for the consideration and on the terms set forth in this Settlement Agreement is fair, reasonable, and adequate, as well as in the best interest of the Settlement Class Members and Aggrieved Employees in light of all known facts and circumstances, including the risk of significant delay and uncertainty associated with litigation, various defenses asserted by Defendant, and numerous potential appellate issues. (Bokhour Decl. ¶ 13.)

On March 22, 2023, and June 2, 2023, the Parties participated in mediation before David Phillips, a highly experienced class action mediator. After two full-days of mediation, followed by a mediator's proposal, the Parties reached a settlement. (Bokhour Decl., ¶ 14, Exhibit "A".) The Parties subsequently memorialized the terms of the Settlement in a long-form Settlement Agreement. (*Id.*) The Parties now seek the Court's preliminary approval of the Settlement.

C. Summary of Plaintiffs' Claims

Plaintiffs alleged numerous wage and hour violations on behalf of the non-exempt employees who worked for Defendant during the Class Period. (Bokhour Decl. ¶ 15.)

First, the Plaintiffs alleged that the Defendant failed to pay all minimum and overtime wages due to Defendant's requirement that Plaintiffs and the Settlement Class perform work while off-the-clock. (Bokhour Decl. ¶ 16.)

Further, Plaintiffs alleged that they and the Settlement Class were not provided timely compliant meal periods and were not provided with a one-hour wage premium at the "regular rate of pay" pursuant to Labor Code § 226.7 on each such occasion. Specifically, Plaintiffs and the Settlement Class were forced to cut their meal periods short or take them late in order to meet the arduous work demands imposed by the Defendant. (Bokhour Decl. ¶ 17.)

Next, Plaintiffs alleges that they and the Settlement Class were not provided with compliant rest periods or a one-hour wage premium at the "regular rate of pay" pursuant to Labor Code § 226.7 on each occasion. Specifically, Plaintiffs allege that Defendant prevented the Settlement Class from taking complaint rest periods due to work demands and that Defendant prevented Settlement Class Members from leaving the premises during rest breaks. (Bokhour Decl. ¶ 18.)

Based on the above violations, Plaintiffs alleged that Defendant failed to provide accurate itemized wage statements and timely pay upon separation of employment. Finally, Plaintiffs also sought PAGA penalties arising out of the alleged Labor Code violations. (Bokhour Decl. ¶ 19.)

D. Summary of Defendant's Defenses

Defendant contested and denied each of Plaintiffs' material allegations on the merits and as to the propriety of the class and representative action. (Bokhour Decl. ¶ 20.)

First, Defendant argued that it always paid employees all wages owed. Defendant further contended that its meal and rest period policies/practices for its California non-exempt employees were compliant with California law during the Class Period. (Bokhour Decl. ¶ 21.)

Next, Defendant argued that Plaintiffs' claims for wage statements, waiting time penalties and PAGA penalties were derivative of other claims, which it argued had no merit. (Bokhour Decl. ¶ 22.)

Moreover, Defendant contended that Plaintiffs' claims were not suitable for class certification because individualized inquiries would be required to establish Plaintiffs' claims. For example, Defendant contends that individualized inquiries would be required to establish, amongst other things, which employees, if any, allegedly took meal periods of less than 30 minutes and why a particular employee allegedly received a meal period of less than 30 minutes on a particular shift. (Bokhour Decl. ¶ 23.).

III. <u>SUMMARY OF THE PROPOSED SETTLEMENT</u>

The following is a summary of the principal terms of the Settlement Agreement.

A. <u>SETTLEMENT CONSIDERATION AND ALLOCATION</u>

The $312,500 Settlement Amount, which will be paid, is non-reversionary and will be paid out to Settlement Class Members without the need to submit a claim form or take any affirmative action. It includes (1) Plaintiffs' Attorneys' Fees and Costs up to one-third of the Settlement Amount, as approved by the Court; (2) A Class Representative Award of $10,000 to each named Plaintiff, as approved by the Court; (3) Settlement Administration Costs, not to exceed $10,000; as approved by the Court; (4) a $10,000 PAGA award, 75 percent of which is to be paid to the LWDA pursuant to California Labor Code § 2699(i); and (5) the aggregate of all Individual Settlement Amounts of the Participating Class Members. (S.A. ¶ 48 *et seq.*)

After all Court-approved deductions from the Settlement Amount, it is estimated that $143,333.33 will be available to pay the Individual Settlement Amounts. As noted above, the average Individual Settlement Amount to Settlement Class Members is approximately $731.29 each, which is a fair and reasonable recovery. (Bokhour Decl. ¶ 8.)

B. NOTICE PROCEDURES

The proposed Notice Packet will be provided to the Settlement Class Members showing the estimated amount each will receive and the number of pay periods for which he/she will be credited (Exhibit "B" to the Bokhour Decl.). Within fifteen (15) days after entry by the Court of its Order of Preliminary Approval, Defendant shall provide the Settlement Administrator with a list of all Settlement Class Members containing names, social security numbers, last-known mailing addresses, and the dates worked as Class Members during the Class Period (the "Class Data"). (S.A. ¶ 65.)

Within seven (7) days after receipt of the Class Data, the Settlement Administrator shall calculate the number of pay periods for each Settlement Class Member, populate the Notice Packet, and send each Settlement Class Member the Notice Packet via first-class, United States mail. (S.A. ¶ 66.)

The Settlement Administrator will take steps to ensure that the Notice is correctly mailed to all Settlement Class Members, including utilization of the National Change of Address Database maintained by the United States Postal Service to review the accuracy of and, if possible, update a mailing address. (S.A. ¶ 65.) If the Administrator, Defendant, or Class Counsel is contacted by or otherwise discovers any persons who believe they should have been included in the Class Data and should have received Class Notice, the Parties will expeditiously meet and confer in person or by telephone, and in good faith in an effort to agree on whether to include them as Class Members. If the Parties agree, such persons will be Class Members entitled to the same rights as other Class Members, and the Administrator will send, via email or overnight delivery, a Class Notice requiring them to exercise options under this Agreement not later than 14 days after receipt of Class Notice, or the deadline dates in the Class Notice, whichever are later. (*Id.*)

C. EXCLUSION AND OBJECTION PROCEDURES

Settlement Class Members who do not timely Opt-Out of the Settlement will be deemed to participate in the Settlement and shall become Participating Class Members without having to submit a claim form or take any other action. The Notice Packet shall inform the Settlement Class

Members of their right to Opt-Out of the Settlement. To do so, the Settlement Class Member must submit a written request to the Settlement Administrator no later than 45 days after being mailed the Notice Packet by the Settlement Administrator ("Notice Response Deadline"). (S.A. ¶ 71.) Any Opt-Out request that is not postmarked by the Notice Response Deadline will be invalid.

The Notice Packet shall inform the Settlement Class Members of their right to object to the Settlement. Any Settlement Class Member who wishes to object to the Settlement must submit a written objection to the Settlement Administrator no later than the Notice Response Deadline. The objection must include the full name, address, telephone number, dates of employment, the basis for the objection, as well as any documentation or evidence in support thereof, and the name and address of his or her counsel, if represented by counsel. (S.A. ¶ 71)

D. SETTLEMENT ALLOCATION FORMULA FOR SETTLEMENT SHARES

The Individual Settlement Amount for each Settlement Class Member will be calculated by the Settlement Administrator using the Class Data provided by Defendant as follows. Compensable pay periods will be all pay periods worked by the Settlement Class Members during the Class Period. The dollars per compensable pay period will be calculated by dividing the total pay periods worked by Settlement Class Members into the Net Settlement Amount to determine a per-pay-period value ("Pay Period Value"). The Net Settlement Amount shall be allocated to each Participating Class Member based on his/her/their proportionate pay periods worked during the Class Period by multiplying the Participating Class Member's total pay periods worked during the Class Period by the Pay Period Value.

If there are any timely submitted Requests for Exclusion, the Settlement Administrator shall proportionately increase the Individual Settlement Amounts for each Participating Class Member so that the amount distributed to Participating Class Members equals 100% of the Net Settlement Amount. The Notice Packet will inform Settlement Class Members of his/her estimated share and the number of pay periods he/she worked during the Class Period. Settlement Class Members may dispute their pay periods worked if they feel they worked more pay periods in the Class Period in California than Defendant's records show by timely submitting evidence to the Settlement Administrator.

E. Timing of Settlement Disbursements

The Settlement Administrator will provide wire transfer information within three (3) days after Final Approval. Defendant shall fund the Settlement with the Gross Settlement Amount by transmitting the funds to the Administrator no later than 30 days after the Effective Date. (S.A. ¶ 73.) The Settlement Amount will be used to fund: (i) Individual Settlement Amounts of the Participating Class Members; (ii) amounts awarded to Class Counsel for Attorneys' Fees and Costs, (iii) the Class Representative Award to the Plaintiffs, (iv) the payment to the LWDA to resolve claims under the PAGA, and (v) Settlement Administration Costs. The Settlement Administrator will issue the court-approved payments within seven (7) days of receipt of funds from Defendant into the Qualified Settlement Fund. (S.A. ¶ 74.)

Settlement Class Members will have 180 days after mailing by the Settlement Administrator to cash his/her settlement checks. If any Participating Class Member's check is not cashed within that period, the check will be void and a stop-payment will be issued. the Administrator shall transmit the funds represented by such checks to Legal Aid at Work. (S.A. ¶ 75.)

F. Tax Treatment

The Individual Settlement Amounts will be allocated based on the allegations in the Action as follows: fifteen percent (15%) will be paid as wages subject to withholding of all applicable local, state and federal taxes; and eighty-five percent (85%) will be paid as interest and penalties from which no taxes will be withheld. The Settlement Administrator will issue to each Settlement Class Member an Internal Revenue Service Form W-2 and comparable state forms with respect to the wage allocation and a Form 1099 with respect to the penalties and interest allocations. (S.A. ¶ 48(e).)

G. Participating Class Members' Release of Claims

In exchange for these payments, the Settlement Agreement provides that upon the Effective Date of the Settlement, the Participating Class Members, together and individually, for themselves and for their respective spouses, domestic partners, marital community, children, estates, trusts, attorneys, heirs, successors, beneficiaries, devisees, legatees, executors, administrators, trustees, conservators, guardians, assigns, and representatives, shall be deemed to have fully, forever, and completely released and discharged all of the Released Parties[2] from, or any of them, from each of the Released Class Claims[3] arising during the Class Release Period. (S.A. ¶ 52.)

Likewise, the Aggrieved Employees, for themselves and for their respective spouses, domestic partners, marital community, children, estates, trusts, attorneys, heirs, successors, beneficiaries, devisees, legatees, executors, administrators, trustees, conservators, guardians, assigns, and representatives, will forever completely release and discharge the Released Parties from the Released PAGA Claims[4] for the PAGA Release Period

In addition to the foregoing release, the named Plaintiffs have also agreed to execute a separate general release of all known and unknown claims against Defendant as part of a separate private settlement agreement.

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[2] "Released Parties" shall refer to Defendant, its current and former officers, directors, members, employees, managers, shareholders, agents, insurers, charitable organizations, parents, subsidiaries, affiliates, operators, partners, attorneys, predecessors in interest, successors, heirs, representatives, accountants, auditors, consultants, insurers and reinsurers, and assignees, and their respective successors and predecessors in interest, subsidiaries, affiliates, parents and attorneys, if any. (S.A. ¶ 30.)

[3] "Released Class Claims" will include all claims asserted and which could have been asserted in the operative complaints, and any future amendments to the operative complaints, including, but not limited to, state wage and hour claims for any and all violations of California's Labor Code and Unfair Competition Law based on Defendant's failure to pay for all hours worked (including minimum, straight time, and overtime wages), failure to provide meal periods, failure to authorize and permit rest periods, failure to timely pay final wages at termination, failure to furnish accurate itemized wage statements, civil penalties under PAGA based on the alleged Labor Code violations, and all damages, interest, penalties, attorneys' fees, costs, and other amounts recoverable under said causes of action under California law, to the extent permissible, including, but not limited to, the California Labor Code and the applicable Wage Orders. (S.A. ¶ 4.)

[4] "Released PAGA Claims" shall include any and all claims for civil penalties pursuant to PAGA based on the allegations stated in the PAGA Notices and that were or could have been pled in the Complaint based on the facts alleged therein , including but not limited to claims all claims asserted in the operative complaints, and any future amendments to the operative complaints, including, but not limited to, state wage and hour claims for any and all violations of California's Labor Code and Unfair Competition Law based on Defendant's failure to pay for all hours worked (including minimum, straight time, and overtime wages), failure to provide meal periods, failure to authorize and permit rest periods, failure to timely pay final wages at termination, failure to furnish accurate itemized wage statements, civil penalties under PAGA based on the alleged Labor Code violations, and all damages, interest, penalties, attorneys' fees, costs, and other amounts recoverable under said causes of action under California law, to the extent permissible, including, but not limited to, the California Labor Code and the applicable Wage Orders. (S.A. ¶ 21.)

IV. PROVISIONAL CERTIFICATION OF THE SETTLEMENT CLASS UNDER THE LESSER STANDARD OF SCRUTINY FOR SETTLEMENT-ONLY CERTIFICATION IS APPROPRIATE FOR PURPOSES OF SETTLEMENT

California Rule of Court 3.769(d) provides that the Court may make an order approving certification of a provisional settlement class at the preliminary approval stage. It is well-established that trial courts should use a "lesser standard of scrutiny" for determining the propriety of certifying a settlement class, as opposed to a litigation class. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1807 at n.19. The reasons include that no trial is anticipated in a settlement class, so the case management issues inherent in determining if the class should be certified need not be confronted; and the trial court's fairness review of the settlement protects the interests of the non-representative Class Members. *Id.*; *see also Officers for Justice v. Civil Service Com.* (9th Cir. 1982) 688 F.2d 615, 633 ("Th[e] relationship between the certification determination and the merits of the case is further attenuated within the context of the settlement evaluation process . . . [C]ertification issues raised by class action litigation that is resolved short of a decision on the merits must be viewed in a different light."); *Amchem Prods., Inc. v. Windsor* (1997) 521 U.S. 591, 620 ("Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems . . . for the proposal is that there be no trial.").

As discussed below, for the purposes of this Settlement only, Plaintiffs request that this Court provisionally certify the Settlement Class, as defined above, under Code of Civil Procedure § 3150.

A. NUMEROSITY AND ASCERTAINABILITY

Numerosity is met if a proposed class is so large that joinder of all members would be impracticable. *See* Cal. Code Civ. Proc. § 3150. A proposed settlement class is ascertainable if the Class Members can be objectively identified and given notice of the litigation without unreasonable time or expense. *See Medrazo v. Honda of N. Hollywood* (2008) 166 Cal.App.4th 89, 101. Here, according to Defendant's records, approximately 196 Settlement Class Members worked during the Class Period. Plaintiffs contend that this figure undoubtedly satisfies the numerosity requirement.

B. <u>WELL-DEFINED COMMUNITY OF INTEREST</u>

1. Commonality

To justify certification, the class proponent must show that questions of law or fact common to the class predominate over the questions affecting the individual members. *See Arenas v. El Torito Rests., Inc*. (2010) 183 Cal.App.4th 723, 732 (citing *Washington Mut. Bank v. Superior Court* (2001) 24 Cal.4th 906, 913.

Here, Plaintiffs contend that they and the Settlement Class were subject to common policies and practices relating to timekeeping and payroll, the provision of meal and rest periods, and the payment of minimum and overtime wages, among other things. While the Parties dispute whether a class would be appropriate if the litigation were to continue, they agree to class certification for the purposes of this Settlement only.

2. Typicality

Typicality "focuses on whether there exists a relationship between the Plaintiffs' claims and the claims alleged on behalf of the class." *See* Herbert B. Newberg & Alba Conte, *Newberg on Class Actions* ("*Newberg*") § 3:13 (4th ed. 2002).

Again, the Parties dispute whether Plaintiffs' claims are typical of the Settlement Class for the purposes of any continued litigation of the Action, but agree, for the purposes of this Settlement only, that Plaintiffs assert claims regarding Defendant's timekeeping and payroll practices, alleged failure to pay all minimum and overtime wages, meal and rest break policies/practices, wage statements, and the provisions governing the timely and complete payment of final wages, which are at the core of the lawsuit.

3. Adequacy of Representation

The proposed Class Representatives must establish that they will adequately represent the proposed Settlement Class. *See Barboza v. West Coast Digital GSM, Inc.* (2009) 179 Cal.App.4th 540, 546. Here, Plaintiffs are adequate to represent the Settlement Class because they were employed by Defendant during the Class Period, experienced the same wage-and-hour practices as the rest of the Settlement Class, understand their duties as Class Representative, have been willing to undergo the risk of litigation, and have no conflicts of interest.

Moreover, adequacy may be established because counsel are experienced practitioners. *See Local Joint Exec. Bd. of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.* (9th Cir. 2001) 244 F.3d 1152, 1162. Here, Plaintiffs are represented by Class Counsel with extensive experience in wage-and-hour class and PAGA actions like the instant matter. (Bokhour Decl. ¶¶ 2-5.); Declaration of Joshua Falakassa in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement ("Falakassa Decl."), ¶¶ 2-8; Marquez Decl., ¶¶ 21-33.)

4. Superiority

Plaintiffs contend that certification of the Settlement Class for settlement purposes is superior here because there will be a global resolution of all claims at once, which fosters judicial economy. Plaintiffs also contend that class certification for settlement purposes is vastly superior to litigation of numerous individual claims because most of the claims are too small to litigate outside of the class context.

V. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT, WHICH IS FAIR, ADEQUATE, AND REASONABLE

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

The law favors settlements. *Bush v. Superior Court* (1992) 10 Cal.App.4th 1374, 13150. This is particularly true in class actions where substantial resources can be conserved by avoiding the time, cost, and rigors of formal litigation. However, a class action may not be dismissed, compromised, or settled without the Court's approval. Cal. R. Ct. 3.769(a). The California Rules of Court set forth the procedures for court approval of a class action settlement: (1) the Court preliminarily approves the settlement; (2) class members receive notice as directed by the Court; and (3) the Court conducts a final approval hearing to inquire into the fairness of the proposed settlement. *See* Cal. R. Ct. 3.769(c), (e-g).

The decision to approve or reject a proposed settlement lies within the Court's sound discretion. *See Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-35. Nevertheless, in considering a potential settlement for approval, a court is not to turn the approval hearing "into a trial or rehearsal for trial on the merits . . . [or] to reach any ultimate conclusions on the contested issues of fact and law which underlie the merits of the dispute." *Officers for Justice,* 688 F.2d at 625.

The Court's ultimate duty is to determine whether the settlement is fair, adequate, and reasonable. *See Dunk,* 48 Cal.App.4th at 1801 (setting forth the "fair, adequate, and reasonable" standard) (citing *Officers for Justice*, *supra*); *Cho v. Seagate Tech. Holdings, Inc.* (2009) 177 Cal.App.4th 734, 742-43 (a trial court must approve a class action settlement agreement, but only after determining that it is "'fair, adequate and reasonable,'" considering factors such as the "'risk, expense, [and] complexity'" of continued litigation) (citations omitted). The Court enjoys broad discretion in making its fairness determination, and should consider factors including, but not limited to:

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

Dunk, supra (setting forth a non-exhaustive list of factors for the court's consideration at final approval).

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

At the preliminary approval stage, the Court needs only to determine that the settlement falls within the "range of possible judicial approval" so that notice to the class and the scheduling of the fairness hearing are worthwhile. *See Newberg* § 11:25. Indeed, the Court should grant preliminary approval if there are no "grounds to doubt its fairness or other obvious deficiencies

… and [the settlement] appears to fall within the range of possible approval." *Manual For Complex Litigation* (Third) § 30.41 (1995); *see Dunk*, 48 Cal.App.4th at 1802. A "presumption of fairness exists where: (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small." *Dunk*, *supra* (citing *Newberg* § 11:41). As shown below, the Settlement falls well within the range of approval because there are no grounds to doubt its fairness.

B. THE SETTLEMENT IS THE RESULT OF SERIOUS, INFORMED, NON-COLLUSIVE NEGOTIATIONS

The Settlement was the product of extensive arm's length negotiations between counsel and was facilitated by an experienced wage-and-hour class action mediator. Though cordial and professional, the Settlement negotiations were adversarial and non-collusive in nature. The Settlement reached is the product of substantial effort by the Parties and their counsel. Although Plaintiffs and counsel believed that there was a possibility of certifying the claims, they recognized the potential risk, expense, and complexity posed by litigation, such as unfavorable decisions on class certification, summary judgment, at trial and/or on the damages awarded, and/or on an appeal that can take several more years to litigate. In addition, if Defendant prevailed on any of its defenses, the Class Members may not have received any substantial monetary recovery. (Bokhour Decl. ¶ 37.)

C. THE EXTENT OF THE INVESTIGATION WAS MORE THAN SUFFICIENT TO PERMIT PRELIMINARY APPROVAL OF THE SETTLEMENT

Plaintiffs thoroughly investigated and evaluated this case's factual and legal strengths and weaknesses before reaching the Settlement. (Bokhour Decl. ¶¶ 22-36.) As described above, the Settlement was reached after extensive investigation and research, formal discovery, thorough calculations and risk evaluation, and a substantial exchange of information relating to Plaintiffs and the Settlement Class Members prior to mediation. (*Id*.)

D. THE SETTLEMENT IS A REASONABLE COMPROMISE OF CLAIMS

To evaluate a settlement, the parties must provide the trial court with "basic information about the nature and magnitude of the claims in question and the basis for concluding that the consideration being paid for the release of those claims represents a reasonable compromise." *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133. The *Kullar* requirement was further explained in *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, which held that an explicit statement of the maximum theoretical amount that the class could recover was not necessary:

> Greenwell misunderstands *Kullar*, apparently interpreting it to require the record in all cases to contain evidence in the form of an explicit statement of the maximum amount the Plaintiffs class could recover if it prevailed on all its claims – a number which appears nowhere in the record of the case. But *Kullar* does not, as Greenwell claims, require any such explicit statement of value; it requires a record which allows "an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation.

A settlement is not judged against what might have been recovered had a Plaintiffs prevailed at trial, nor does the settlement have to provide 100% of the damages sought to be fair and reasonable. *Wershba v. Apple Computers, Inc.* (2001) 91 Cal.App.4th 224, 250 ("Compromise is inherent and necessary in the settlement process … even if the relief afforded by the proposed settlement is substantially narrower than it would be if the suits were to be successfully litigated, this is no bar to a class settlement because the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation.")

Of relevance to the reasonableness of the proposed Settlement is the fact that significant legal and factual grounds for defending this action exist. As further detailed below, in addition to disputing the merits of Plaintiffs' claims, Defendant disputed whether Plaintiffs could obtain class certification, arguing a lack of commonality of the legal claims and injuries. (Bokhour Decl. ¶¶ 18-20.) Defendant further argued that it complied with the applicable law, that all Settlement Class Members actually took their meal and rest periods, and that any purported deviations therefrom were individualized in nature, thereby limiting Plaintiffs' ability to certify the Settlement Class. (*Id*.)

While Plaintiffs assert that this is a suitable case for certification, they realize that there is always a significant risk associated with class certification proceedings, which could significantly limit the claims that they could pursue on a class basis. (Bokhour Decl. ¶ 37.)

Considering the uncertainties of protracted litigation, this negotiated Settlement reflects the best practicable recovery for the Settlement Class. (Bokhour Decl. ¶¶ 38-42.) While the total Settlement Amount is, of course, a compromise figure, the potential risks and opportunities of both parties were effectively weighed and considered by the Parties, resulting in a fair and equitable Settlement. (*Id*.)

Based upon detailed data obtained through informal discovery and information exchanges, Plaintiffs' counsel estimated the following big-picture data points in preparation for mediation: (1) approximately 196 Class Members who worked approximately 9,865 pay periods since March 29, 2018. (Bokhour Decl. ¶ 24.)

<u>Failure to Pay All Minimum and Overtime Wages</u>

Plaintiffs contended that one of their strongest claims was for unpaid wages arising from Defendant's failure to pay employees for work performed while off-the-clock. Based on Plaintiffs' analysis of the payroll records and data produced, as well as anecdotal evidence from Plaintiffs, Plaintiffs concluded that Defendant's policy of requiring employees to work off-the-clock resulted in several Class Members being underpaid. (Bokhour Decl. ¶ 25).

However, this figure ignores Defendant's defenses to Plaintiffs' off-the-clock claim. In this regard, Defendant argued that this constituted precisely the type of individualized inquiry that is not appropriate for certification because the court would have to conduct a person-by-person analysis to determine if the Class Member was correctly paid. Based on this argument, and others, Plaintiffs believed that the Court would deny class certification on this claim. Additionally, Defendant alleged that, if certification were granted, it would defeat this claim on the merits at summary judgment or at trial because its policies and/or practices were, always, facially neutral in compliance with *See's I*. (Bokhour Decl. ¶ 26).

Due to this, and in light of Defendant's other defenses, Plaintiffs completely discounted these claims, keeping in mind that the true significant value of these unpaid wage claims lies in the derivative claims for waiting time penalties under Labor Code § 203 and wage statement violations under Labor Code § 226 as discussed below. (Bokhour Decl. ¶ 27.)

Failure to Provide Meal Periods or Compensation in Lieu Thereof

With respect to Plaintiffs' meal period violation claims, Plaintiffs calculated that Settlement Class Members worked approximately 42,425 shifts during the Class Period. (Bokhour Decl. ¶ 28.) Based on the sampling of data provided by Defendant, Plaintiffs calculated that there were approximately 10,141 non-compliant meal periods during the Class Period. (*Id.*) Therefore, Plaintiffs calculated Defendant's maximum exposure under this theory of liability at $175,642.12 (10,141 non-compliant meal periods x $17.32 meal period premium.) (*Id.*)

However, Defendant asserted that it maintained legally compliant meal period policies and practices throughout the Class Period. (Bokhour Decl. ¶ 29.) Defendant also contends that this claim would not be certified due to the lack of common evidence tying together the reason Settlement Class Members experienced a meal period violation. (*Id.*) Lastly, Defendant asserts that the presence of these affirmative defenses as to the voluntariness of a particular meal period decision would preclude class certification. *Id.*; See *Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 25. (Bokhour Decl. ¶ 30.)

In light of these defenses and arguments, Plaintiffs discounted Defendant's maximum exposure by 40% for the risk of non-certification and an additional 65% to account for Defendant's defenses on the merits to arrive at an estimated total of $36,884. (Bokhour Decl. ¶ 31.)

Failure to Provide Rest Breaks or Compensation in Lieu Thereof

Similarly, Plaintiffs alleges that Defendant failed to authorize and permit all legally compliant rest periods throughout the Class Period. (Bokhour Decl. ¶ 32.) Specifically, Plaintiffs allege that Defendant does not maintain a formal rest period policy and, in practice, does not allow Settlement Class Members to leave the premises during rest periods. (*Id.*) According to the data provided by Defendant, Plaintiffs calculated that there were approximately 30,006 rest period eligible shifts, and Plaintiffs assumed a 33% violation rate. (*Id.*) As such, Plaintiffs calculated Defendant's maximum exposure on this claim at $519,703.92 (30,006 non-compliant rest periods x $17.32 rest period premium). (*Id.*)

However, Defendant asserted that it maintained compliant rest period policies throughout the Class Period and authorized and permitted all rest periods to Settlement Class Members. (Bokhour Decl. ¶ 33.) Further, Defendant contends that this claim is not amenable to class treatment because individualized inquiries would be required to determine which employees failed to take rest periods, and the reasons why each employee failed to take a rest period on a particular shift. (*Id.*)

As such, Plaintiffs discounted Defendant's maximum exposure by 50% to account for the risk of non-certification and an additional 60% to account for Defendant's defenses on the merits to arrive at an estimated exposure of approximately $103,940.78. (*Id.*)

Waiting Time Penalties

With respect to the waiting time penalty claim, there were approximately 145 Settlement Class Members that separated from their employment with Defendant during the statutory period. (Bokhour Decl. ¶ 34.) As such, the maximum potential penalty under Labor Code § 201 – 203 is $602,736 (145 employees * 8.0 hours per day * average rate of $17.32 * 30 days). (*Id.*) However, Defendant argued that it would defeat the waiting time penalty claim as to Plaintiffs' underpayment of overtime claims because the failure to pay wages, if any, was not willful given Defendant's alleged facially neutral policy. (*Id.*) Furthermore, Defendant argued that it would defeat liability for waiting time penalties arising from the other unpaid wage claims and unavailability of derivative claims for meal and rest violations. (*Id.*)

Therefore, Plaintiffs applied a 50% risk of defeat at the class certification stage and an additional 50% risk of defeat at the summary judgment stage or on the merits, resulting in the risk-adjusted value of $150,684 for waiting time penalty claims. (*Id.*)

Failure to Provide Accurate Itemized Wage Statements

Finally, Plaintiffs estimates the maximum potential penalties for the wage statement claims as $246,250 (based on approximately 4,925 allegedly violative wage statements issued during the Class Period). (Bokhour Decl. ¶ 35.) In calculating Defendant's exposure, Plaintiffs gave Defendant the benefit of assuming Plaintiffs could only obtain the "initial" wage statement penalty of $50 per violation, for a total of $435,050 in potential wage statement penalties. *Id.*, Lab. Code § 226(e) (providing for a $50 penalty for "initial" violations); *Amaral v. Cintas Corp*. No. 2, 163 Cal.App.4th 1157, 1207 (2008) (finding that "initial" violation rate applies until the employer has been notified that it is violating a Labor Code provision.)

In response to Plaintiffs' wage statement violation claims, Defendant contended that any alleged violations were not "knowing and intentional" and that Plaintiffs could not establish that they or anyone else suffered "injury" as a result of any alleged wage statement violations. (Bokhour Decl. ¶ 36.) Further, Defendant relied on its defenses to Plaintiffs' underlying claims both on the merits and to class certification. (*Id.*) As such, Plaintiffs discounted the calculated maximum exposure by 30% for the risk of non-certification and by an additional 20% for the risk of being unsuccessful on the merits to arrive at an estimated total of $137,900. (*Id.*)

In sum when factoring in defenses and risks of ongoing litigation, Plaintiffs estimate the risk-adjusted class recovery as follows:

- Unpaid Wages: $0 (discounted)
- Meal Period Claims: $36,884
- Rest Period Claims: $103,940.78
- Labor Code §§ 201 – 203 Claims: $150,684
- Wage Statement Violation Claims: $137,900
- **Total Risk-Adjusted Penalties and Damages**: $429,408.80

(Bokhour Decl. ¶ 37.)

Plaintiffs also sought PAGA penalties for each violation for which they are available and alleged that these penalties can be "stacked." Bokhour Decl. ¶ 36; *See Gonzalez v. Corecivic of Tennessee, LLC*, No. 1:16-cv-01891-DAD-JLT, 2018 WL 4388425 (E.D. Cal. Sept. 12, 2018) ("'stacking' PAGA penalties is not inappropriate under California law"). Assuming that a PAGA penalty is available in the default amount of $100 per pay period and is not reduced, the maximum potential PAGA penalty would be $492,500 per claim for the approximately 4,925 pay periods in the PAGA period. *See* Cal. Lab. Code. § 2699(f)(2). (*Id.*)

However, this maximum figure fails to account for numerous unclear issues relating to PAGA claims. (Bokhour Decl. ¶ 3*.) First, it is unclear whether stacking is permissible and/or whether the court would award penalties in such a way (especially for purely derivative penalties). (*Id.*) Second, the maximum figure fails to acknowledge that courts have wide latitude to reduce the amount of civil penalties "based on the facts and circumstances of a particular case" and if "to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory." *Id.*; Labor Code § 2699(h); *Cotter v. Lyft, Inc.*, 193 F. Supp. 3d 1030, 1037 (N.D. Cal. 2016) (noting in the context of approving settlement that a reduction in PAGA penalties would be "appropriate" based on the "unjust, arbitrary and oppressive, or confiscatory" factors because (i) the employer did not "deliberately evad[e] a clear obligation to provide legally required pay and benefits to employees," (ii) the employer did not "negligently fail to learn about its obligations under the wage and hour laws," and (iii) the employer's obligations were "genuinely unclear" because "there is no straight answer to the question.").

The reasonableness of the settlement is apparent from the fact that the proposed settlement is approximately 72% of the risk-adjusted class damages and penalties. And while the PAGA penalties had a maximum value of $492,500, this fails to acknowledge that courts have wide latitude to reduce the civil penalties "based on the facts and circumstances of a particular case" and if "to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory." Labor Code § 2699(e)(2). Moreover, Defendant argued against the merits of the underlying claims, particularly that the "willfulness" standard and/or "good faith" defenses mitigated the civil penalty claims and rendered any such penalties uncertain. Defendant also argued that it is improper to stack civil penalty claims on top of the underlying statutory claim. For these reasons, the Parties submit that the agreed-upon settlement is fair and reasonable. (Bokhour Decl. ¶ 38.) Preliminary approval is thus appropriate since the Settlement will provide significant monetary relief to the Settlement Class.

For these reasons, the Parties submit that the agreed-upon Settlement is fair and reasonable.

E. Plaintiffs' Counsel Is Experienced in Similar Wage-and-Hour Litigation

The view of the attorneys actively conducting the litigation is entitled to significant weight in deciding whether to approve the settlement. *Ellis v. Naval Air Rework Facility* (N.D. Cal. 1980) 87 F.R.D. 15, 18, *aff'd* (9th Cir. 1981) 661 F.2d 939; *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128 (court must take into account "the experience and view of counsel") (internal quotation and citation omitted).

Plaintiffs' counsel are also highly experienced in Class and PAGA litigation, having litigated upwards of 150 class actions and PAGA cases, having been named "Super Lawyers Rising Stars" in employment litigation (a distinction awarded to only 2.5% of attorneys) and having achieved class action settlements in California. (Bokhour Decl. ¶¶ 2-5; Falakassa Decl. ¶¶ 2-8; Marquez Decl. ¶¶ 21-33.)

Plaintiffs' counsel, operating at arm's length, weighed the strengths and risks of this case and are of the view that this is a fair and reasonable settlement in light of the nature of the claims, realistic risk-adjusted value of damages, complexities of the case, the state of the law, and uncertainties of class certification and litigation. (Bokhour Decl. ¶¶ 22-37; Falakassa Decl. ¶¶ 35-42; Marquez Decl. ¶ 10.)

F. The Class Notice Conforms to All Applicable Statutes and Rules

The proposed Notice Packet should be approved, as it fully informs the Settlement Class Members of the nature of the lawsuit and each Settlement Class Members' rights under the terms of the Settlement Agreement and applicable law. The manner in which the Notice Packet shall be disseminated, as outlined above, shall ensure that all or nearly all of the Settlement Class Members shall be properly notified of the proposed Settlement.

The proposed Notice Packet and proposed plan for the Settlement Administrator to mail the Notice Packet to the last known address of all Settlement Class Members complies with all the requirements of California Rule of Court 3.769(f) and 3.766(b). The contents of the proposed

Notice Packet include (1) the material terms of the Settlement; (2) the proposed Attorneys' Fees and Costs and the Settlement Administration Costs; (3) details about the final fairness hearing and how Settlement Class Members may elect to exclude themselves or make an objection; and (4) how Settlement Class Members can obtain additional information. *See* Notice Packet (Bokhour Decl. ¶ 9, Exhibit B.) In addition, it will inform Settlement Class Members of their estimated settlement share.

The Court has wide discretion in approving the means of providing notice, so long as the class representative "provide(s) meaningful notice in a form that should have a reasonable chance of reaching a substantial percentage of Class Members." *Archibald v. Cinerama Hotels*, (1976) 15 Cal.3d 853, 861. Here, the parties' notice plan is that notice of the Settlement will be disseminated directly to the Settlement Class Members by first class mail by the Settlement Administrator, since Defendant has the last known addresses of all Settlement Class Members and the Settlement Administrator will perform a skip trace and update those addresses for any Notice Packets that are returned and re-send the Notice Packet.

The Notice Packet satisfies the requirements of Rule of Court 3.766 and affords Settlement Class Members with all due process protections required by the United States Constitution. Moreover, the contents of the Notice Packet are in compliance with Cal. R. Ct. 3.766(d), because the Notice Packet includes, without limitation (1) a detailed explanation of the case, including the basic contentions or denials of the Parties; (2) a statement that the court will exclude the Settlement Class Member if the Settlement Class Member so requests by a specified date; (3) a procedure for the Settlement Class Members to follow in requesting exclusion from the Settlement Class; (4) a statement that the judgment, whether favorable or not, will bind all Settlement Class Members who do not request exclusion; and (5) a statement that any Class Member who does not request exclusion may if the Settlement Class Member so desires, enter an appearance through counsel.

The 45-day response deadline for Settlement Class Members to exclude themselves is reasonable, as it provides Settlement Class Members with sufficient time to do so and, if they so choose, to seek independent legal advice in the interim. If a Settlement Class Member does not opt-out, then he or she will automatically be sent a settlement check.

G. <u>The Non-Reversionary "Checks Cashed" Distribution Ensures Maximal Recovery for Class Members</u>

The fact that each member who does not opt out of the Settlement shall be mailed a check ensures that every Class Member will be paid unless he or she affirmatively acts to exclude himself or herself. Moreover, the Settlement Amount is non-reversionary, which means that no settlement funds will revert to Defendant; instead, if any checks are uncashed by the deadline, the funds will be transferred to Legal Aid at Work subject to the approval of the Court. Such terms are favored by Courts and demonstrate that there was no collusion between counsel for the parties and that the Settlement is fair and favorable to the Class Members.

H. <u>The Attorneys' Fees Allocation Under the Settlement Agreement is Fair</u>

Under the terms of the Settlement Agreement, Class Counsel is requesting $104,166.67 in Attorneys' Fees, which is equal to one-third (33.33%) of the Gross Settlement Amount. (S*ee, e.g., Laffitte v. Robert Half Int'l Inc.* (2016) 1 Cal.5th. 480 (approving 1/3 fee in the amount of $6.33 million at a 2.13 lodestar multiplier, when class action litigation establishes a monetary fund for the benefit of the Class Members, the trial court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created); *see also Stuart v. RadioShack Corp*. (N.D. Cal. Aug. 9, 2010) No. C-07-4499 EMC, 2010 WL 3155645 (approving fee award of 1/3 of the total maximum settlement amount of $4.5 million) (the court noted that the fee award of 1/3 of the total settlement was "well within the range of percentages which courts have upheld as reasonable in other class action lawsuits"); *Singer v. Becton Dickinson and Co*. (S.D. Cal. June 1, 2010) No. 08-cv-1501-IEG (BLM), 2010 WL 2196104, at *8 (approving fee award of 33.33% of the common fund); *Romero v. Producers Dairy Foods, Inc.* (E.D. Cal. Nov. 14, 2007) No. 1:05cv0484 DLB, 2007 WL 3492841, at *4 (awarding fees of 1/3 of common fund, noting: "[f]ee awards in class actions average around one-third of the recovery."); *Martin v. FedEx Ground Package System, Inc*. (N.D. Cal. Dec. 31, 2008) No. C 06-6883 VRW, 2008 WL 5478576, at *8 (approving fees of 1/3 of the common fund). (Bokhour Decl. ¶ 47.)

Once the Court grants preliminary approval of the Settlement Agreement and Notice Packet is disseminated, Plaintiffs' counsel will submit a request for Attorneys' Fees and Costs with Plaintiffs' final approval motion.

I. THE CLASS REPRESENTATIVE AWARD IS FAIR AND APPROPRIATE

The Settlement Agreement provides for a Class Representative Award to each named Plaintiffs in the amount of $10,000. (S.A. ¶ 48(f).) The proposed Class Representative Award is reasonable given the time and effort Plaintiffs devoted to this case. Plaintiffs' efforts included: providing factual background for the Complaints and PAGA Letters; providing documents and information about Defendant's operations; participating in phone calls to discuss litigation and settlement strategy; making themselves available throughout the litigation to assist with analyzing the claims and defenses; helping Class Counsel prepare for the mediations and participating during mediations; and reviewing the Settlement documents. Plaintiffs also assumed significant risk in bringing this litigation—namely, had they lost, they could have been ordered to pay Defendant's costs. (Bokhour Decl. ¶¶ 44-45; Marquez Decl. ¶¶ 11-15.)

The requested Class Representative Award falls within the range of incentive payments typically awarded to Class Representatives in similar class actions. *See e.g. Bond v. Ferguson Enterprises, Inc*. (E.D. Cal. 2011) No. 1:09–cv–1662 OWW MJS, 2011 WL 2648879 (approving $11,250 service award to each of the two class representatives in a trucker meal break class action; *Ross v. US Bank National Association* (N.D. Cal. 2010) No. C 07-02951 SI, 2010 WL 3833922, at *2 (approving $20,000 enhancement award to Class Representative in California wage-and-hour class action settlement); *Vasquez v. Coast Valley Roofing, Inc*. (E.D. Cal. 2010) 266 F.R.D. 4150, 493 (approving service awards in the amount of $15,000 each from a $300,000 settlement fund in a wage/hour class action).

VI. THE COURT SHOULD APPOINT PHOENIX AS THE SETTLEMENT ADMINISTRATOR

Subject to the Court's approval, the parties stipulated to Phoenix to serve as the Settlement Administrator. Phoenix is experienced in administering class action settlements and will not exceed $10,000 to administer this class action Settlement. (Bokhour Decl. ¶ 47.)

VII. TIMELINE AND SCHEDULING A FINAL APPROVAL HEARING

The last step in the approval process is the formal hearing, whereby proponents of the Settlement may explain and describe its terms and conditions and offer argument in support of approval, and Settlement Class Members or their counsel may be heard in support of or in opposition to the Settlement. Subject to the Court's approval, the Settlement Agreement stipulates that the Court schedule a hearing for final approval in accordance with the following schedule:

TBD	Preliminary Approval (PA) hearing
(7 calendar days after receiving the Class Data)	Deadline for Settlement Administrator to complete first mailing of the Notice Packet to all Settlement Class Members.
(*45 days after mailing Class Notice*)	Response Deadline for Settlement Class Members to submit Requests for Exclusion and Objections to the Settlement.
16 court days before Final Approval hearing	Deadline for Plaintiffs to file and serve Motion for Final Approval of Settlement and request for an award of attorneys' fees, costs, and service payments.
TBD	Final Approval Hearing.

VIII. CONCLUSION

For all of the foregoing reasons, Plaintiffs respectfully request that the Court grant their Motion for Preliminary Approval of Class Action Settlement.

Dated: October 21, 2024,

WILSHIRE LAW FIRM

BY: */s/ Arrash T. Fattahi*

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Benjamin H. Haber
Arrash T. Fattahi
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Dated: October 21, 2024,

BOKHOUR LAW GROUP, P.C.
FALAKASSA LAW, P.C.

BY: *_/s/ Mehrdad Bokhour_*

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[*Additional counsel on the following page*]

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SONOMA

GABRIEL SAGER and ELIZABETH ADAMS, individually, on behalf of all others similarly situated, and on behalf of the State of California and other aggrieved persons,

Plaintiffs,

v.

SUMMIT FOOD SERVICE, LLC, a limited liability company; and DOES 1 through 10, inclusive,

Defendants.

CASE NO.: SCV-270486

Assigned to Hon. Christopher M. Honigsberg

CLASS & REPRESENTATIVE ACTION

DECLARATION OF MEHRDAD BOKHOUR IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

Hearing Information:

Date:
Time:
Dept.: 18

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DECLARATION OF MEHRDAD BOKHOUR

I, Mehrdad Bokhour, say and declare as follows:

1. I am an attorney at law, duly licensed to practice before all the Courts of the State of California, and I am the principal of Bokhour Law Group, P.C., and I serve as attorney of record for Plaintiffs Gabriel Sager and Elizabeth Adams("Plaintiffs") and the Putative Class. I am familiar with the file in this matter, and if called as a witness, I could and would competently testify to the following facts of my own personal knowledge. I submit this declaration in support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement.

2. I have been a member, in good standing, of the State Bar of California since 2012. I am admitted to practice before all California state courts and the United States District Court for the Central District, Eastern District, and Southern District and have litigated class action and Private Attorney General Act ("PAGA') representative action cases in various courts in California.

3. I graduated from the University of California, Berkeley in 2007. I received my Juris Doctorate from Loyola Law School, Los Angeles, in 2012. I began my legal career focusing on plaintiff-side employment litigation, emphasizing disability discrimination and harassment matters under the Fair Employment and Housing Act. After practicing for several years in an amorphous range of civil litigation on behalf of plaintiffs and defendants, I opened my law firm in 2014 with an exclusive concentration on the representation of employees against employers to recover unpaid wages and vindicate harassment, discrimination, and retaliation claims in various contexts. Most of my cases have been litigated as class actions, representative PAGA actions, or a combination of the two.

4. I am also an active member of the California Employment Lawyers Association ("CELA") and have attended various Continuing Legal Education courses pertaining to advocacy on behalf of employees. My firm has the experience, resources, and means necessary to allow us to provide adequate representation as Class Counsel to all aggrieved employees in this litigation. Currently, my firm is acting as lead counsel in at least twenty-five wage-and-hour class actions and co-counsel in at least twenty others.

5. I was selected as a "Super Lawyer Rising Star" in Employment Litigation from 2017 through 2022 and as a "Super Lawyer" from 2023-2024, a distinction reserved for the top 2.5 % of attorneys in the practice area.

6. Through a contested but productive mediation, Plaintiffs and Defendant Summit Food Service, LLC ("Defendant") (collectively, the "Parties") entered into a Class Action and PAGA Settlement Agreement resolving the wage and hour claims of the Settlement Class ("Settlement Agreement" and/or "Settlement"), which is attached hereto as **Exhibit A**. The Settlement Agreement seeks to fully release and discharge Defendant from the claims brought against it in this matter in exchange for Defendant's agreement to pay $312,500 on a non-reversionary, non-claim made basis (each Settlement Class Member will receive his/her share of the Net Settlement Amount without having to submit a claim form or taking action, except for those who opt-out).

7. Plaintiffs seek to represent all individuals employed by Defendant as non-exempt hourly employees in California from March 29, 2018, through September 1, 2023 (the "Class Period"). Likewise, Plaintiffs seek to represent all aggrieved employees employed by Defendant as non-exempt hourly employees in California from April 8, 2021, until September 1, 2023 (the "PAGA Period").

8. Under the terms of the Settlement Agreement,[1] Defendant will not oppose Class Counsel's request for a reasonable award of Attorneys' Fees, not to exceed one-third of the Settlement Amount, Class Counsel's reasonable litigation Costs, not to exceed $25,000, Settlement Administration Costs, not to exceed $10,000, PAGA penalties of $10,000 (of which $7,500 or 75% will be paid to the LWDA and the remaining $2,500 or 25% will be paid to the Settlement Class Members), and a Class Representative Award to Plaintiffs not to exceed $10,000 to Plaintiffs, as follows:

[1] The Class Action and PAGA Settlement Agreement is attached as Exhibit "A" to the Declaration of Mehrdad Bokhour ("Bokhour Decl.") submitted herewith and referred to as the "Settlement Agreement" or, at times, the "Settlement." The proposed class Notice Packet is attached to the Bokhour Declaration as Exhibit "B."

	Total Amount
Gross Settlement Amount	$312,500
Attorneys' Fees (33.33%)	$104,166.67
Litigation Costs	$25,000
Administrator Costs	$10,000
PAGA payment to LWDA (75% of 10k allocation)	$7,500
PAGA payment to aggrieved employees	$2,500
Plaintiffs' Class Representative Award (not to exceed 10k each)	$20,000
Net Settlement Amount	**$143,333.33**

9. As of approximately June 2, 2023, the Settlement Class included approximately 196 non-exempt employees who worked for Defendant in California since March 29, 2018. Plaintiffs contend that regardless of their roles, all non-exempt employees worked under the same workplace policies and scheduling practices. The Settlement Agreement provides that the Individual Settlement Amounts will be paid pro-rata based on the number of pay periods worked during the Class Period. Assuming a total class size of 196 Settlement Class Members, the average payment to each Settlement Class Member will be approximately **$731.29**. Of course, those with more pay periods stand to recover proportionally more.

10. The Settlement is non-reversionary, and Settlement Class Members will not be required to submit claim forms to receive payment, but each Settlement Class Member will receive the Notice Packet containing information about his/her share, the opportunity to dispute the number of pay periods worked by the Settlement Class Member, and the opportunity to opt-out or object to the Settlement. All Settlement Class Members who do not affirmatively opt-out will receive a settlement check upon the Court granting final approval.

11. Because the Settlement is fair and reasonable and was negotiated at arm's length by experienced counsel and an experienced mediator following a sufficient exchange of information and documents before mediation, it should be preliminarily approved. Plaintiffs respectfully request that the Court enter an order preliminarily approving the Settlement, conditionally certifying the Settlement Class under Code of Civil Procedure § 382 for settlement purposes, approving the proposed Notice Packet, appointing Plaintiffs' counsel as Class Counsel, appointing Phoenix Class Action Administration Solutions as the Settlement Administrator, and scheduling a hearing for the

final approval of the Settlement.

12. On March 29, 2022, Plaintiff Sager filed his class action complaint in Sonoma Superior Court alleging various violations of the California Labor Code. (Declaration of Justin F. Marquez in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement ("Marquez Decl."), ¶ 2.) On or about June 23, 2022, Plaintiff Adams filed her class action complaint in Placer Superior Court County, alleging various violations of the California Labor Code. On July 2, 2024, Plaintiff Sager subsequently filed a First Amended Class & Represnetative Action Complaint to consolidate both actions.

13. Defendant retained counsel, denied the allegations, and vowed to vigorously defend against the allegations. The Parties conducted a thorough investigation into the facts of the Action. This investigation included extensive informal discovery, meet and confer efforts, as well as Defendant's disclosure of information and materials in informal discovery for the mediation. The discovery and disclosures included, amongst other things, Defendant's written wage-and-hour policies/procedures and payroll and timekeeping records for Settlement Class Members and Aggrieved Employees. Class Counsel is both knowledgeable about and has done extensive research with respect to the applicable law and potential defenses to the claims of the Settlement Class Members and Aggrieved Employees. Class Counsel has diligently investigated the Class Members' claims against Defendant. Based on the data and information disclosed, and on Class Counsel's own independent investigation and evaluation, Class Counsel is of the opinion that the settlement with Defendant for the consideration and on the terms set forth in this Settlement Agreement is fair, reasonable, and adequate, as well as in the best interest of the Settlement Class Members and Aggrieved Employees in light of all known facts and circumstances, including the risk of significant delay and uncertainty associated with litigation, various defenses asserted by Defendant, and numerous potential appellate issues.

14. On March 22, 2023, and June 2, 2023, the Parties participated in mediation before David Phillips, a highly experienced class action mediator. After two full-days of mediation, followed by a mediator's proposal, the Parties reached a settlement.

15. Plaintiff alleged numerous wage and hour violations on behalf of the non-exempt

employees who worked for Defendant during the Class Period.

16. First, the Plaintiffs alleged that the Defendant failed to pay all minimum and overtime wages due to Defendant's requirement that Plaintiffs and the Settlement Class perform work while off-the-clock.

17. Further, Plaintiffs alleged that they and the Settlement Class were not provided timely compliant meal periods and were not provided with a one-hour wage premium at the "regular rate of pay" pursuant to Labor Code § 226.7 on each such occasion. Specifically, Plaintiffs and the Settlement Class were forced to cut their meal periods short or take them late in order to meet the arduous work demands imposed by the Defendant.

18. Next, Plaintiffs alleges that they and the Settlement Class were not provided with compliant rest periods or a one-hour wage premium at the "regular rate of pay" pursuant to Labor Code § 226.7 on each occasion. Specifically, Plaintiffs allege that Defendant prevented the Settlement Class from taking complaint rest periods due to work demands and that Defendant prevented Settlement Class Members from leaving the premises during rest breaks.

19. Based on the above violations, Plaintiffs alleged that Defendant failed to provide accurate itemized wage statements and timely pay upon separation of employment. Finally, Plaintiffs also sought PAGA penalties arising out of the alleged Labor Code violations.

20. Defendant contested and denied each of Plaintiffs' material allegations on the merits and as to the propriety of the class and representative action.

21. First, Defendant argued that it always paid employees all wages owed. Defendant further contended that its meal and rest period policies/practices for its California non-exempt employees were compliant with California law during the Class Period.

22. Next, Defendant argued that Plaintiffs' claims for wage statements, waiting time penalties and PAGA penalties were derivative of other claims, which it argued had no merit.

23. Moreover, Defendant contended that Plaintiffs' claims were not suitable for class certification because individualized inquiries would be required to establish Plaintiffs' claims. For example, Defendant contends that individualized inquiries would be required to establish, amongst other things, which employees, if any, allegedly took meal periods of less than 30 minutes and why

a particular employee allegedly received a meal period of less than 30 minutes on a particular shift

24. Based upon detailed data obtained through informal discovery and information exchanges, Plaintiffs' counsel estimated the following big-picture data points in preparation for mediation: (1) approximately 196 Class Members who worked approximately 9,865 pay periods since March 29, 2018.

Failure to Pay All Minimum and Overtime Wages

25. Plaintiffs contended that one of their strongest claims was for unpaid wages arising from Defendant's failure to pay employees for work performed while off-the-clock. Based on Plaintiffs' analysis of the payroll records and data produced, as well as anecdotal evidence from Plaintiffs, Plaintiffs concluded that Defendant's policy of requiring employees to work off-the-clock resulted in several Class Members being underpaid.

26. However, this figure ignores Defendant's defenses to Plaintiffs' off-the-clock claim. In this regard, Defendant argued that this constituted precisely the type of individualized inquiry that is not appropriate for certification because the court would have to conduct a person-by-person analysis to determine if the Class Member was correctly paid. Based on this argument, and others, Plaintiffs believed that the Court would deny class certification on this claim. Additionally, Defendant alleged that, if certification were granted, it would defeat this claim on the merits at summary judgment or at trial because its policies and/or practices were, always, facially neutral in compliance with *See's I*.

27. Due to this, and in light of Defendant's other defenses, Plaintiffs completely discounted these claims, keeping in mind that the true significant value of these unpaid wage claims lies in the derivative claims for waiting time penalties under Labor Code § 203 and wage statement violations under Labor Code § 226 as discussed below.

Failure to Provide Meal Periods or Compensation in Lieu Thereof

28. With respect to Plaintiffs' meal period violation claims, Plaintiffs calculated that Settlement Class Members worked approximately 42,425 shifts during the Class Period. Based on the sampling of data provided by Defendant, Plaintiffs calculated that there were approximately 10,141 non-compliant meal periods during the Class Period. Therefore, Plaintiffs calculated

Defendant's maximum exposure under this theory of liability at $175,642.12 (10,141 non-compliant meal periods x $17.32 meal period premium.)

29. However, Defendant asserted that it maintained legally compliant meal period policies and practices throughout the Class Period. Defendant also contends that this claim would not be certified due to the lack of common evidence tying together the reason Settlement Class Members experienced a meal period violation.

30. Lastly, Defendant asserts that the presence of these affirmative defenses as to the voluntariness of a particular meal period decision would preclude class certification. *Id*.; See *Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 25. (Bokhour Decl. ¶ 30.)

31. In light of these defenses and arguments, Plaintiffs discounted Defendant's maximum exposure by 40% for the risk of non-certification and an additional 65% to account for Defendant's defenses on the merits to arrive at an estimated total of $36,884.

<u>Failure to Provide Rest Breaks or Compensation in Lieu Thereof</u>

32. Similarly, Plaintiffs alleges that Defendant failed to authorize and permit all legally compliant rest periods throughout the Class Period. Specifically, Plaintiffs allege that Defendant does not maintain a formal rest period policy and, in practice, does not allow Settlement Class Members to leave the premises during rest periods. According to the data provided by Defendant, Plaintiffs calculated that there were approximately 30,006 rest period eligible shifts, and Plaintiffs assumed a 33% violation rate. As such, Plaintiffs calculated Defendant's maximum exposure on this claim at $519,703.92 (30,006 non-compliant rest periods x $17.32 rest period premium).

33. However, Defendant asserted that it maintained compliant rest period policies throughout the Class Period and authorized and permitted all rest periods to Settlement Class Members. Further, Defendant contends that this claim is not amenable to class treatment because individualized inquiries would be required to determine which employees failed to take rest periods, and the reasons why each employee failed to take a rest period on a particular shift. As such, Plaintiffs discounted Defendant's maximum exposure by 50% to account for the risk of non-certification and an additional 60% to account for Defendant's defenses on the merits to arrive at an estimated exposure of approximately $103,940.78.

Waiting Time Penalties

34. With respect to the waiting time penalty claim, there were approximately 145 Settlement Class Members that separated from their employment with Defendant during the statutory period. As such, the maximum potential penalty under Labor Code § 201 – 203 is $602,736 (145 employees * 8.0 hours per day * average rate of $17.32 * 30 days). (*Id.*) However, Defendant argued that it would defeat the waiting time penalty claim as to Plaintiffs' underpayment of overtime claims because the failure to pay wages, if any, was not willful given Defendant's alleged facially neutral policy. Furthermore, Defendant argued that it would defeat liability for waiting time penalties arising from the other unpaid wage claims and unavailability of derivative claims for meal and rest violations. Therefore, Plaintiffs applied a 50% risk of defeat at the class certification stage and an additional 50% risk of defeat at the summary judgment stage or on the merits, resulting in the risk-adjusted value of $150,684 for waiting time penalty claims.

Failure to Provide Accurate Itemized Wage Statements

35. Finally, Plaintiffs estimates the maximum potential penalties for the wage statement claims as $246,250 (based on approximately 4,925 allegedly violative wage statements issued during the Class Period). In calculating Defendant's exposure, Plaintiffs gave Defendant the benefit of assuming Plaintiffs could only obtain the "initial" wage statement penalty of $50 per violation, for a total of $435,050 in potential wage statement penalties. *Id*., Lab. Code § 226(e) (providing for a $50 penalty for "initial" violations); *Amaral v. Cintas Corp*. No. 2, 163 Cal.App.4th 1157, 1207 (2008) (finding that "initial" violation rate applies until the employer has been notified that it is violating a Labor Code provision.)

36. In response to Plaintiffs' wage statement violation claims, Defendant contended that any alleged violations were not "knowing and intentional" and that Plaintiffs could not establish that they or anyone else suffered "injury" as a result of any alleged wage statement violations. Further, Defendant relied on its defenses to Plaintiffs' underlying claims both on the merits and to class certification. As such, Plaintiffs discounted the calculated maximum exposure by 30% for the risk of non-certification and by an additional 20% for the risk of being unsuccessful on the merits to arrive at an estimated total of $137,900.

37. In sum, when factoring in defenses and risks of ongoing litigation, Plaintiffs estimate the risk-adjusted class recovery as follows:

- Unpaid Wages: $0 (discounted)
- Meal Period Claims: $36,884
- Rest Period Claims: $103,940.78
- Labor Code §§ 201 – 203 Claims: $150,684
- Wage Statement Violation Claims: $137,900
- **Total Risk-Adjusted Penalties and Damages**: $429,408.80

38. Plaintiffs also sought PAGA penalties for each violation for which they are available and alleged that these penalties can be "stacked." Assuming that a PAGA penalty is available in the default amount of $100 per pay period and is not reduced, the maximum potential PAGA penalty would be $492,500 per claim for the approximately 4,925 pay periods in the PAGA period. *See* Cal. Lab. Code. § 2699(f)(2).

39. However, this maximum figure fails to account for numerous unclear issues relating to PAGA claims. (Bokhour Decl. ¶ 37.) First, it is unclear whether stacking is permissible and/or whether the court would award penalties in such a way (especially for purely derivative penalties). (*Id.*) Second, the maximum figure fails to acknowledge that courts have wide latitude to reduce the amount of civil penalties "based on the facts and circumstances of a particular case" and if "to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory." *Id.*; Labor Code § 2699(h); *Cotter v. Lyft, Inc.*, 193 F. Supp. 3d 1030, 1037 (N.D. Cal. 2016) (noting in the context of approving settlement that a reduction in PAGA penalties would be "appropriate" based on the "unjust, arbitrary and oppressive, or confiscatory" factors because (i) the employer did not "deliberately evad[e] a clear obligation to provide legally required pay and benefits to employees," (ii) the employer did not "negligently fail to learn about its obligations under the wage and hour laws," and (iii) the employer's obligations were "genuinely unclear" because "there is no straight answer to the question.").

40. The reasonableness of the settlement is apparent from the fact that the proposed settlement is approximately 72% of the risk-adjusted class damages and penalties. And while the

PAGA penalties had a maximum value of $492,500, this fails to acknowledge that courts have wide latitude to reduce the civil penalties "based on the facts and circumstances of a particular case" and if "to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory." Moreover, Defendant argued against the merits of the underlying claims, particularly that the "willfulness" standard and/or "good faith" defenses mitigated the civil penalty claims and rendered any such penalties uncertain. Defendant also argued that it is improper to stack civil penalty claims on top of the underlying statutory claim. For these reasons, the Parties submit that the agreed-upon settlement is fair and reasonable.

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

42. The Settlement will result in a fair payment to each Settlement Class Member based on the number of Weeks Worked during the Class Period. As set forth hereinabove, Plaintiff and his counsel have diligently investigated the claims and defenses on behalf of the Settlement Class Members and worked to achieve a resolution of the claims to maximize the recovery by avoiding further expenditure of Attorneys' Fees and Costs. After evaluating the significant risks attendant with further litigation described above and weighing them against the benefits of a known compromise and settlement as set forth in the Settlement Agreement, settlement on the terms agreed to is believed to be in the best interest of Plaintiff and the Settlement Class, and is a fair and reasonable resolution of the claims alleged.

43. Plaintiff's counsel brought to bear a great deal of collective experience in negotiating the settlement of this case. As detailed herein, Plaintiff's counsel engaged in necessary informal

discovery, investigation, sampling, and expert evaluation, making it possible to exercise informed judgment throughout the settlement process, including significant document review (e.g., documents pertaining to Defendant's policies and procedures, personnel documents, wage statements, time records, among others) and conducted an extensive analysis and extrapolation of the sampling of class-wide data provided by Defendant.

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

45. Plaintiffs' counsel, as well as Defendant's counsel, fully endorse the terms and conditions of the Settlement as set forth in the abovementioned Settlement Agreement.

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

47. Plaintiffs seeks a Service Award of $10,000 each, which we believe is fair and warranted. Plaintiff agreed to come forward in an effort to effectuate a policy and practice change that benefitted all other Settlement Class Members, and to recover unpaid wages and penalties. They assumed significant risk in bringing this litigation, namely, had they lost, they could have been ordered to pay Defendant's costs.

48. Plaintiffs provided invaluable assistance to the investigation and prosecution of this case, including: providing factual background for the Class Complaint; reviewing the litigation documents; providing information and documentation about Defendant's policies and practices; participating in phone calls to discuss litigation and settlement strategy; and reviewing the settlement documents. Plaintiff agreed to participate in this case with no guarantee of personal benefit. Plaintiff's comprehensive declaration setting forth all of the reasons why she believes that the Service Award

should be approved has been filed herewith.

49. When this case was taken on a contingency fee basis, with our firms agreeing to assume responsibility for all litigation costs, the ultimate result was far from certain. During this litigation, we paid all costs, including the filing fees, court costs, research/database fees, mediation costs, and expert costs. There was never a guarantee that our firms would recoup these expenditures. In fact, had Plaintiff lost, he could have been ordered to pay Defendant's costs

50. It is our experience that attorneys' fee awards of one-third of a common fund settlement are the standard in California. Plaintiff's counsel agreed to seek one-third of the Settlement Amount for Attorneys' Fees in this case. Defendant does not oppose this fee request. The fee is further warranted because it is within the range of reasonableness typically awarded in class actions. Our firm's Costs will not exceed $20,000 and will be based on the actual amount incurred at the time of final approval.

51. Subject to the Court's approval, the parties stipulated to Phoenix Class Action Administration Solutions. to serve as the Settlement Administrator. Phoenix is experienced in administering class action settlements and will not exceed $10,000 to administer this class action Settlement.

52. Plaintiff has concurrently submitted the Settlement to the LWDA in accordance with Labor Code Section 2699(1)(2). The proof of submission is attached hereto as **Exhibit "C."**

53. For the foregoing reasons, it is respectfully requested that the Court grant preliminary approval of the Settlement as being fair, reasonable, and in the best interests of the Settlement Class, as well as preliminarily approve the requested Attorneys' Fees and Costs, and Service Award to the Class Representative.

I declare under penalty of perjury under the laws of California that the foregoing is true and correct on this 21st day of October 2024, in Los Angeles, California.

By: ______________________________
Mehrdad Bokhour, Esq.

EXHIBIT "A"

<u>**CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND RELEASE**</u>

This Class Action and PAGA Settlement Agreement is entered into by and between Plaintiffs Gabriel Sager ("Plaintiff Sager") and Elizabeth Adams ("Plaintiff Adams") (collectively, at times "Plaintiffs"), individually and on behalf of all others similarly situated, and Defendant Summit Food Service, LLC (collectively with Plaintiffs, the "Parties"), and is approved by their respective counsel of record, subject to the terms and conditions hereof and the Court's approval.

The Parties agree as follows:

A. <u>Definitions</u>

<u>The following definitions are applicable to this Settlement Agreement. Definitions contained elsewhere in this Settlement Agreement will also be effective:</u>

1. "Action" or "Lawsuit" means and refers to the case entitled *Sager v. Summit Food Service, LLC*, Sonoma County Superior Court, Case Nos. SCV-270486 & SCV-271061 and *Adams v. Summit Food Service, LLC*, Placer County Superior Court, Case No. S-CV-0048656.

2. "Aggrieved Employees" means all persons who are or were previously employed by Defendant in California classified as a non-exempt hourly employee at any time from April 8, 2021, until September 1, 2023.

3. "Agreement," "Settlement Agreement and Release," "Settlement," or "Stipulation" shall mean this Class Action and PAGA Settlement Agreement and Release of Claims, including any attached Exhibits.

4. "Class Claims" or "Released Class Claims" will include all claims asserted and which could have been asserted in the operative complaints, and any future amendments to the operative complaints, including, but not limited to, state wage and hour claims for any and all violations of California's Labor Code and Unfair Competition Law based on Defendant's failure to pay for all hours worked (including minimum, straight time, and overtime wages), failure to provide meal periods, failure to authorize and permit rest periods, failure to timely pay final wages at termination, failure to furnish accurate itemized wage statements, civil penalties under PAGA based on the alleged Labor Code violations, and all damages, interest, penalties, attorneys' fees,

costs, and other amounts recoverable under said causes of action under California law, to the extent permissible, including, but not limited to, the California Labor Code and the applicable Wage Orders.

5. “Class Counsel” refers to Justin Marquez, Benjamin H. Haber, and Arrash T. Fattahi of Wilshire Law Firm, PLC, Mehrdad Bokhour of Bokhour Law Group, P.C. and Joshua Falakassa of Falakassa Law, P.C., collectively.

6. “Class Data” means a complete list that Defendant will diligently and in good faith compile from its records and provide to the Settlement Administrator on one spreadsheet and shall include the Settlement Class Members’ full names; last known addresses; telephone numbers; Social Security Numbers; and dates of employment and/or number of Workweeks Worked in California as non-exempt or hourly employees of Defendant during the Class Period and the PAGA Period for each Settlement Class Member.

7. “Class Period” and “Class Release Period” shall mean March 29, 2018 through September 1, 2023.

8. “Class Representatives” or “Plaintiffs” means and refers to Gabriel Sager and Elizabeht Adams.

9. “Complaint” refers to the original complaint and any amended complaints filed in the Action.

10. “Court” means the California Superior Court, County of Sonoma or any other Court of competent jurisdiction.

11. “Defendant” means and refers to Summit Food Service, LLC.

12. “Defendant’s Counsel” or “Defense Counsel” means and refers to Tracy Costantino of Littler Mendelson, P.C.

13. “Effective Date” shall mean (i) in the event that the Settlement has received final approval by the Court and there were no timely objections filed, or that any timely objections have been withdrawn, then the date the Court’s order of final approval of the Settlement; (ii) in the event that one or more timely objections has/have been filed and not withdrawn, then upon the passage of the applicable date for an objector to seek appellate review of the trial court’s order

of final approval of the Settlement, without a timely appeal having been filed; or, (iii) in the event that a timely appeal of the Court's order of final approval has been filed, then the Settlement shall be final when the applicable appellate court has rendered a final decision or opinion affirming the trial court's final approval without material modification, and the applicable date for seeking further appellate review has passed, or the date that any such appeal has been either dismissed or withdrawn by the appellant

14. "Final Settlement Class" means, collectively, all Participating Class Members and all Aggrieved Employees.

15. "Individual Settlement Amount" shall have the meaning ascribed to it in Paragraph 47(d) below.

16. "Net Settlement Amount" shall have the meaning ascribed to it in Paragraph 48(c) below.

17. "Notice" means the notice of settlement of Class Action and PAGA Settlement that will be sent to the Settlement Class Members.

18. "Notice Response Deadline" is forty-five (45) calendar days from the date the Notice is mailed to the Settlement Class Members.

19. "Objecting Settlement Class Member" means a Settlement Class Member, other than Plaintiffs, who submits a valid and timely objection to the terms of this Agreement with respect to the Class Claims pursuant to Paragraph 71(a) below.

20. "PAGA" shall refer to the California Labor Code Private Attorneys General Act of 2004, California Labor Code sections 2698–2699.5.

21. "PAGA Claims" or "Released PAGA Claims" shall include any and all claims for civil penalties pursuant to PAGA based on the allegations stated in the PAGA Notices and that were or could have been pled in the Complaint based on the facts alleged therein , including but not limited to claims all claims asserted in the operative complaints, and any future amendments to the operative complaints, including, but not limited to, state wage and hour claims for any and all violations of California's Labor Code and Unfair Competition Law based on Defendant's failure to pay for all hours worked (including minimum, straight time, and overtime wages),

failure to provide meal periods, failure to authorize and permit rest periods, failure to timely pay final wages at termination, failure to furnish accurate itemized wage statements, civil penalties under PAGA based on the alleged Labor Code violations, and all damages, interest, penalties, attorneys' fees, costs, and other amounts recoverable under said causes of action under California law, to the extent permissible, including, but not limited to, the California Labor Code and the applicable Wage Orders.

22. "PAGA Notice" shall refer to the notices sent by Plaintiffs, by and through counsel, to the LWDA and to Defendant, alleging that Defendant engaged in violations of the California Labor Code and California Wage Order(s).\

23. "PAGA Period" and "PAGA Release Period" shall mean April 8, 2021, until September 1, 2023.

24. "Participating Class Member" means any and all Settlement Class Members who receive an Individual Settlement Amount for the Class Claims and who do not opt-out of the settlement of the Class Claims by submitting timely and valid Requests for Exclusion.

25. "Parties" or "Settling Parties" mean Plaintiffs, the Settlement Class Members, the Aggrieved Employees, and Defendant, collectively.

26. "Preliminary Approval Date" means the date on which the Court enters an order granting preliminary approval of the Settlement Agreement.

27. "Preliminary Approval Order" means the judicial Order to be entered by the Court, upon the application or motion of the Plaintiffs, preliminarily approving this Settlement and providing for the issuance of the Notice to the Settlement Class Members, an opportunity to opt out of settlement of the Class Claims, an opportunity to submit timely objections to the terms of this Settlement related to the Class Claims, and setting a hearing on the fairness of the terms of Settlement, including approval of attorneys' fees and costs.

28. "QSF" means the Qualified Settlement Fund managed by the Settlement Administrator for the benefit of the Final Settlement Class, and from which the settlement payments shall be made, and which is intended to be a fund that qualifies under Internal Revenue Code Section 468.

29. "Release" shall mean the complete release and discharge of the Class Claims by Plaintiffs and all of the Participating Class Members and the complete release and discharge of the PAGA Claims by Plaintiffs and all of the Aggrieved Employees against Defendant.

30. "Released Parties" shall refer to Defendant, its current and former officers, directors, members, employees, managers, shareholders, agents, insurers, charitable organizations, parents, subsidiaries, affiliates, operators, partners, attorneys, predecessors in interest, successors, heirs, representatives, accountants, auditors, consultants, insurers and reinsurers, and assignees, and their respective successors and predecessors in interest, subsidiaries, affiliates, parents and attorneys, if any.

31. "Request for Exclusion" shall have the meaning ascribed to it in Paragraph 71(a) below.

32. "Service Payment" or "Service Award" means the amount approved by the Court to be paid to Class Representatives in addition to their Individual Settlement Amount as Participating Class Members.

33. "Settlement Administration Costs" means the costs payable from the Settlement Amount to the Settlement Administrator for administering this Settlement, including, but not limited to, printing, distributing, and tracking documents for this Settlement, tax reporting, due diligence, reporting and remittance obligations, distributing the Settlement Amount, and providing necessary reports and declarations, as requested by the Parties. The Settlement Administration Costs shall be paid from the Settlement Amount.

34. "Settlement Administrator" means and refers to Phoenix Class Action Administration Solutions, which the Parties have mutually agreed will provide the Notice to the Class Members and distribute the settlement amounts as described in this Agreement. The Parties each represent that they do not have any financial interest in the Settlement Administrator or otherwise have a relationship with the Settlement Administrator that could create a conflict of interest.

35. "Settlement Amount" or "Gross Settlement Amount" shall have the meaning

ascribed to it in Paragraph 48(a) below.

36. "Settlement Class Member" or "Class Member" refers to individual members of the Settlement Class.

37. "Settlement Class" and "Settlement Class Members" refers to all persons who are or were previously employed by Defendant in California classified as a non-exempt employee during the Class Period.

38. "Workweeks Worked" for each Settlement Class Member and Aggrieved Employee means any workweek during the Class Period and/or the PAGA Period, as applicable, in which the Settlement Class Member and/or Aggrieved Employee was employed by Defendant as a non-exempt employee in California and worked at least one shift during the workweek for Defendant. Workweeks Worked shall not include weeks where a Settlement Class Member and/or Aggrieved Employee only had sick time, vacation time, was on leave, or otherwise did not record any actual work time in Defendant's timekeeping system. Workweeks Worked will be calculated based on Defendant's business records.

B. <u>General Terms</u>

39. On March 29, 2022, Plaintiff Sager filed her class action complaint in Sonoma Superior Court alleging various violations of the California Labor Code.

40. On or about June 23, 2022, Plaintiff Adams filed her class action complaint in Placer Superior Court County alleging various violations of the California Labor Code.

41. Plaintiffs intend to file a First Amended Complaint to consolidate both actions.

42. Defendant denies Plaintiffs' claims and allegations and contends that the Action is not suitable for class certification and/or representative treatment.

43. Class Representatives believe they can proceed with their class and representative claims, that the Action is meritorious, and that class certification is appropriate.

44. The Parties have conducted a thorough investigation into the underlying facts and circumstances of the Action. This has included conducting extensive exchanges of informal discovery, including Defendant's employee handbooks and related written policies and practices, the production of records showing the mileage of Settlement Class Members and Aggrieved

Employees and the production of payroll and timekeeping records for Settlement Class Members and Aggrieved Employees. Class Counsel is both knowledgeable about and has done extensive research with respect to the applicable law and potential defenses to the claims of the Settlement Class Members and Aggrieved Employees. Class Counsel has diligently pursued an investigation of the Class Members' claims against Defendant. Based on the foregoing data and on their own independent investigation and evaluation, Class Counsel is of the opinion that the settlement with Defendant for the consideration and on the terms set forth in this Settlement Agreement is fair, reasonable, and adequate and is in the best interests of the Settlement Class Members and Aggrieved Employees in light of all known facts and circumstances, including the risk of significant delay and uncertainty associated with litigation, various defenses asserted by Defendant, and numerous potential appellate issues.

45. On March 22, 2023, and June 2, 2023, the Parties participated in mediation before David Phillips, a highly experienced class action mediator. Although the Parties did not reach a settlement during the first mediation, they continued their extensive and arms-length negotiations, through Mr. Phillips, and reached a settlement following the second mediation.

46. The Parties agree that neither the Parties' Settlement, this Agreement, nor the acts to be performed or judgments to be entered pursuant to the terms of the Settlement and Agreement, shall be construed as an admission by Defendant of any wrongdoing or violation of any statute, law, wage order, or liability in any capacity regarding the claims or allegations in the Action.

47. Stipulation for Class Certification and Representative Treatment. For settlement purposes only, Defendant will stipulate that the Settlement Class Members described herein who do not Request Exclusion from the Settlement Class may be conditionally certified as a settlement class and that the Aggrieved Employees are appropriate for representative treatment for purposes of settlement. This stipulation to certification and representative treatment is in no way an admission that class action certification and/or representative treatment is proper and shall not be admissible in this or in any other action except for the sole purposes of enforcing this Agreement. Should, for whatever reason, the Court fail to issue Final Approval, the Parties' stipulation to

class certification and representative treatment as part of the Settlement shall become null and void *ab initio* and shall have no bearing on and shall not be admissible in connection with the issue of whether or not class certification and/or representative treatment would be appropriate in any other context. Defendant expressly reserves its rights and declares that it will continue to oppose class certification, representative treatment, and the substantive merits of the case should the Court fail to issue Final Approval. Plaintiffs expressly reserve their right and declare that they will continue to pursue class certification and representative treatment and a trial should the Court fail to issue Final Approval.

C. Terms of Settlement

48. The financial terms of the Settlement are as follows:

(a) Gross Settlement Amount: The Parties agree to settle this Action for Three Hundred Twelve Thousand Five Thousand Dollars ($312,500.00) ("the Settlement Amount"). The Settlement Amount is the maximum amount that will be paid by Defendant, and includes Individual Settlement Amounts, all attorneys' fees of Class Counsel, costs and expenses, the Service Payment to Class Representatives, all Settlement Administration Costs, and payment to the Labor Workforce Development Agency (LWDA) for PAGA penalties. Defendant shall separately pay the employers' share of applicable payroll taxes.

(b) Defendant represents that as of June 2, 2023 there were no more than 9,220 workweeks worked by the Class Members during the Class Period. In the event the number of workweeks worked by the Class Members increases by more than 7%, or 645, then the Maximum Settlement Amount shall be increased proportionally by the workweeks worked in excess of 9,865 multiplied by the workweek value or Defendant has the option of electing to have the Class Period run through the date the total number of workweeks has reached 9,865 (the "New Class Period End Date"). Should Defendant elect to increase the Maximum Settlement Amount, the workweek value shall be calculated by dividing the Maximum Settlement Amount by 9,220 workweeks. The Parties agree that the workweek value is $33.89 ($312,500.00 / 9,220 workweeks). Thus, for example, should there be 10,000 workweeks in the Class Period, then the Maximum Settlement Amount shall be increased by $4,575.15 ([10,000 workweeks – 9,865 workweeks] x

[$33.89/workweek]).

(c) Net Settlement Amount: The "Net Settlement Amount" is defined as the Settlement Amount less attorneys' fees and litigation costs as approved and awarded by the Court, the Service Payment of $10,000 to each of the Class Representatives as approved and awarded by the Court, the Settlement Administration Costs, as approved and awarded by the Court, and the Fifteen Thousand Dollars ($15,000.00) PAGA payment to the LWDA and Five Thousand Dollars ($5,000.00) payment to Aggrieved Employees related to PAGA penalties as described in paragraph 48(d) below. In the event that the Court reduces the attorneys' fees and litigation costs or Service Awards, Settlement Administration Costs, or either increases or decreases the amount allocated to PAGA penalties, the Net Settlement Sum shall be increased or decreased accordingly.

(d) Individual Settlement Amounts for the Settlement Class: The Settlement Administrator will use the Class Data provided by Defendant to calculate each Participating Class Member's and Aggrieved Employee's Individual Settlement Amount based on the following formula:

i. PAGA Amount: $10,000 of the Gross Settlement Amount has been designated to the PAGA claims. Twenty-five percent (25%) or $2,500, shall be paid out to Aggrieved Employees, while seventy-five percent (75%), or $7,500, will be paid to the LWDA. Each Aggrieved Employee shall receive a portion of the $2,500 proportionate to the number of Workweeks Worked by the Aggrieved Employees during the PAGA Period compared to the total number of Workweeks Worked by all Aggrieved Employees during the PAGA Period. Aggrieved Employees shall have their settlement amount for the Released PAGA claims paid one hundred percent (100%) as civil penalties for which no taxes will be withheld and for which a Form 1099 will be issued by the Settlement Administrator.

ii. Class Amount: The Net Settlement Amount shall be allocated to each Participating Class Member based on his/her/their proportionate Workweeks Worked during the Class Period. This is determined by multiplying the Net Settlement Amount by a fraction, the numerator of which is the Participating Class Member's total Workweeks Worked during the Class Period, and the denominator of which is the total Workweeks Worked by all Participating

Class Members during the Class Period. If there are any timely submitted Requests for Exclusion, the Settlement Administrator shall proportionately increase the Individual Settlement Amounts for each Participating Class Member so that the amount actually distributed to Participating Class Members equals 100% of the Net Settlement Amount allocated toward Released Class Claims.

(e) Allocation of Individual Settlement Amounts: The Individual Settlement Amounts will be allocated for tax purposes based on the allegations in the Action as follows: fifteen percent (15%) will be paid as wages subject to withholding of all applicable local, state, and federal taxes; and eighty five percent (85%) will be paid as interest and as civil penalties (pursuant to, *e.g.*, California Labor Code sections 203, 226) from which no taxes will be withheld. The Settlement Administrator will issue to each Participating Class Member an Internal Revenue Service Form W-2 and comparable state forms with respect to the wage allocation and a Form 1099 with respect to the civil penalties and interest allocations.

(f) Service Payment to Class Representative: The amount awarded to Class Representatives as a Service Payment will be set by the Court in its discretion, not to exceed $10,000. Defendant agrees not to oppose this request. The Service Payment to Class Representatives will be paid out of the Gross Settlement Amount. Class Representatives will be issued IRS Form 1099 in connection with this payment. Plaintiffs shall be solely and legally responsible to pay any and all applicable taxes on this payment. The Parties agree that any amount awarded by the Court as the Service Payment to Plaintiffs less than the requested amount shall not be a basis for Plaintiffs or Class Counsel to void this Stipulation. Should the Court approve a lesser amount for any Service Payment, the difference shall be added to the Net Settlement Amount to be distributed to the Participating Class Members. In the event of any appeal of the amount of any Service Payment (if any) approved by the Court, if, after the exhaustion of any such appellate review, additional amounts not awarded to Class Representatives shall be added to the Net Settlement Amount to be distributed to the Participating Class Members.

(g) Attorneys' Fees and Costs: Defendant agrees not to oppose a request by Class Counsel to the Court for an award of attorneys' fees of one-third (33.33%) of the Settlement Amount (approximately $104,166.67), plus reasonable litigation costs not to exceed $25,000

("Attorneys' Fees and Cost Award"). For purposes of this Settlement, Defendant agrees not to oppose any contention by Class Counsel that attorneys' fees should be based on the common fund theory. The Attorneys' Fee and Cost Award shall be paid from the Gross Settlement Amount, and except for this award, Defendant shall have no further obligation to pay any attorneys' fees, costs, or expenses to Class Counsel. Should the Court approve a lesser amount than what is sought by Class Counsel, the difference shall be added to the Net Settlement Amount to be distributed to the Participating Class Members. Any Court order awarding less than the amount sought by Class Counsel shall not be grounds to rescind the Settlement Agreement or otherwise void the Settlement. In the event of any appeal of the amount of the awards of attorneys' fees and costs (if any) approved by the Court, final funding and administration of the portion of the attorneys' fees and/or costs award in dispute will be segregated and stayed pending the exhaustion of appellate review. If, after the exhaustion of any such appellate review, additional amounts not awarded to as attorneys' fees and costs shall be added to the Net Settlement Amount to be distributed to the Participating Class Members and/or Aggrieved Employees. It is understood and agreed by the Parties, Class Counsel and Defendant's counsel that no amounts designated herein as Class Counsel's attorney's fees or expenses are accessible or otherwise available to Class Counsel until the payment amount and method are agreed to by Class Counsel and the Settlement Administrator pursuant to a distribution agreement and the Joint Prosecution and Fee-Sharing Agreement. IRS Form 1099s shall be issued to Class Counsel reflecting the amount of attorneys' fees and costs awarded by the Court. Class Counsel agrees that any allocation of fees between or among Class Counsel and any other attorney representing or claiming to represent the Class Members shall be the sole responsibility of Class Counsel.

(h) Settlement Administration Costs: The fees and other charges of the Settlement Administrator will be paid from the Gross Settlement Amount, not to exceed $10,000 subject to Court approval, unless approved by all Parties and the Court.

(j) Tax Liability: Class Counsel, Defendant, and Defendant's Counsel make no representations as to the tax treatment or legal effect of Settlement Amounts called for hereunder, and Plaintiffs and the Settlement Class Members are not relying on any statement or representation by Class Counsel, Defendant, or Defendant's Counsel in this regard. Plaintiffs and Final Settlement Class Members understand and agree that they will be solely responsible for the payment of any taxes and penalties assessed on their respective Settlement Amounts described herein. Income tax withholding will also be made pursuant to applicable federal, state, and/or local withholding codes or regulations. Forms W-2 and/or Forms 1099 will be distributed at times and in the manner required by the Internal Revenue Code of 1986 (the "Code") and consistent with this Agreement. If the Code, the regulations promulgated thereunder, or other applicable tax law, are changed after the date of this Agreement, the processes set forth in this Section may be modified in a manner to bring Defendant into compliance with any such changes.

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

50. <u>"Non-Reversionary" Settlement</u>. This is a "non-reversionary" settlement. Under no circumstances will any portion of the Settlement Amount revert to Defendant. Final Settlement Class Members will not have to make a claim to receive an Individual Settlement Amount. Individual distributions, in the form of Individual Settlement Amounts, will be made directly to each Final Settlement Class Member. The Settlement Administrator shall be responsible for accurately and timely reporting any remittance obligations with respect to unclaimed funds as a result of a Final Settlement Class Member not cashing an Individual Settlement Amount by the check cashing deadline, as set forth herein.

51. Class Counsel and Plaintiffs believe that the Settlement is fair and reasonable, and adequate, and will so represent same to the Court.

D. Release by Plaintiffs and the Final Settlement Class

52. Upon the Effective Date of this Settlement, Plaintiffs and each Participating Class Member, together and individually, for themselves and for their respective spouses, domestic partners, marital community, children, estates, trusts, attorneys, heirs, successors, beneficiaries, devisees, legatees, executors, administrators, trustees, conservators, guardians, assigns, and representatives, shall be deemed to have fully, forever, and completely released and discharged all of the Released Parties from, or any of them, from each of the Released Class Claims arising during the Class Release Period.

53. Each Participating Class Member will be deemed to have made the foregoing Release as if by manually signing it.

54. Upon the Effective Date of this Settlement, Plaintiffs, the LWDA, and each Aggrieved Employee, for themselves and for their respective spouses, domestic partners, marital community, children, estates, trusts, attorneys, heirs, successors, beneficiaries, devisees, legatees, executors, administrators, trustees, conservators, guardians, assigns, and representatives, will forever completely release and discharge the Released Parties from the Released PAGA Claims for the PAGA Release Period.

55. Each Aggrieved Employee and the LWDA will be deemed to have made the foregoing Release as if by manually signing it.

56. Plaintiffs and Defendant intend that the Settlement described in this Agreement will release and preclude any further claim, whether by lawsuit, administrative claim or action, arbitration, demand, or other action of any kind, by each and all of the Participating Class Members to obtain a recovery based on, arising out of, and/or related to any and all of the Released Class Claims. The Settlement Class Members shall be notified in the Notice. This paragraph does not apply to any Settlement Class Member who timely and validly opts out of the Settlement for purposes of Class Claims.

57. Plaintiffs and Defendant intend that the Settlement described in this Agreement will release and preclude any further claims, whether by lawsuit, administrative claim or action, arbitration, demand, or other action of any kind, by the LWDA to obtain recovery based on,

arising out of, and/or related to any and all of the Released PAGA Claims.

58. Class Representatives, on behalf of themselves and the Participating Settlement Class Members, acknowledge and agree that the claims are disputed, and that the payments set forth herein constitute payment of all sums allegedly due to each of them. Class Representatives, on behalf of themselves and the Participating Settlement Class Members, acknowledge and agree that California Labor Code Section 206.5 is not applicable to the Parties hereto. Section 206.5 provides in pertinent part as follows:

> An employer shall not require the execution of any release of any 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.

E. <u>Release by Class Representatives</u>

59. With the exception of Plaintiff Adams pending individual lawsuit against Defendant, which Plaintiff Adams will be permitted to pursue, in addition to Class Representatives' release of the Released Class Claims and Released PAGA Claims, as discussed in Paragraphs 52 and 54 above, Class Representatives do hereby, for themselves and for their respective spouses, domestic partners, marital community, children, estates, trusts, attorneys, heirs, successors, beneficiaries, devisees, legatees, executors, administrators, trustees, conservators, guardians, assigns, and representatives, forever completely release and discharge the Released Parties from any and all charges, complaints, claims, liabilities, obligations, promises, agreements, contracts, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts, and expenses (including for back wages, statutory penalties, civil penalties, liquidated damages, exemplary damages, interest, attorneys' fees, and costs) of any nature whatsoever, from the beginning of time through the execution of this Stipulation, whether known or unknown, suspected or unsuspected, concealed or hidden, including but not limited to all claims arising out of, based upon, or relating to Class Representatives' employment with Defendant or the remuneration for or termination of such employment (collectively, the "Class Representatives' Claims").

60. Without limiting the generality of the foregoing, Class Representatives also

expressly release all claims or rights against Released Parties arising out of or relating to alleged violations of any contracts, express or implied (including but not limited to any contract of employment); any contract or covenant of good faith and fair dealing (express or implied); any tort, including but not limited to, negligence, fraud, misrepresentation and violation of California Labor Code section 970, negligent infliction of emotional distress, intentional infliction of emotional distress, defamation, "retaliation" claims and claims for violation of public policy, any claim for improper or unauthorized wage deductions, failure to pay the applicable wage, unpaid wages, unpaid vacation benefits, penalties, liquidated damages, other damages, overtime, and alleged "off the clock" work under federal and state law, including, but not limited to, California Labor Code Sections 204 and 558, waiting time penalties pursuant to California Labor Section 203, damages, or penalties pursuant to California Labor Code Section 226, meal period and rest break payments and penalties pursuant to California Labor Code Sections 226.7 and 512, failure to provide itemized wage statements pursuant to California Labor Code Section 226, statutory or civil penalties pursuant to California Labor Code Sections 210, failure to indemnify for business expenses pursuant to Labor Code section 2802, failure to provide one day of rest in seven pursuant to California Labor Code Sections 551 and 552, any other claim under the California Labor Code, including but not limited to any claims for whistleblower retaliation under Labor Code section 1102.5, unfair competition and unfair business practices pursuant to Business and Professions Code Section 17200 *et seq*., interest and costs pursuant to California Civil Code Section 3287 and California Labor Code Section 218.6, statutory or common law rights to attorneys' fees and costs, including those pursuant to California Labor Code Section 1194 *et seq*.; claims under the Private Attorneys General Act of 2004, Labor Code section 2699 *et seq*., and the alleged violation or breach of any other state or federal statute, rule, and or regulation; including all applicable Industrial Welfare Commission Wage Orders, and all similar causes of action, including but not limited to, any claim for restitution, equitable relief, interest, penalties, costs, or attorneys' fees in connection with any of the foregoing, negligent infliction of emotional distress, intentional infliction of emotional distress, and defamation; any "wrongful discharge," "constructive discharge," and "retaliation" claims; any claims relating to any breach of public policy; any legal restrictions on Defendant's right to discharge employees; and any federal, state, or other governmental statute, regulation, or ordinance, including, without limitation: (1) Title VII of the Civil Rights Act of 1964 (race, color, religion, sex, and national origin discrimination or harassment, including retaliation for reporting discrimination or harassment); (2) 42 U.S.C. § 1981 (discrimination); (3) Equal Pay Act, 29 U.S.C. § 209(d)(1) and California Labor Code1197.5 (equal pay); (4) Americans with Disabilities Act, 42 U.S.C. § 12100 et seq. (disability discrimination); (5) Family and Medical Leave Act, 29 U.S.C. § 2601 et seq.(family/medical leave); (6) California Fair Employment and Housing Act, Cal. Government Code § 12900 *et seq*. (discrimination or harassment in employment and/or housing, including discrimination or harassment based on race, religious creed, color, national origin, ancestry, disability, marital status, sex (including pregnancy), or age, including retaliation for reporting discrimination or harassment); (7) California Family Rights Act, Cal. Government Code § 12945.1 et seq. (family/medical leave); (8) California Labor Code, including Section 1720 et seq., or any Industrial Welfare Commission Wage Order; (9) Executive Order 11246 (race, color, religion, sex, and national origin discrimination or harassment); (10) Executive Order 11141 (age discrimination); (11) Sections 503 and 504 of the Rehabilitation Act of 1973 (handicap discrimination); (12) the Fair Labor Standards Act; (13) Employee Retirement Income Security Act, 29 U.S.C. § 1000 *et seq*. (employee benefits); (14) the California Civil Code; (15) the California Labor Code; (16) the California Constitution; (17) the National Labor Relations Act; and (18) any other federal, state, or local statute or legislation.

61. Class Representatives expressly waive and relinquish all rights and benefits afforded by Section 1542 of the Civil Code of the State of California and does so understanding and acknowledging the significance of the waiver of Section 1542. Section 1542 of the Civil Code of the State of California states:

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

Notwithstanding the provisions of Section 1542, and for the purpose of implementing a full and complete release and discharge of all parties, Class Representatives, and Class Counsel expressly acknowledge that this Settlement Agreement is intended to include in its effect, without limitation, all claims that Class Representatives knew of, as well as all claims that they do not know or suspect to exist in their favor against the Released Parties, or any of them, for the time period from the beginning of time to the execution of this Settlement Agreement, and that this Settlement Agreement contemplates the extinguishment of any such Class Representatives' claims.

F. <u>Interim Stay of Proceedings</u>

62. Pending completion of all of the prerequisites necessary to effectuate this Settlement, the Parties agree, subject to Court approval, to a stay of all proceedings in the Action except those steps necessary to effectuate the Settlement.

G. <u>Notice Process</u>

63. <u>Appointment of Settlement Administrator</u>. The Parties have agreed to the appointment of the Settlement Administrator to perform the duties of a settlement administrator, including mailing the Notice, using standard devices to obtain forwarding addresses, independently reviewing and verifying documentation associated with any claims or opt-out requests, resolving any disputes regarding the calculation or application of the formula for determining the Individual Settlement Amounts, drafting and mailing the settlement checks to Final Settlement Class Members, issuing Forms W-2 and 1099, reporting to taxing authorities, due diligence, reporting and remittance obligations, and performing such other tasks as set forth herein or as the Parties mutually agree or that the Court orders.

64. <u>Disputes Regarding Settlement Administration</u>. Any and all disputes relating to administration of the Settlement by the Settlement Administrator (except for disputes regarding Class Data) shall be referred to the Court, if necessary, which will have continuing jurisdiction over the terms and conditions of this Settlement Agreement, until Plaintiffs and Defendant notify the Court that all payments and obligations contemplated by this Settlement Agreement have been fully carried out. Prior to presenting any issue to the Court, counsel for the Parties will confer in

good faith to resolve the dispute without the necessity of Court intervention. The Settlement Administrator shall also be responsible for issuing to Plaintiffs, Final Settlement Class Members, and/or Class Counsel any Forms W-2, Forms 1099, or other Tax Forms as may be required by law for all amounts paid pursuant to this Agreement. The Settlement Administrator shall also be responsible for setting up all necessary tax accounts and forwarding all payroll taxes and penalties to the appropriate government authorities.

65. Class Data. Within fifteen (15) days after entry of the Preliminary Approval Order, Defendant shall provide the Class Data to the Settlement Administrator. The Settlement Administrator will run a check of the Class Members' addresses against those on file with the U.S. Postal Service's National Change of Address List. The Class Data provided to the Settlement Administrator will not be provided to Class Counsel and it will remain confidential, it shall be used solely to administer the Settlement, and it will not be used or disclosed to anyone, except as required by applicable tax authorities, pursuant to Defendant's express written consent, or by order of the Court.

66. Notice. The Notice, as approved by the Court, shall be sent by the Settlement Administrator to the Settlement Class Members, by first class mail, in English and Spanish, within seven (7) calendar days following the Settlement Administrator's receipt of the Class Data. The Settlement Administrator shall use standard devices, including a skip trace, to obtain forwarding addresses of Settlement Class Members if any envelopes are returned.

67. Returned Notices. The Settlement Administrator will take steps to ensure that the Notice is received by all Settlement Class Members, including utilization of the National Change of Address Database maintained by the United States Postal Service to review the accuracy of and, if possible, update a mailing address. If no forwarding address is provided, the Settlement Administrator will promptly attempt to determine the correct address using a skip-trace, or other search using the name, address, and/or Social Security number of the Class Member involved and will then perform a single re-mailing. In the event the procedures in this Paragraph are followed and the intended recipient of a Notice Packet still does not receive the Notice Packet, the Class Member shall be bound by all terms of the Settlement and any Judgment entered by the Court if

the Settlement is approved by the Court. Notices will be re-mailed to any Settlement Class Member for whom an updated address is located within ten (10) calendar days following both the Settlement Administrator learning of the failed mailing and its receipt of the updated address. The Notice shall be identical to the original Notice, except that it shall notify the Settlement Class Member that the exclusion (opt-out) request or objection must be returned by the later of the Notice Response Deadline or fifteen (15) days after the remailing of the Notice.

68. Presumption Regarding Receipt of Notice. It will be conclusively presumed that if an envelope has not been returned to the Settlement Administrator within thirty (30) days of the mailing that the Settlement Class Member received the Notice.

69. Disputes Regarding Class Data. Settlement Class Members are deemed to participate in the Settlement unless they opt-out. The Notice will inform Settlement Class Members of their estimated Individual Settlement Amount and the number of Workweeks Worked during the Class Period and during the PAGA Period. Settlement Class Members may dispute their Workweeks Worked if they feel they were employed more workweeks in the Class Period in California than Defendant's records show by timely submitting evidence to the Settlement Administrator.. Defendant's records will be presumed determinative absent reliable evidence to rebut Defendant's records. The Settlement Administrator will evaluate the evidence submitted by the Settlement Class Member and provide the evidence submitted to Class Counsel and Defense Counsel who agree to meet and confer in good faith about the evidence to determine the Class Member's actual number of Workweeks Worked and estimated Individual Settlement Amount. If Class Counsel and Defense Counsel are unable to agree , they agree to submit the dispute to the Settlement Administrator to render a final decision. All disputes will be decided within ten (10) business days of the Notice Response Deadline. Settlement Class Members will have until the Notice Response Deadline to dispute Workweeks Worked, object, or opt out, unless extended by the Court. In the event that the Settlement Administrator increases the number of Workweeks Worked for any Settlement Class Member, the Settlement Administrator will then recalculate the Participating Class Members' Individual Settlement Amounts. However, in no event will Defendant be required to increase the Gross Settlement Amount.

70. Declaration of Due Diligence. The Settlement Administrator shall provide counsel for the Parties, at least twenty-five (25) calendar days prior to the final approval hearing, a declaration of due diligence and proof of mailing with regard to the mailing of the Notice.

71. Settlement Class Members' Rights. Each Settlement Class Member will be fully advised of the Settlement, the ability to object to the provisions in the Settlement related to the Class Claims, and the ability to opt out or request exclusion from the Class Claims provisions of the Settlement. The Notice will inform the Settlement Class Members of the Court-established deadlines for filing objections or requesting exclusion from the Class Claims provisions of the Settlement in accordance with the following guidelines:

(a) Requests for Exclusion from Participating Settlement Class. Any Settlement Class Member, other than Plaintiffs, may request to be excluded from the Participating Settlement Class by submitting a "Request for Exclusion" to the Settlement Administrator, postmarked on or before the Notice Response Deadline. The Request for Exclusion should state in words to this effect:

> I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN SAGER V. SUMMIT FOOD LAWSUIT. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT RECEIVE ANY MONEY FROM THE SETTLEMENT OF THE CLASS CLAIMS IN THIS LAWSUIT.

Any Request for Exclusion must include the full name, address, telephone number, last four digits of the social security number or date of birth, and signature of the Settlement Class Member requesting exclusion. The Request for Exclusion must be returned by mail to the Settlement Administrator at the specified address. Any such Request must be made in accordance with the terms set forth in the Notice. A Request for Exclusion will be timely only if postmarked by the Notice Response Deadline, unless the Parties otherwise agree in writing. The postmark date will be the exclusive means to determine whether a Request for Exclusion has been timely submitted. Any Settlement Class Member who timely requests exclusion in compliance with these requirements: (i) will not have any rights under this Agreement with respect to the Class Claims, including the right to object, appeal, or comment on the Settlement; (ii) will not be entitled to receive any payments under this Agreement with respect to Class Claims; and (iii) will not be bound by this Agreement, or the Judgment, with respect to the Class Claims.

(b) Binding Effect on Final Settlement Class Members. Except for those Settlement Class Members who exclude themselves in compliance with the procedures set forth above, all Settlement Class Members will: (i) be deemed to be Final Settlement Class Members for all purposes under this Agreement; (ii) be bound by the terms and conditions of this Agreement, the Judgment, and the releases set forth herein; and (iii) except as otherwise provided herein, be deemed to have waived all objections and oppositions to the fairness, reasonableness, and adequacy of the Settlement.

(c) Objections to Settlement of Class Claims. Any Settlement Class Member, other than Plaintiffs, may object to the terms of this Agreement with respect to the Class Claims and may appear at the Final Approval Hearing and object whether or not they have filed a written objection as outlined herein. To object, a Settlement Class Member shall inform the Settlement Administrator, in writing, of his/her/their objection, which must be postmarked by the Notice Response Deadline at the address set forth in the Notice. Such objection shall include the full name, address, telephone number, dates of employment with Defendant of the Objecting Settlement Class Member, the case name and number, the basis for the objection, including any legal support and each specific reason in support of the objection, as well as any documentation or evidence in support thereof, and, if the Objecting Settlement Class Member is represented by counsel, the name and address of his/her/their counsel. If any Objecting Settlement Class Member wishes to speak at the Final Approval Hearing with respect to the Class Claims, that Objecting Settlement Class Member's written submission should include a request to be heard, and the Court will determine whether Objecting Settlement Class Members will be permitted to speak at the hearing. The Settlement Administrator shall provide objections, if any, to Class Counsel and Defense Counsel within three (3) business days of receipt, and the Settlement Administrator shall attach the same to its declaration of due diligence it files with the Court prior to the Final Approval Hearing. Any Objecting Settlement Class Member remains eligible to receive monetary compensation from the Settlement. Plaintiffs and Defendant shall not be responsible for any fees, costs, or expenses incurred by any Class Member and /or his/her/their counsel related to any objections to the Settlement. Submitting an objection does not preserve the right to appeal a final judgment. Rather, the right to appeal is preserved by becoming a party of record by timely and properly intervening or filing a motion to vacate the judgment under Code of Civil Procedure section 663. Settlement Class Members and Aggrieved Employees may not object to or opt out of the Settlement with respect to the PAGA Claims. At no time will any of the Parties or their counsel seek to solicit or otherwise encourage Class Members to submit written objections to the Settlement or appeal from the Judgment. To the extent a timely Notice of Objection is withdrawn before final approval, such an objection shall be treated as though the objection had not been made.

(d) Failure to Object. Any Settlement Class Member who desires to object with respect to the Class Claims but fails to submit a timely written objection waives any right to object and will be foreclosed from making any objection to this Settlement. Any Settlement Class Member who does not timely and properly become a party of record by intervening or filing a motion to vacate the judgment waives any and all rights to appeal from the Judgment, including all rights to any post-judgment proceeding and appellate proceeding, such as a motion to vacate judgment, motion for new trial, a motion under California Code of Civil Procedure section 473, and extraordinary writs.

(e) Responses to Objections. Counsel for the Parties may file a response to any objections submitted by Objecting Settlement Class Members at least five (5) court days before the date of the Final Approval Hearing.

72. Settlement Class Members will have until the Notice Response Deadline to object or submit a Request for Exclusion to the Settlement Administrator by U.S. Mail. The Settlement Administrator shall disclose jointly to Class Counsel and Defendant's counsel what objections or Requests for Exclusion were timely submitted on a weekly basis, and upon the request of Class Counsel or Defense Counsel.

73. Funding of the Settlement Amount. Defendant shall make a one-time deposit into the QSF of the Settlement Amount, as described in Paragraph 48(a) that is necessary to make all

payments required under this Settlement, within thirty (30) days after the Effective Date. Separately but on this same date (30 days after Effective Date), Defendant shall pay its share of employer payroll taxes as calculated and directed by the Settlement Administrator and set forth herein.

74. Distribution of Funds. No later than seven (7) calendar days after deposit of the Settlement Amount into the QSF, the Settlement Administrator shall mail the payments to the Participating Class Members, the payment for the attorneys' fees and costs to Class Counsel (except as provided herein and/or pursuant to a distribution agreement), any Service Payment to the Class Representatives, the payment to the LWDA for PAGA penalties, and will pay itself the Settlement Administration Costs.

75. Deadline for Cashing Settlement Checks. Final Settlement Class Members shall have 180 calendar days after mailing by the Settlement Administrator to cash their settlement checks. If any Final Settlement Class Member's check is not cashed within that period, the check will be void and a stop-payment will be issued. All unclaimed funds shall be donated to cy pres recipient, Legal Aid at Work, the cy pres recipient approved by the Court. The Settlement Administrator shall provide Class Counsel and Defense Counsel with an accounting of the unclaimed funds sent to the cy pres recipient. The release will be binding upon all Final Settlement Class Members who do not cash their checks within the 180-day period. In the event that any settlement check is returned to the Settlement Administrator within 180 days of mailing, the Settlement Administrator will, within five (5) business days of receipt of the returned settlement check, perform a skip trace to locate the individual. If a new address is located by these means, the Administrator will have ten (10) business days to re-issue the check and will notify Defense Counsel and Class Counsel that a re-issued check has been sent. Neither Defendant, Defense Counsel, Class Counsel, Plaintiffs, nor the Settlement Administrator will have any liability for lost or stolen settlement checks, forged signatures on settlement checks, or unauthorized negotiation of settlement checks. Without limiting the foregoing, in the event a Final Settlement Class Member notifies the Settlement Administrator that they believe that a settlement check has been lost or stolen, the Settlement Administrator shall immediately stop payment on such check.

If the check in question has not been negotiated prior to the stop payment order, the Settlement Administrator will issue a replacement check.

76. No person shall have any claim against Defendant, Defendant's Counsel, Plaintiffs, Class Counsel, or the Settlement Administrator based on mailings, distributions, payments, or reports made in accordance with or pursuant to this Agreement. This provision does not, however, prevent a Party from seeking enforcement of this Agreement.

77. Without prejudice to any other remedies, the Settlement Administrator shall agree to be responsible for any breach of its obligations (whether committed by the Settlement Administrator or its agents) and to indemnify and hold the Parties and their counsel harmless from and against all liabilities, claims, causes of action, costs and expenses (including legal fees and expenses) arising out of any breach committed by the Settlement Administrator or its agents.

H. <u>Duties of the Parties Prior to the Court's Approval</u>

78. Within thirty (30) days of execution of this Agreement, Plaintiffs will move the Court for Preliminary Approval of this Settlement and entry of the Preliminary Approval Order accomplishing the following:

(a) Scheduling the Final Approval Hearing on the issue of whether this Settlement should be finally approved as fair, reasonable, and adequate as to the Class Members and a hearing on fees, costs, and the Service Payment;

(b) Approving as to form and content the proposed Notice;

(c) Directing the mailing of the Notice by first class mail to the Settlement Class Members;

(d) Preliminarily approving this Settlement; and

(e) Preliminarily certifying the class for purposes of this Settlement.

79. In conjunction with the Preliminary Approval Hearing, Plaintiffs will submit this Settlement Agreement, and will include the proposed Notice Packet, which will include the Notice of Class Action Settlement document and proposed Mailing Envelope.

80. In accordance with section 2699(1)(2) of the California Labor Code, Plaintiffs shall provide a copy of this Settlement Agreement to the LWDA on the same day that Plaintiffs

file their motion for Preliminary Approval of this Settlement with the Court.

81. Modifications. In the event the Court refuses, on its first hearing, to approve this Agreement, the Parties shall cooperate in good faith to address any issues raised by the Court. If there are nonmaterial changes that do not affect the terms and non-class payments to Plaintiffs, Class Counsel and Defense Counsel shall have authority to modify this Agreement without additional signatures of the Parties.

I. Duties of the Parties Following Court's Final Approval

82. In connection with the Final Approval Hearing provided for in this Settlement Agreement, Class Counsel shall submit a proposed Final Approval Order:

(a) Approving the Settlement, adjudging the terms thereof to be fair, reasonable, and adequate, and directing consummation of its terms and provisions;

(b) Approving Class Counsel's application for an award of attorneys' fees and reimbursement of litigation costs and expenses, the Service Payment to the Class Representatives, and the payment to the Settlement Administrator for costs of administering the Settlement; and

(c) Entering judgment approving settlement, thereby permanently barring all Participating Class Members from prosecuting any Released Class Claims against any of the Released Parties, permanent barring the Class Representatives from prosecuting any claims of any nature against the Release Parties (as a product of the general release that each of them hereby provides, see Section 58, above) and permanently barring all Aggrieved Employees and the LWDA from prosecuting any Released PAGA Claims against any of the Released Parties.

J. Voiding the Agreement

83. If the Court fails or refuses to issue the Final Approval Order or fails to approve any material condition of this Settlement Agreement which effects a fundamental change of the Settlement, the entire Settlement Agreement shall be rendered voidable and unenforceable as to all Parties herein at the option of any Party.

84. If the Settlement is voided or fails for any reason, Plaintiffs and Defendant will have no further obligations under the Settlement, including any obligation by Defendant to pay

the Settlement Amount, or any amounts that otherwise would have been owed under this Settlement.

85. If the Settlement is voided or fails for any reason, any costs incurred by the Settlement Administrator shall be borne equally by Defendant (50 percent) and Plaintiffs (collectively 50 percent), unless otherwise specified in this Agreement.

K. Other Terms

86. Full and Complete Defense. This Agreement may be pleaded by any Released Party as a full and complete defense to and may be used as the basis for an injunction against, any action, suit, or other proceeding that has been or may be instituted, prosecuted, or attempted, asserting any Released Claim. The Parties agree to the admissibility of this Agreement in any subsequent action involving the prosecution of any Released Claim.

87. Waiver. No waiver of any condition or covenant contained in this Settlement Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or constitute a further waiver by such party of the same or any other condition, covenant, right or remedy.

88. Parties' Authority. The signatories hereto represent that they are fully authorized to enter into this Settlement Agreement and bind the Parties hereto to the terms and conditions hereof.

89. Mutual Full Cooperation. The Parties agree to fully cooperate with each other to accomplish the terms of this Settlement Agreement, including but not limited to, execution of such documents and to take such other action as may reasonably be necessary to implement the terms of this Settlement Agreement. The Parties to this Settlement Agreement shall use their best efforts, including all efforts contemplated by this Settlement Agreement and any other efforts that may become necessary by order of the Court, or otherwise, to effectuate this Settlement Agreement and the terms set forth herein. As soon as practicable after execution of this Settlement Agreement, Class Counsel shall, with the assistance and cooperation of Defendant and Defendant's Counsel, take all necessary steps to secure the Court's preliminary and final approval of the settlement and the final entry of judgment.

90. No Prior Assignments. The Parties hereto represent, covenant, and warrant that they have not, directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action, or rights released and discharged by this Settlement Agreement.

91. No Admission. Defendant denies any and all liability to Plaintiffs and/or any Settlement Class Member in this Action, as to any and all causes of action that were asserted or that might have been asserted in this Action. Nonetheless, Defendant wishes to settle and compromise to avoid further substantial expense and the inconvenience and distraction of protracted litigation. Defendant has considered the uncertainty and risks inherent in litigation, and without conceding any infirmity in the defenses that they have asserted or could assert against Plaintiffs, have determined that it is desirable and beneficial that Plaintiffs' claims be settled in the manner and upon the terms and conditions set forth in this Agreement.

92. Inadmissibility of Agreement. Whether or not the Court issues the Final Approval Order, nothing contained herein, nor the consummation of this Settlement Agreement, is to be construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part of Defendant or any of the other Released Parties. Each of the Parties hereto has entered into this Settlement Agreement with the intention of avoiding further disputes and litigation with the attendant inconvenience and expenses. This Settlement Agreement is a settlement document, and it, along with all related documents such as the notices, and motions for preliminary and final approval, shall, pursuant to California Evidence Code section 1152 and/or Federal Rule of Evidence 408, be inadmissible in evidence in any proceeding, except an action or proceeding to approve the settlement, and/or interpret or enforce this Settlement Agreement. The stipulation for class certification as part of this Settlement Agreement is for settlement purposes only and if, for any reason the settlement is not approved, the stipulation will be of no force or effect.

93. Confidentiality: The Parties, Class Counsel and Defense Counsel agree to keep the Settlement confidential through the Preliminary Approval Date. Thereafter, the Parties, Class Counsel and Defense Counsel agree to make no comments to the media or otherwise publicize the terms of the Settlement.

94. Invalidity of Any Provision. Before declaring any provision of this Settlement Agreement invalid, the Parties request the Court to first attempt to construe the provision as valid to the fullest extent possible consistent with applicable precedents so as to define all provisions of this Settlement Agreement valid and enforceable. Notices. Unless otherwise specifically provided herein, all notices, demands, or other communications given hereunder shall be in writing and shall be deemed to have been duly given as of the third business day after mailing by United States registered or certified mail, return receipt requested, addressed:

To the Settlement Class Members and Aggrieved Employees:

Justin Marquez *justin@wilshirelawfirm.com* Benjamin Haber *benjamin@wilshirelawfirm.com* Arrash Fattahi *afattahi@wilshirelawfirm.com* 3055 Wilshire Blvd., 12th Floor Los Angeles, California 90010 Mehrdad Bokhour *mehrdad@bokhourlaw.com* 1901 Avenue of the Stars, Suite 450 Los Angeles, California 90067 Tel: (310) 975-1493; Fax: (310) 675-0861	Joshua Falakassa *josh@falakassalaw.com* 1901 Avenue of the Stars, Suite 450 Los Angeles, California 90067 Tel: (818) 456-6168; Fax: (818) 505-0868

To Defendant:

Tracy Costantino *Tcostantino@littler.com* 633 West Fifth Street, 63rd Floor Los Angeles California, 90071 Tel: (213) 443-4244; Fax: (213) 652-0560

95. Construction. The Parties hereto agree that the terms and conditions of this Settlement Agreement are the result of lengthy, intensive arms' length negotiations between the Parties and that this Settlement Agreement shall not be construed in favor of or against any Party by reason of the extent to which any Party or their counsel participated in the drafting of this Settlement Agreement. Plaintiffs and Defendant expressly waive the common-law and statutory rule of construction that ambiguities should be construed against the drafter of an agreement and further agree, covenant, and represent that the language in all parts of this Agreement shall be in

all cases construed as a whole, according to its fair meaning.

96. Captions and Interpretations. Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Settlement Agreement or any provision hereof. Each term of this Settlement Agreement is contractual and not merely a recital.

97. Modification. This Settlement Agreement may not be changed, altered, or modified, except in writing and signed by the Parties hereto (except as provided herein, permitting Class Counsel and Defense Counsel to approve any such changes in writing), and approved by the Court. This Settlement Agreement may not be discharged except by performance in accordance with its terms or by a writing signed by all of the Parties hereto.

98. Dispute Resolution. Prior to instituting legal action to enforce the provisions of this Agreement or to declare rights and/or obligations under this Agreement, a Party shall provide written notice to the other Party or Parties and allow an opportunity to cure the alleged deficiencies, and Plaintiffs and Defendant agree to seek the help of the mediator identified in this Agreement to resolve any dispute they are unable to resolve informally. During this period, the Parties shall bear their own attorneys' fees and costs. This provision shall not apply to any legal action or other proceeding instituted by any person or entity other than Plaintiffs or Defendant.

99. Court Retains Jurisdiction. The Parties agree that upon the entry of judgment of dismissal pursuant to the terms of this Agreement, that, pursuant to Code of Civil Procedure section 664.6, the Court shall retain exclusive and continuing equity jurisdiction of this Action over all Parties to interpret, enforce, and effectuate the terms, conditions, intents, and obligations of this Agreement.

100. Enforceability. Pursuant to California Evidence Code section 1123(a) and (b), this Agreement is intended by the Parties to be, and shall be, enforceable, binding and admissible in a court of law.

101. Choice of Law. This Settlement Agreement shall be governed by and construed, enforced, and administered in accordance with the laws of the State of California, without regard to its conflicts-of-law rules.

102. Integration Clause. This Settlement Agreement contains the entire agreement between the Parties relating to the settlement and transaction contemplated hereby, 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. No rights hereunder may be waived except in writing.

103. Binding On Assigns. This Settlement Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators, successors, and assigns.

104. Signatures of All Class Members Unnecessary to be Binding. It is agreed that, because the members of the Settlement Class are numerous, it is impossible or impractical to have each Final Class Member execute this Settlement Agreement. The Notice will advise all Settlement Class Members of the binding nature of the releases provided herein and such shall have the same force and effect as if this Settlement Agreement were executed by each Final Settlement Class Member.

105. Counterparts. This Settlement Agreement may be executed in counterparts, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one fully signed Settlement Agreement, which shall be binding upon and effective as to all Parties. Electronic signatures shall have the same force and effect as an original.

APPROVAL AND EXECUTION BY PARTIES.

2/21/2024
Dated: February ___, 2024 **CLASS REPRESENTATIVE:**

DocuSigned by:
E3B3A29C9953452...
GABRIEL SAGER

2/15/2024

Dated: February ___, 2024

CLASS REPRESENTATIVE:

DocuSigned by:

Elizabeth Adams

4D268339F0AE48B

ELIZABETH ADAMS

Dated: February ___, 2024

DEFENDANT:

SUMMIT FOODS SERVICE, LLC

By

Its

Dated: February ___, 2024

CLASS REPRESENTATIVE:

____
ELIZABETH ADAMS

Dated: February 8___, 2024

DEFENDANT:

SUMMIT FOODS SERVICE, LLC

DocuSigned by:
Angela Anderson
7DD919AD9159492...

By ______________________________
Its Deputy General Counsel

APPROVED AS TO FORM:

CLASS COUNSEL

2/8/2024
Dated: February ___, 2024

BOKHOUR LAW GROUP, P.C.

DocuSigned by:
Mehrdad Bokhour
D8D3643F271940F...

Mehrdad Bokhour
Attorneys for Plaintiffs

2/8/2024
Dated: February ___, 2024

FALAKASSA LAW, PC

DocuSigned by:
Joshua Falakassa
15A628B2C5A149C...

Joshua Falakassa
Attorneys for Plaintiffs

Dated: February 21, 2024

WILSHIRE LAW FIRM, PLC

Justin Marquez
Attorneys for Plaintiffs

Dated: February ___, 2024

DEFENDANT'S COUNSEL:

LITTLER MENDELSON, P.C.

Tracy Costantino
Attorneys for Defendant,
Summit Food Service, LLC

APPROVED AS TO FORM:

CLASS COUNSEL

Dated: February ___, 2024

BOKHOUR LAW GROUP, P.C.

____
Mehrdad Bokhour
Attorneys for Plaintiffs

Dated: February ___, 2024

FALAKASSA LAW, PC

____
Joshua Falakassa
Attorneys for Plaintiffs

Dated: February ___, 2024

WILSHIRE LAW FIRM, PLC

____
Justin Marquez
Attorneys for Plaintiffs

Dated: February 22, 2024

DEFENDANT'S COUNSEL:

LITTLER MENDELSON, P.C.

____
Tracy Costantino
Attorneys for Defendant,
Summit Food Service, LLC

EXHIBIT "B"

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

Gabriel Sager, et al. v. Summit Food Service, LLC

Superior Court of the State of California, County of Sonoma

Case No. SCV-270486

The Superior Court for the State of California authorized this Notice. Read it carefully! It is not junk mail, spam, an advertisement, or solicitation by a lawyer. You are not being sued.

You may be eligible to receive money from an employee class action lawsuit ("Action") against Summit Food Service, LLC ("SFS") for alleged wage and hour violations. The Action was filed by Gabriel Sager and Elizabeth Adams, former employees of SFS ("Plaintiff") and seeks payment of (1) back wages, penalties, and interest for a class of non-exempt, hourly-paid employees who worked for SFS in California during the Class Period (March 29, 2018, through September 1, 2023) ("Class Members"); and (2) penalties under the California Private Attorney General Act ("PAGA") for all non-exempt, hourly-paid employees who worked for SFS in California during the PAGA Period (April 8, 2021, until September 1, 2023) ("Aggrieved Employees").

The proposed Settlement has two main parts: (1) a Class Settlement requiring SFS to fund Individual Settlement Payments, and (2) a PAGA Settlement requiring SFS to fund Individual PAGA Payments and pay penalties to the California Labor and Workforce Development Agency ("LWDA").

Based on SFS' records, and the Parties' current assumptions, **your Individual Settlement Payment is estimated to be $______ (less withholding) and your Individual PAGA Payment is estimated to be $______**. The actual amount you may receive likely will be different and will depend on a number of factors. (If no amount is stated for your Individual PAGA Payment, then according to SFS' records you are not eligible for an Individual PAGA Payment under the Settlement because you didn't work during the PAGA Period.)

The above estimates are based on SFS' records showing that **you worked ______ workweeks** during the Class Period and **you worked ______ workweeks** during the PAGA Period. If you believe that you worked more workweeks during either period, you can submit a challenge by the deadline date. See Section 4 of this Notice.

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 you act or not act. Read this Notice carefully. You will be deemed to have carefully read and understood it. At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement and how much of the Settlement will be paid to Plaintiffs and Plaintiffs' attorneys ("Class Counsel"). The Court will also decide whether to enter a judgment that requires SFS to make payments under the Settlement and requires Class Members and Aggrieved Employees to give up their rights to assert certain claims against SFS.

If you are a Class Member or Aggrieved Employees, you have two basic options under the Settlement:

(1) **Do Nothing**. You don't have to do anything to participate in the proposed Settlement and to be eligible for an Individual Settlement Payment and/or an Individual PAGA

Payment. As a Participating Class Member, though, you will give up your right to assert Class Period wage claims and PAGA Period penalty claims against SFS.

(2) **Opt-Out of the Class Settlement**. You can exclude yourself from the Class Settlement (opt-out) by submitting the written Request for Exclusion or otherwise notifying the Administrator in writing. If you opt-out of the Settlement, you will not receive an Individual Settlement Payment. You will, however, preserve your right to personally pursue Class Period wage claims against SFS, and, if you are an Aggrieved Employee, remain eligible for an Individual PAGA Payment. You cannot opt-out of the PAGA portion of the proposed Settlement.

SFS will not retaliate against you for any actions you take with respect to the proposed Settlement.

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

You Don't Have to Do Anything to Participate in the Settlement	If you do nothing, you will be a Participating Class Member, eligible for an Individual Settlement Payment and an Individual PAGA Payment (if any). In exchange, you will give up your right to assert the wage claims against SFS that are covered by this Settlement (Released Claims).
You Can Opt-out of the Class Settlement but not the PAGA Settlement **The Opt-out Deadline is ___________, 2025**	If you don't want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion. Once excluded, you will no longer eligible for an Individual Settlement Payment and you cannot object to any portion of the proposed Settlement. See **Section 6** of this Notice. You cannot opt-out of the PAGA portion of the proposed Settlement. SFS must pay Individual PAGA Payments to all Aggrieved Employees and the Aggrieved Employees must give up their rights to pursue Released Claims (defined below).
Participating Class Members Can Object to the Class Settlement but not the PAGA Settlement **Written Objections Must be Submitted by _____________, 2025**	All Class Members who do not opt-out ("Participating Class Members") can object to any aspect of the proposed Settlement. The Court's decision whether to finally approve the Settlement will include a determination of how much will be paid to Class Counsel and Plaintiffs who pursued the Action on behalf of the Class. You are not personally responsible for any payments to Class Counsel or Plaintiffs, but every dollar paid to Class Counsel and Plaintiffs reduces the overall amount paid to Participating Class Members. You can object to the amounts requested by Class Counsel or Plaintiffs if you think they are unreasonable. See **Section 7** of this Notice.

You Can Participate in the ___________, 2025 Final Approval Hearing	The Court's Final Approval Hearing is scheduled to take place on ___________, 2025. You don't have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court's virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing. See **Section 8** of this Notice.
You Can Challenge the Calculation of Your Workweeks **Written Challenges Must be Submitted by ___________, 2025**	The amount of your Individual Settlement Payment and PAGA Payment (if any) depend on how many workweeks you worked at least one day during the Class Period and at least one day during PAGA Period, respectively. The number workweeks you worked during the Class and PAGA Periods according to SFS' records is stated on the first page of this Notice. If you disagree with either of these numbers, you must challenge it by ___________, 2025. See **Section 4** of this Notice.

1. WHAT IS THE ACTION ABOUT?

Plaintiffs are former employees of SFS. The Action accuses SFS of violating California labor laws by failing to pay wages, overtime wages, sick time, wages due upon termination, and reimbursable expenses, and failing to provide meal periods, rest periods, and accurate itemized wage statements. Based on the same claims, Plaintiffs has also asserted a claim for civil penalties under the PAGA. Plaintiff Sager is represented by the Wilshire Law Firm and Plaintiff Adams is represented by Falakassa Law, P.C. and Bokhour Law Group, P.C. in the Action ("Class Counsel").

SFS strongly denies violating any laws or failing to pay any wages and contends it complied with all applicable laws.

2. WHAT DOES IT MEAN THAT THE ACTION HAS SETTLED?

So far, the Court has made no determination on the merits of the claims.

In the meantime, Plaintiffs and SFS hired an experienced, neutral mediator in an effort to resolve the Action by negotiating to end the case by agreement (settle the case) rather than continuing the expensive and time-consuming process of litigation. The negotiations were successful. By signing a lengthy written settlement agreement (the "Agreement") and agreeing to jointly ask the Court to enter a judgment ending the Action and enforcing the Agreement, the Parties have negotiated a proposed Settlement that is subject to the Court's Final Approval. Both sides agree the proposed Settlement is a compromise of disputed claims. By agreeing to settle, SFS does not admit any violations or concede the merit of any claims.

Plaintiffs and Class Counsel strongly believe the Settlement is a good deal for you because they believe that: (a) SFS has agreed to pay a fair, reasonable and adequate amount considering the strength of the claims and the risks and uncertainties of continued litigation; and (2) Settlement is in the best interests of the Class Members and Aggrieved Employees. The Court preliminarily approved the proposed Settlement as fair, reasonable and adequate, authorized this Notice, and scheduled a hearing to determine Final Approval.

3. WHAT ARE THE IMPORTANT TERMS OF THE PROPOSED SETTLEMENT?

A. SFS Will Pay $312,500 as the Gross Settlement Amount ("Gross Settlement"). SFS has agreed to deposit the Gross Settlement into an account controlled by the Administrator of the Settlement. The Administrator will use the Gross Settlement to pay the Individual Settlement Payments, Individual PAGA Payments, Class Representative Service Payments, Class Counsel's attorneys' fees and expenses, the Administrator's expenses, and penalties to be paid to the LWDA. Assuming the Court grants Final Approval, SFS will fund the Gross Settlement in within 30 days of the Effective Date. The Judgment will be final on the date the Court enters Judgment, or a later date if Participating Class Members object to the proposed Settlement or the Judgment is appealed.

B. Court Approved Deductions from Gross Settlement. At the Final Approval Hearing, Plaintiffs and/or Class Counsel will ask the Court to approve the following deductions from the Gross Settlement, the amounts of which will be decided by the Court at the Final Approval Hearing:

(i) Up to $104,166.67 (33.33% of the Gross Settlement) to Class Counsel for attorneys' fees and up to $25,000 for their litigation expenses. To date, Class Counsel have worked and incurred expenses on the Action without payment.

(ii) Up to $10,000 each as Class Representative Awards for filing the Action, working with Class Counsel and representing the Class. A Class Representative Awards will be the only monies Plaintiffs will receive other than Plaintiffs' Individual Settlement Payments and any Individual PAGA Payments.

(iii) Up to $7,250 to the Administrator for services administering the Settlement.

(iv) Up to $10,000 for PAGA Penalties, allocated 75% to the LWDA PAGA Payment and 25% in Individual PAGA Payments to the Aggrieved Employees based on their workweeks during the PAGA Period.

Participating Class Members have the right to object to any of these deductions. The Court will consider all objections.

C. Net Settlement Distributed to Class Members. After making the above deductions in amounts approved by the Court, the Administrator will distribute the rest of the Gross Settlement (the "Net Settlement") by making Individual Settlement Payments to Participating Class Members based on their workweeks worked during the Class Period.

D. Taxes Owed on Payments to Class Members. Plaintiffs and SFS are asking the Court to approve an allocation of 15% of each Individual Settlement Payment to taxable wages ("Wage Portion") and 85% to interest and penalties ("Non-Wage Portion"). The Wage Portion is subject to withholdings and will be reported on IRS W-2 Forms.

SFS will separately pay employer payroll taxes it owes on the Wage Portion. The Individual PAGA Payments are counted as penalties rather than wages for tax purposes. The Administrator will report the Individual PAGA Payments and the Non-Wage Portions of the Individual Settlement Payments on IRS 1099 Forms.

Although Plaintiffs and SFS have agreed to these allocations, neither side is giving you any advice on whether your Payments are taxable or how much you might owe in taxes. You are responsible for paying all taxes (including penalties and interest on back taxes) on any Payments received from the proposed Settlement. You should consult a tax advisor if you have any questions about the tax consequences of the proposed Settlement.

E. <u>Need to Promptly Cash Payment Checks.</u> The front of every check issued for Individual Settlement Payments and Individual PAGA Payments will show the date when the check expires (the void date). If you don't cash it by the void date, the unclaimed funds will be sent to Legal Aid at Work, the cy pres recipient approved by the Court.

F. <u>Requests for Exclusion from the Class Settlement (Opt-Outs).</u> You will be treated as a Participating Class Member, participating fully in the Class Settlement, unless you notify the Administrator in writing, not later than ____________________, that you wish to opt-out. The easiest way to notify the Administrator is to send a written and signed Request for Exclusion by the __________________ Response Deadline. The Request for Exclusion should be a letter from a Class Member or his/her representative setting forth a Class Member's name, present address, telephone number, and a simple statement electing to be excluded from the Settlement. Excluded Class Members will not receive Individual Settlement Payments, but will preserve their rights to personally pursue wage and hour claims against SFS.

You cannot opt-out of the PAGA portion of the Settlement. Class Members who exclude themselves from the Class Settlement remain eligible for Individual PAGA Payments and are required to give up their right to assert PAGA claims against SFS based on the PAGA Period facts alleged in the Action.

G. <u>The Proposed Settlement Will be Void if the Court Denies Final Approval.</u> It is possible the Court will decline to grant Final Approval of the Settlement or decline to enter a Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiffs and SFS have agreed that, in either case, the Settlement will be void: SFS will not pay any money and Class Members will not release any claims against SFS.

H. <u>Administrator.</u> The Court has appointed a neutral company, Phoenix Class Action Administration Solutions (the "<u>Administrator</u>") to send this Notice, calculate and make payments, and process Class Members' Requests for Exclusion. The Administrator will also decide disputes over workweeks, mail and re-mail settlement checks and tax forms, and perform other tasks necessary to administer the Settlement. The Administrator's contact information is contained in Section 9 of this Notice.

I. Participating Class Members' Release. In exchange for the Individual Settlement Payments, the Participating Class Members, together and individually, for themselves and for their respective spouses, domestic partners, marital community, children, estates, trusts, attorneys, heirs, successors, beneficiaries, devisees, legatees, executors, administrators, trustees, conservators, guardians, assigns, and representatives, shall be deemed to have fully, forever, and completely released and discharged all of the Released Parties (Defendant, its current and former officers, directors, members, employees, managers, shareholders, agents, insurers, charitable organizations, parents, subsidiaries, affiliates, operators, partners, attorneys, predecessors in interest, successors, heirs, representatives, accountants, auditors, consultants, insurers and reinsurers, and assignees, and their respective successors and predecessors in interest, subsidiaries, affiliates, parents and attorneys, if any) from, or any of them, from each of the Released Class Claims (all claims asserted and which could have been asserted in the operative complaints, and any future amendments to the operative complaints, including, but not limited to, state wage and hour claims for any and all violations of California's Labor Code and Unfair Competition Law based on Defendant's failure to pay for all hours worked [including minimum, straight time, and overtime wages], failure to provide meal periods, failure to authorize and permit rest periods, failure to timely pay final wages at termination, failure to furnish accurate itemized wage statements, civil penalties under PAGA based on the alleged Labor Code violations, and all damages, interest, penalties, attorneys' fees, costs, and other amounts recoverable under said causes of action under California law, to the extent permissible, including, but not limited to, the California Labor Code and the applicable Wage Orders) arising during the Class Release Period.

J. Aggrieved Employees' PAGA Release. Aggrieved Employees, for themselves and for their respective spouses, domestic partners, marital community, children, estates, trusts, attorneys, heirs, successors, beneficiaries, devisees, legatees, executors, administrators, trustees, conservators, guardians, assigns, and representatives, will forever completely release and discharge the Released Parties from the Released PAGA Claims (any and all claims for civil penalties pursuant to PAGA based on the allegations stated in the PAGA Notices and that were or could have been pled in the Complaint based on the facts alleged therein , including but not limited to claims all claims asserted in the operative complaints, and any future amendments to the operative complaints, including, but not limited to, state wage and hour claims for any and all violations of California's Labor Code and Unfair Competition Law based on Defendant's failure to pay for all hours worked (including minimum, straight time, and overtime wages), failure to provide meal periods, failure to authorize and permit rest periods, failure to timely pay final wages at termination, failure to furnish accurate itemized wage statements, civil penalties under PAGA based on the alleged Labor Code violations, and all damages, interest, penalties, attorneys' fees, costs, and other amounts recoverable under said causes of action under California law, to the extent permissible, including, but not limited to, the California Labor Code and the applicable Wage Orders) for the PAGA Release Period.

4. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?

A. Individual Settlement Payments. The Administrator will calculate Individual

Settlement Payments by (a) dividing the Net Settlement Amount by the total number of workweeks worked by all Participating Class Members, and (b) multiplying the result by the number of workweeks worked by each individual Participating Class Member.

B. Individual PAGA Payments. The Administrator will calculate Individual PAGA Payments by (a) dividing $2,500 by the total number of workweeks worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by the number of workweeks worked by each individual Aggrieved Employee.

C. Workweek Challenges. The number of workweeks you worked during the Class Period and the number of workweeks you worked during the PAGA Period, as recorded in SFS' records, are stated in the first page of this Notice. You have until ______________________ to challenge the number of workweeks credited to you. You can submit your challenge by signing and sending a letter to the Administrator via mail, email or fax. Section 9 of this Notice has the Administrator's contact information.

5. HOW WILL I GET PAID?

A. Participating Class Members. The Administrator will send, by U.S. mail, a single check to every Participating Class Member (i.e., every Class Member who doesn't opt-out) including those who also qualify as Aggrieved Employees. The single check will combine the Individual Settlement Payment and the Individual PAGA Payment.

B. Aggrieved Employees. The Administrator will send, by U.S. mail, a single Individual PAGA Payment check to every Aggrieved Employee who opts out of the Class Settlement.

Your check will be sent to the same address as this Notice. If you change your address, be sure to notify the Administrator as soon as possible. Section 9 of this Notice has the Administrator's contact information.

6. HOW DO I OPT-OUT OF THE CLASS SETTLEMENT?

Submit a written and signed letter with your name, present address, telephone number, and a simple statement that you do not want to participate in the Settlement. The Administrator will exclude you based on any writing communicating your request to be excluded. Be sure to personally sign your request, identify the Action as *Sager, et al. v Summit Food Service, LLC*, and include your identifying information (full name, address, telephone number, approximate dates of employment, and social security number for verification purposes). You must make the request yourself. If someone else makes the request for you, it will not be valid. **The Administrator must be sent your request to be excluded by ____________________, or it will be invalid.** Section 9 of the Notice has the Administrator's contact information.

7. HOW DO I OBJECT TO THE SETTLEMENT?

Only Participating Class Members have the right to object to the Settlement. Before deciding whether to object, you may wish to see what Plaintiffs and SFS are asking the Court to approve. At least 16 court days before the ____________________ Final Approval Hearing, Class Counsel and/or Plaintiffs will file in Court a Motion for Final Approval that includes, among other things, the reasons why the proposed Settlement, attorneys' fees and litigation expenses, and service awards are fair. Upon reasonable request, Class Counsel (whose contact information is in Section 9 of this Notice) will send you copies of these documents at no cost to you. You can also view them on the Court's website https://sonoma.courts.ca.gov/portal-disclaimer.

A Participating Class Member who disagrees with any aspect of the Agreement and/or the Motion for Final Approval may wish to object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class Counsel or Plaintiffs are too high or too low. **The deadline for sending written objections to the Administrator is ____________________**. Be sure to tell the Administrator what you object to, why you object, and any facts that support your objection. Make sure you identify the *Summit Food Service, LLC* Action and include your name, current address, telephone number, and approximate dates of employment for SFS, and sign the objection. Section 9 of this Notice has the Administrator's contact information.

Alternatively, a Participating Class Member can object (or personally retain a lawyer to object at your own cost) by attending 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 that support your objection. See Section 8 of this Notice (immediately below) for specifics regarding the Final Approval Hearing.

8. CAN I ATTEND THE FINAL APPROVAL HEARING?

You can, but don't have to, attend the Final Approval Hearing on ____________________ at ________ in Courtroom 18 of the Sonoma County Superior Court, located at 3055 Cleveland Avenue, Santa Rosa, California 95403. At the Hearing, the judge will decide whether to grant Final Approval of the Settlement and how much of the Gross Settlement will be paid to Class Counsel, Plaintiffs, and the Administrator. The Court will invite comment from objectors, Class Counsel and Defense Counsel before making a decision. It's possible the Court will reschedule the Final Approval Hearing. You should check the Court's website or contact Class Counsel to verify the date and time of the Final Approval Hearing.

9. HOW CAN I GET MORE INFORMATION?

The Agreement sets forth everything SFS and Plaintiffs have promised to do under the proposed Settlement. The easiest way to read the Agreement, the Judgment or any other Settlement documents is to telephone or send an email to Class Counsel or the Administrator using the contact information listed below. You can also access these documents on the Superior Court website by going to (https://sonoma.courts.ca.gov/portal-disclaimer) and searching for the case by name or case number.

DO NOT TELEPHONE THE SUPERIOR COURT TO OBTAIN INFORMATION ABOUT THE SETTLEMENT.

Class Counsel: Justin Marquez, Benjamin Haber, Arrash Fattahi
WILSHIRE LAW FIRM
3055 Wilshire Blvd., 12th Floor
Los Angeles, California 90010
Telephone: (213) 784-3830

Joshua S. Falakassa
FALAKSSA LAW, P.C.
1901 Avenue of the Stars, Suite 450
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<u>Administrator</u>: Phoenix Class Action Administration Solutions
XXXXXX
XXXXXX

10. WHAT IF I LOSE MY SETTLEMENT CHECK?

If you lose or misplace your settlement check before cashing it, the Administrator will replace it as long as you request a replacement before the void date on the face of the original check. If your check is already void, the unclaimed funds will be sent to Legal Aid at Work, the cy pres recipient approved by the Court

11. WHAT IF I CHANGE MY ADDRESS?

To receive your check, you should immediately notify the Administrator if you move or otherwise change your mailing address.

EXHIBIT "C"

Gmail

Carlos Garcia <carlos@bokhourlaw.com>

Thank you for your Proposed Settlement Submission

1 message

DIR PAGA Unit <no-reply@formassembly.com> Mon, Oct 21, 2024 at 1:50 PM
To: carlos@bokhourlaw.com

10/21/2024 01:49:49 PM

Thank you for your submission to the Labor and Workforce Development Agency.

Item submitted: Proposed Settlement
If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

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Attorneys for Plaintiff Sager and the Putative Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SONOMA

GABRIEL SAGER and ELIZABETH ADAMS, individually, on behalf of all others similarly situated, and on behalf of the State of California and other aggrieved persons, *Plaintiffs*, v. SUMMIT FOOD SERVICE, LLC, a limited liability company; and DOES 1 through 10, inclusive, *Defendants*.	Case No.: SCV-270486 **CLASS & REPRESENTATIVE ACTION** [*Assigned for all purposes to:* Hon. Christopher M. Honigsberg] **DECLARATION OF JUSTIN F. MARQUEZ IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT** **Hearing Information:** Date: Time: Dept.: 18

DECLARATION OF JUSTIN F. MARQUEZ

I, Justin F. Marquez, declare as follows:

1. I am admitted, in good standing, to practice as an attorney in the State of California, the Ninth Circuit Court of Appeals, and the United States District Courts for the Central, Southern, Eastern, and Northern Districts of California. I am a Senior Partner at Wilshire Law Firm, PLC, counsel of record for Plaintiff Gabriel Sager ("Plaintiff Sager"). I have personal knowledge of the facts set forth in this declaration and could and would competently testify to them under oath if called as a witness. This Declaration is submitted in support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement.

CASE BACKGROUND

2. On March 29, 2022, Plaintiff Sager filed a putative wage and hour class action complaint against Defendant Summit Food Service, LLC ("Defendant") for: (1) failure to pay minimum and straight time wages; (2) failure to pay overtime wages; (3) failure to provide meal periods; (4) failure to authorize and permit rest periods; (5) failure to timely pay final wages at termination; (6) failure to provide accurate itemized wage statements; and (7) unfair business practices (Business and Professions Code 17200, *et seq.*). On April 8, 2022, Plaintiff Sager sent a notice to Defendant and the California Labor & Workforce Development Agency alleging similar wage and hour violations pursuant to the Private Attorneys General Act ("PAGA"). On July 2, 2024, Plaintiff Sager filed a First Amended Class & Representative Complaint, which included a claim for civil penalties under the PAGA, included a claim for Defendant's failure to pay all sick time, added Plaintiff Elizabeth Adams ("Plaintiff Adams," and together with Plaintiff Sager, the "Plaintiffs") as an additional class representative, and added Joshua S. Falakassa and Mehrdad Bokhour as counsel for Plaintiff Adams.

DISCOVERY AND INVESTIGATION

3. Following the filing of the initial Complaint, the Parties[1] exchanged documents and information before mediating this action. Defendant produced a sample of time and pay records

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[1] "Parties" is defined as Plaintiffs and Defendant.

for the class members. Defendant also provided documents of its wage and hour policies and practices during the class period and information regarding the total number of current and former employees in its informal discovery responses.

4. After reviewing documents regarding Defendant's wage and hour policies and practices, analyzing Defendant's timekeeping and payroll records, Class Counsel[2] was able to evaluate the probability of class certification, success on the merits, and Defendant's maximum monetary exposure for all claims. Class Counsel also investigated the applicable law regarding the claims and defenses asserted in the litigation. Class Counsel reviewed these records and utilized an expert to prepare a damages analysis prior to mediation.

SETTLEMENT NEGOTIATIONS

5. The Parties participated in two mediations with experienced class action mediator, David Phillips, Esq. The mediations were conducted via Zoom. The settlement negotiations were at arm's length and, although conducted in a professional manner, were adversarial. The Parties went into the mediation willing to explore the potential for a settlement of the dispute, but each side was also prepared to litigate their position through trial and appeal if a settlement had not been reached.

6. After extensive negotiations and discussions regarding the strengths and weaknesses of Plaintiffs' claims and Defendant's defenses, the Parties were able to reach a resolution, the material terms of which are encompassed within the Settlement Agreement.[3]

7. I requested several bids from experienced class action settlement administrators to handle the responsibilities of the Settlement Administrator under this Settlement. The Parties accepted the bid of Phoenix Class Action Administration Solutions ("Phoenix"). Phoenix has multiple years of experience in the field of Class Action Administration, particularly in the wage and hour arena. In its bid, Phoenix agreed to cap its costs at $7,250.0 if there are 200 class members. Phoenix's bid also accounts for Notice in English and Spanish. A true and correct copy of the bid is attached hereto as **Exhibit A.**

[2] Wilshire Law Firm, Bokhour Law Group, P.C., and Falakassa Law, P.C. are Class Counsel.

[3] The Settlement Agreement is attached as Exhibit A to the Declaration of Mehrdad Bokhour.

8. Plaintiff Sager does not have any interest, financial or otherwise, in the proposed third-party administrator, Phoenix.

9. No one at Wilshire Law Firm, PLC (meaning the law firm itself and anyone employed at the law firm) has any interest, financial or otherwise, in the proposed third-party administrator, Phoenix.

THE PROPOSED SETTLEMENT IS FAIR AND REASONABLE

10. Class Counsel has conducted a thorough investigation into the facts of this case. Class Counsel is of the opinion that the Settlement is fair, reasonable, and adequate and is in the best interests of the Settlement Class Members in light of all known facts and circumstances, the risk of significant delay, the defenses that could be asserted by Defendant both to certification and on the merits, trial risk, and appellate risk.

ENHANCEMENT AWARD FOR PLAINTIFF SAGER IS REASONABLE

11. Class Counsel represent that Plaintiff Sager devoted a great deal of time and work assisting counsel in the case, communicated with counsel very frequently for litigation and to prepare for mediation, and were frequently in contact with Class Counsel during the mediation. Plaintiff Sager's requested enhancement award is reasonable particularly in light of the substantial benefits Plaintiff Sager generated for all class members.

12. Throughout this litigation, Plaintiff Sager, who is a former employee of Defendant, has cooperated immensely with my office and has taken many actions to protect the interests of the class. Plaintiff Sager provided valuable information regarding the off-the-clock, meal period, and rest period claims. Plaintiff Sager also informed my office of developments and information relevant to this action, participated in decisions concerning this action, made himself available to answer questions during the mediation, and provided my office with the names and contact information of potential witnesses in this action. Before we filed this case, Plaintiff Sager provided my office with documents regarding the claims alleged in this action. The information and documentation provided by Plaintiff Sager was instrumental in establishing the wage and hour violations alleged in this action, and the recovery provided for in the Settlement Agreement would have been impossible to obtain without Plaintiff Sager's participation.

13. At the same time, Plaintiff Sager faced many risks in adding himself as the class representative in this matter. Plaintiff Sager faced actual risks with his future employment, as putting himself on public record in an employment lawsuit could also very well affect his likelihood for future employment. Furthermore, as part of this Settlement, Plaintiff Sager is executing a general release of all claims against Defendant.

14. In turn, class members will now have the opportunity to participate in a settlement, reimbursing them for alleged wage violations they may have never known about on their own or been willing to pursue on their own. If these class members would have each tried to pursue their legal remedies on their own, that would have resulted in each having to expend a significant amount of their own monetary resources and time, which were obviated by Plaintiff Sager putting himself on the line on behalf of these other class members.

15. In the final analysis, this class action would not have been possible without the aid of Plaintiff Sager, who put his own time and effort into this litigation, sacrificed the value of his own individual claims, and placed himself at risk for the sake of the class members. The requested enhancement award for Plaintiff Sager for his service as the class representatives and for his general release of all individual claims is a relatively small amount of money when the time and effort put into the litigation are considered and in comparison to enhancements granted in other class actions. The requested incentive award is therefore reasonable to compensate Plaintiff Sager for his active participation in this lawsuit. Indeed, in *Karl Adams, III, et al. v. MarketStar Corporation*, et al., No. 2:14-cv-02509-TLN-DB, a wage and hour class action alleging that class members were misclassified as exempt outside salespersons, I was co-lead Class Counsel and helped negotiate a $2.5 million class action settlement for 339 class members, and the court approved a $25,000.00 class representative incentive award for each named plaintiff.

<u>THE REQUEST FOR ATTORNEYS' FEES AND COSTS IS REASONABLE</u>

16. The Settlement provides for attorneys' fees payable to Class Counsel in an amount up to one-third (33 1/3%) of the Settlement Amount, for a maximum fees award of $104,166.67 plus actual costs and expenses not to exceed $25,000.00. The proposed award of attorneys' fees to Class Counsel in this case can be justified under either method – lodestar or percentage recovery.

Class Counsel, however, intend to base the proposed award of fees, costs and expenses on the percentage method as many of the entries in the time records will have to be redacted to preserve attorney-client and attorney work product privileges.

17. I am informed and believe that the fee and costs provision is reasonable. Class Counsel has invested significant time and resources into the case, with payment deferred to the end of the case, and then, of course, contingent on the outcome.

18. It is further estimated that we will need to expend at least another 50 to 100 hours to monitor the process leading up to the final approval and payments made to the class. My office also bears the risk of taking whatever actions are necessary if Defendant fails to pay.

19. The risk has been very significant, particularly if we would not be successful in pursuing this class action. In that case, we would have been left with no compensation for all the time taken in litigating this case. Indeed, I have taken on a number of class action cases that have resulted in thousands of attorney hours being expended and ultimately having certification denied or the defendant company going bankrupt. The contingent risk in these types of cases is very real and they do occur regularly. Furthermore, we were precluded from focusing on, or taking on, other cases which could have resulted in a larger, and less risky, monetary gain.

20. Because most individuals cannot afford to pay for representation in litigation on an hourly basis, Wilshire Law Firm, PLC represents virtually all of its employment law clients on a contingency fee basis. Pursuant to this arrangement, we are not compensated for our time unless we prevail at trial or successfully settle our clients' cases. Because Wilshire Law Firm, PLC is taking the risk that we will not be reimbursed for our time unless our client settles or wins his or her case, we cannot afford to represent an individual employee on a contingency basis if, at the end of our representation, all we are to receive is our regular hourly rate for services. It is essential that we recover more than our regular hourly rate when we win if we are to remain in practice so as to be able to continue representing other individuals in civil rights employment disputes.

<u>MY EXPERIENCE AND QUALIFICATIONS</u>

21. Wilshire Law Firm, PLC was selected by Best Lawyers and U.S. News & World Report as one of the nation's Best Law Firms for every year since 2020 and is comprised of over

70 attorneys and over 500 employees. Wilshire Law Firm, PLC is actively and continuously practicing in employment litigation, representing employees in both individual and class actions in both state and federal courts throughout California.

22. Wilshire Law Firm, PLC is qualified to handle this litigation because its attorneys are experienced in litigating Labor Code violations in both individual, class action, and representative action cases. Wilshire Law Firm, PLC has handled, and is currently handling, numerous wage and hour class action lawsuits, as well as class actions involving consumer rights and data privacy litigation.

23. I graduated from the University of California, Los Angeles's College Honors Program in 2004 with Bachelor of Arts degrees in History and Japanese, *magna cum laude* and *Phi Beta Kappa*. As an undergraduate, I also received a scholarship to study abroad for one year at Tokyo University in Tokyo, Japan. I received my Juris Doctor from Notre Dame Law School in 2008.

24. My practice is focused on advocating for the rights of consumers and employees in class action litigation and appellate litigation. I am currently the primary attorney in charge of litigating several class action cases in state and federal courts across the United States.

25. I have received numerous awards for my legal work. From 2017 to 2020, Super Lawyers selected me as a "Southern California Rising Star," and from 2022 to 2024, I was selected as a "Southern California Super Lawyer." I was selected as one of the "Best Lawyers in America" in 2023 and 2024. In 2016 and 2017, the National Trial Lawyers selected me as a "Top 40 Under 40" attorney. I am also rated 10.0 ("Superb") by Avvo.com.

26. In 2024, I, along with my colleagues at Wilshire Law Firm, received a CLAY (California Lawyer Attorneys of the Year) award for my work on a false advertising case against Apple which ultimately led to a $25 million settlement.

27. I am on the California Employment Lawyers Association ("CELA")'s Wage and Hour Committee and Mentor Committee. I have been selected to speak at multiple CELA conferences throughout my career – in 2019, I spoke on the topic of manageability of class actions at CELA's 2019 Advanced Wage & Hour Seminar, and in 2024, I spoke on the topic of dealing

with multiple cases against the same defendant at CELA's 2024 Advanced Wage & Hour Seminar. Since 2013, I have actively mentored young attorneys through CELA's mentorship program.

28. I am also a past member of the Consumer Attorneys of California ("CAOC"). In 2020, I was selected for a position on CAOC's Board of Directors. I am also a past member of CAOC's Diversity Committee, and I helped assist the CAOC in defeating bills that harm employees. Indeed, I recently helped assist Jacqueline Serna, Esq., Legislative Counsel for CAOC, in defeating AB 443, which proposed legislation that sought to limit the enforceability of California Labor Code § 226.

29. As the attorney responsible for day-to-day management of this matter at the Wilshire Law Firm, PLC, I have over fourteen years of experience with litigating wage and hour class actions. Over the last fourteen years, I have managed and assisted with the litigation and settlement of several wage and hour class actions. In those class actions, I performed similar tasks as those performed in the course of prosecuting this action. My litigation experience includes:

a. I served as lead or co-lead in negotiating class action settlements worth over $10 million in gross recovery to class members for each year since 2020, including over $37.5 million in 2022 and over $75 million in 2023.

b. I lead a team of attorneys that successfully obtained class certification of meal period, rest period, and related derivative claims on April 5, 2024 in *Aguilar-Flores v. Javier's CC LLC*, Los Angeles County Superior Court, Case No. 19STCV36438 (Hon. Elihu M. Berle).

c. I was part of the team of attorneys that prevailed in *Moore v. Centrelake Medical Group, Inc*. (2022) 83 Cal.App.5th 515, the first California appellate decision in a data breach class action holding that consumer plaintiffs adequately alleged injury in fact under the benefit of the bargain theory and monitoring-costs theory.

d. In 2022, Top Verdict recognized Wilshire Law Firm and myself for having one case in the Top 20 Labor & Employment Settlements (including number 19 for the $4.1 million settlement in The FPI Management Wage and Hour Cases) and four additional cases in the Top 50 Labor & Employment Settlements (numbers 36, 39, 41, and 49).

e. In 2021, Top Verdict recognized Wilshire Law Firm and myself for having one case in the Top 20 Labor & Employment Settlements (including number 19 for the $1.6 million settlement in *Moreno v. Pretium Packaging, L.L.C*) and four additional cases in the Top 50 Labor & Employment Settlements (numbers 27, 30, 33, and 37).

f. To my knowledge, I am the only attorney to appear on each of the following Top Verdict lists for 2018 in California: Top 20 Civil Rights Violation Verdicts, Top 20 Labor & Employment Settlements, and Top 50 Class Action Settlements.

g. As lead counsel, on April 29, 2021, I prevailed against CVS Pharmacy, Inc. by winning class certification on behalf of hundreds of thousands of consumers for misleading advertising claims in *Joseph Mier v. CVS Pharmacy, Inc.*, U.S. Dist. Ct. C.D. Cal. no. SA CV 20-1979-DOC-(ADSx).

h. As lead counsel, I prevailed against Bank of America by: winning class certification on behalf of thousands of employees for California Labor Code violations; defeating appellate review of the court's order certifying the class; defeating summary judgment; and defeating a motion to dismiss. (*Frausto v. Bank of America, N.A.* (N.D. Cal. 2019) 334 F.R.D. 192, 2020 WL 1290302 (9th Cir. Feb. 27, 2020), 2019 WL 5626640 (N.D. Cal. Oct. 31, 2019), 2018 W.L. 3659251 (N.D. Cal. Aug. 2, 2018).). The decision certifying the class in *Frausto* is also discussed in Class Certification Under Fed. R. Civ. P. 23 in Action by Information Technology or Call Center Employees for Violation of State Law Wage and Hour Rules, 35 A.L.R. Fed. 3d Art. 8.

i. I was the primary author of the class certification and expert briefs in *ABM Industries Overtime Cases* (2017) 19 Cal.App.5th 277, a wage and hour class action for over 40,000 class members for off-the-clock, meal period, split shift, and reimbursement claims. *ABM Industries Overtime Cases* is the first published California appellate authority to hold that an employer's "auto-deduct policy for meal breaks in light of the recordkeeping requirements for California employers is also an issue amenable to classwide resolution." (*Id.* at p. 310.)[4] Notably, the Court of Appeal also held that expert analysis of timekeeping records can also support the predominance requirement for class certification. (*Id.* at pp. 310-11.) In 2021, the case settled for $140 million, making it one of the largest ever wage and hour class action settlements for hourly-paid employees in California.

j. I briefed, argued, and won *Yocupicio v. PAE Group, LLC* (9th Cir. 2015) 795 F.3d 1057. The Ninth Circuit ruled in my client's favor and held that non-class claims under the PAGA cannot be used to calculate the amount in controversy under the Class Action Fairness Act. This case is cited in several leading treatises such as Wright & Miller's Federal Practice & Procedure, and Newberg on Class Actions. In October 2016, the U.S. Supreme Court denied review of a case that primarily concerned *Yocupicio*. That effort was led by Theodore J. Boutrous, who brought the cert petition, with amicus support from a brief authored by Andrew J. Pincus.[5] Considering that leading Supreme Court practitioners from the class action defense bar were very motivated in undermining *Yocupicio* case, but failed, this demonstrates the national importance of the *Yocupicio* decision.

k. On December 13, 2018, the United States District Court granted final approval of the $2,500,000 class action settlement in *Mark Brulee, et al. v. DAL Global Services, LLC* (C.D. Cal. Dec. 13, 2018) No. CV 17-6433 JVS(JCGx), 2018 WL 6616659 in which I served as lead counsel. In doing so, the Court found: "Class Counsel's declarations show that the attorneys are experienced and successful litigators." (*Id.* at p. *10.)

l. *Gasio v. Target Corp.* (C.D. Cal. Sep. 12, 2014) 2014 U.S. Dist. LEXIS 129852, a reported decision permitting class-wide discovery even though the employer has a lawful policy because "[t]he fact that a company has a policy of not violating the

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[4] As a California district court observed before the *ABM Industries Overtime* decision, "[t]he case law regarding certification of auto-deduct classes is mixed." (*Wilson v. TE Connectivity Networks, Inc.* (N.D. Cal. Feb. 9, 2017) No. 14-CV-04872-EDL, 2017 WL 1758048, *7.)

[5] http://www.chamberlitigation.com/cases/abm-industries-inc-v-castro.

law does not mean that the employees follow it, which is the issue here." The court also ordered defendant to pay for the cost of *Belaire-West* notice.

m. In 2013, I represented a whistleblower that reported that his former employer was defrauding the State of California with the help of bribes to public employees. The case, a false claims (qui tam) action, resulted in the arrest and criminal prosecution of State of California employees by the California Attorney General's Office.

n. In 2013, I was part of a team of attorneys that obtained conditional certification for over 2,000,000 class members in a federal labor law case for misclassification of independent contractors that did crowdsourced work on the Internet, *Otey v. CrowdFlower, Inc.*, N.D. Cal. Case No. 12-cv-05524-JST (MEJ), resulting in the following pro-plaintiff reported decisions:

    i. 2013 U.S. Dist. LEXIS 151846 (N.D. Cal. Oct. 22, 2013) (holding that an unaccepted Rule 68 offer doesn't moot plaintiff's claims, and granting plaintiff's motion to strike defendant's affirmative defenses based on *Twombly/Iqbal*).

    ii. 2013 U.S. Dist. LEXIS 122007 (N.D. Cal. Aug. 27, 2013) (order granting conditional collective certification).

    iii. 2013 U.S. Dist. LEXIS 95687 (N.D. Cal. July 8, 2013) (affirming the magistrate judge's discovery ruling which held that "evidence of other sources of income is irrelevant to the question of whether a plaintiff is an employee within the meaning of the FLSA").

    iv. 2013 U.S. Dist. LEXIS 91771 (N.D. Cal. June 20, 2013) (granting broad discovery because "an FLSA plaintiff is entitled to discovery from locations where he never worked if he can provide some evidence to indicate company-wide violations").

o. From 2012 to 2013, I was part of a team of attorneys that obtained class certification for over 60,000 class members for off-the-clock claims, *Linares v. Securitas Security Services USA, Inc.*, Los Angeles Superior Court, Case No. BC416555. We also successfully opposed subsequent appeals to the California Court of Appeal and California Supreme Court.

30. My current contingent billing rate of $1,500.00 per hour is consistent with my actual billing rate for paid legal industry consulting services, my practice area, lead appellate experience in the Ninth Circuit Court of Appeals, numerous awards received, legal market and accepted hourly rates:

a. I have been paid for legal industry consulting services at $1,500 per hour by Gerson Lehrman Group (GLG), a company that provides financial information and advises investors and consultants with business clients seeking expert advice. GLG is one of the largest companies that provides expert consulting services. GLG's clients include corporations, hedge funds, private equity firms, and consulting firms. I have worked with GLG on numerous occasions at a rate of $1,500 per hour, including on three recent occasions in October and November of 2023.

b. On January 11, 2024, the Hon. Laurel Beeler of the United States District Court, Northern District of California approved my $1,500 hourly rate when she granted final approval of the class action settlement in *Suarez v. Bank of America, N.A.* (N.D. Cal. Jan. 11, 2024), No. 18-cv-01202-LB, 2024 WL150721, *3 ("As for the lodestar cross-check, the billing rates are normal and customary for timekeepers with similar qualifications and experience in the relevant market.")

c. My $1,500 hourly rate was approved by many California state courts:

    1. On December 8, 2023, the Hon. Marcella O. McLaughlin of the San Diego County Superior Court approved my $1,500 hourly rate when she granted final approval of the class action settlement in *Payabyab v. Bridge Hospice, LLC,* Case No. 7-2021-00046218-CU-OE-CTL.

    2. On January 11, 2024, the Hon. Harold Hopp of the Riverside County Superior Court approved my $1,500 hourly rate when he granted final approval of the class action settlement in *Gutierrez v. Next Level Door & Millwork, Inc.,* Case No. CVRI2105455.

3. On January 19, 2024, the Hon. Lauri A. Damrell of the Sacramento County Superior Court approved my $1,500 hourly rate when she granted final approval of the class action settlement in *Sunshine Retirement Wage and Hour Cases,* Case No. JCCP 5247.
4. On January 26, 2024, the Hon. Loren G. Freestone of the San Diego Superior Court approved my $1,500 hourly rate when he granted final approval of the class action settlement in *Lupercio v. Western CNC, Inc*., Case No. 37-2021-00010314-CU-OE-CTL.
5. On February 1, 2024, the Hon. Joseph T. Ortiz of the San Bernardino Court approved my $1,500 hourly rate when he granted final approval of the class action settlement in *Jackson, et al. v. Apple Valley Communications, Inc.*, et al., Case No. CIVSB2124721.
6. On February 2, 2024, the Hon. Harold Hopp of the Riverside County Superior Court approved my $1,500 hourly rate when he granted final approval of the class action settlement in *Barrera v. Paradise Chevrolet Cadillac,* Case No. CVSW2107199.
7. On May 20, 2024, the Hon. Elaine Lu of the Los Angeles County Superior Court approved my $1,500 hourly rate when she granted final approval of the class action settlement in *Mesa v. Argus Management Company,* Case No. 21STCV31612.

d. On May 6, 2022, the Hon. Jay A. Garcia-Gregory of the United States District Court in Puerto Rico approved my then $850 hourly rate when he granted final approval of the class action settlement in *Serrano v. Inmediata Corp.,* No. 3:19-cv-01811-JAG, Dkt. 57 (U.S. Dist. Ct. P.R. May 6, 2022).

e. On September 9, 2021, the Hon. Peter Wilson of the Orange County Superior Court approved my then $800 hourly rate when he granted final approval of the class action settlement in *Ricardo Campos Hernandez v. Adams Iron Co., Inc.*, No. 30-2019-01066522-CU-OE-CXC.

f. On August 6, 2021, the Hon. Stanley Blumenfeld, Jr. of the United States District Court granted final approval of the $1,600,000 class action settlement in *Carlos Moreno v. Pretium Packaging, Inc*. (C.D. Cal. Aug. 6, 2021) No. 8:19-cv-02500-SB-DFM, 2021 WL 3673845 in which I served as lead counsel. In doing so, the Court approved my then $750 hourly rate after finding it was "reasonable, given the qualifications of the attorneys who worked on this matter." (*Id.* at p. *3.)

g. On January 19, 2021, the Hon. Elihu M. Berle of the Los Angeles County Superior Court approved my then $750 hourly rate when he granted final approval of the class action settlement in *Faye Zhang v. Richemont North America, Inc.,* Case No. 19STCV32396.

31. The reasonableness of my firm's hourly rates is also supported by several surveys of legal rates, including the following:

a. The 2022 Real Rate Report survey compiled by Wolters Kluwer, which presents the real market rates of Los Angeles area attorneys who practice litigation. For that category, the third quartile 2022 rate was $1,045 per hour for partners and $855 for associates. Likewise, page 32 of the Report describes the rates charged by 183 Los Angeles partners with "21 or more years of experience" and "Fewer than 21 years." For those categories, the third quartile Los Angeles partner rate in 2022 were $1,133 per hour for 21 or more years and $1,075 for attorneys with fewer than 21 years. A true and correct copy of portions of the 2022 Real Rate Report is attached hereto as **Exhibit B**.

b. In an article entitled "Big Law Rates Topping $2,000 Leave Value 'In Eye of Beholder,'" written by Roy Strom and published by Bloomberg Law on June 9, 2022, the author describes how Big Law firms have crossed the $2,000-per hour rate. The article also notes that law firm rates have been increasing by just under 3% per year. A true and correct copy of this article is attached hereto as **Exhibit C**.

32. Benjamin H. Haber is an eighth-year Associate Attorney at Wilshire Law Firm. He graduated from the University of California, Los Angeles, with a Bachelor of Arts in Political

Science, and received his Juris Doctor from the University of California, Hastings College of the Law in 2016. During law school, he was a member of the executive board for the Hastings Law Journal and student mediator at the San Francisco Superior Court, Small Claims Division. He was admitted to practice law in the State of California in 2017. Since graduating from law school, he has focused his legal work primarily on wage and hour litigation and has helped obtain dozens of settlements on behalf of tens of thousands of workers in California.

33. Arrash T. Fattahi is a fourth-year Managing Associate at Wilshire Law Firm, PLC. He is admitted to practice law in the State of California and the Central, Southern, Eastern, and Northern Districts of California. Arrash graduated from the University of California, Los Angeles, with a Bachelor of Arts in Political Science, *summa cum laude*. He received his Juris Doctor from The George Washington University Law School. During law school, he was a member of the student editorial board for the *Federal Circuit Bar Journal*. Since January 2021, his practice has mainly been focused on wage and hour class action litigation.

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

Executed on October 21, 2024, at Los Angeles, California.

/s/ Justin F. Marquez
Justin F. Marquez

EXHIBIT “A”

CLASS ACTION ADMINISTRATION SOLUTIONS

CASE ASSUMPTIONS	
Class Members	200
Opt Out Rate	1%
Opt Outs Received	2
Total Class Claimants	198
Subtotal Admin Only	**$7,250.00**

Not-to-Exceed Total **$7,250.00**

For 200 Members

Pricing Good for Scope of Estimate Only

August 24, 2023

Case: Sager v. Summit Foods Opt-Out wLanguage

Phoenix Contact: Jodey Lawrence
Contact Number: 949.566.1455
Email: Jodey@phoenixclassaction.com

Requesting Attorney: Justin Marquez
Firm: Wilshire Law Firm, PLC
Contact Number: (213) 381-9988, Ext. 345
Email: justin@wilshirelawfirm.com

Assumptions and Estimate are based on information provided by counsel. If class size changes, PSA will need to adjust this Estimate accordingly. Estimate is based on **200** Class Members. PSA assumes class data will be sent in Microsoft Excel or other usable format with no or reasonable additional formatting needed. A rate of $150 per hour will be charged for any additional analysis or programming.

Case & Database Setup / Toll Free Setup & Call Center / NCOA (USPS)

Administrative Tasks:	Rate	Hours/Units	Line Item Estimate
Programming Manager	$100.00	2	$200.00
Programming Database & Setup	$100.00	2	$200.00
Toll Free Setup*	$103.98	1	$103.98
Call Center & Long Distance	$2.00	16	$32.00
NCOA (USPS)	$70.00	2	$140.00
		Total	**$675.98**

* Up to 120 days after disbursement

Data Merger & Scrub / Notice Packet, Opt-Out Form & Postage / Spanish Translation / Reporting

Project Action	Rate	Hours/Units	Line Item Estimate
Notice Packet Formatting	$125.00	2	$250.00
Data Merge & Duplication Scrub	$0.50	200	$100.00
Notice Packet & Opt-Out Form	$2.00	200	$400.00
Estimated Postage (up to 2 oz.)*	$0.87	200	$174.00
Static Website	$200.00	1	$200.00
Language Translation	$1,000.00	1	$1,000.00
		Total	**$2,124.00**

* Prices good for 90 days. Subject to change with the USPS Rate or change in Notice pages or Translation, if any.

PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

Skip Tracing & Remailing Notice Packets / Tracking & Programming Undeliverables			
Project Action:	**Rate**	**Hours/Units**	**Line Item Estimate**
Case Associate	$55.00	2	$110.00
Skip Tracing Undeliverables	$1.25	20	$25.00
Remail Notice Packets	$2.00	20	$40.00
Estimated Postage	$0.87	20	$17.40
Programming Undeliverables	$50.00	1	$50.00
		Total	**$242.40**

Database Programming / Processing Opt-Outs, Deficiencies or Disputes			
Project Action:	**Rate**	**Hours/Units**	**Line Item Estimate**
Programming Claims Database	$135.00	2	$270.00
Non Opt-Out Processing	$100.00	1	$100.00
Case Associate	$55.00	2	$110.00
Opt-Outs/Deficiency/Dispute Letters	$10.00	5	$50.00
Case Manager	$85.00	2	$170.00
		Total	**$700.00**

Calculation & Disbursement Programming/ Create & Manage QSF/ Mail Checks			
Project Action:	**Rate**	**Hours/Units**	**Line Item Estimate**
Programming Calculations	$135.00	2	$270.00
Disbursement Review	$135.00	2	$270.00
Programming Manager	$95.00	2	$190.00
QSF Bank Account & EIN	$100.00	2	$200.00
Check Run Setup & Printing	$125.00	2	$250.00
Mail Class Checks *	$1.75	198	$346.50
Estimated Postage	$0.64	198	$126.72
		Total	**$1,653.22**

* Checks are printed on 8.5 x 11 in. sheets with W2/1099 Tax Filing

PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

Tax Reporting & Reconciliation / Re-Issuance of Checks / Conclusion Reports and Declarations			
Project Action:	**Rate**	**Hours/Units**	**Line Item Estimate**
Case Supervisor	$100.00	2	$200.00
Remail Undeliverable Checks (Postage Included)	$1.50	40	$59.40
Case Associate	$50.00	2	$100.00
Reconcile Uncashed Checks	$75.00	2	$150.00
Conclusion Reports	$125.00	1	$125.00
Case Manager Conclusion	$85.00	2	$170.00
Final Reporting & Declarations	$125.00	2	$250.00
IRS & QSF Annual Tax Reporting * (1 State Tax Reporting Included)	$800.00	1	$800.00
		Total	**$1,854.40**

* All applicable California State & Federal taxes, which include SUI, ETT, and SDI, and FUTA filings. Additional taxes are Defendant's responsibilty.

Estimate Total:	**$7,250.00**

CLASS ACTION ADMINISTRATION SOLUTIONS

TERMS AND CONDITIONS

Provisions: The case estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make any provision for any services or class size not delineated in the request for proposal or stipulations. Proposal rates and amounts are subject to change upon further review, with Counsel/Client, of the Settlement Agreement. Only pre-approved changes will be charged when applicable. No modifications may be made to this estimate without the approval of PSA (Phoenix Settlement Administrators). All notifications are mailed in English language only unless otherwise specified. Additional costs will apply if translation into other language(s) is required. Rates to prepare and file taxes are for Federal and California State taxes only. Additional charges will apply if multiple state tax filing(s) is required. **Pricing is good for ninety (90) days.**

Data Conversion and Mailing: The proposal assumes that data provided will be in ready-to-use condition and that all data is provided in a single, comprehensive Excel spreadsheet. PSA cannot be liable for any errors or omissions arising due to additional work required for analyzing and processing the original database. A minimum of two (2) business days is required for processing prior to the anticipated mailing date with an additional two (2) business days for a National Change of Address (NCOA) update. Additional time may be required depending on the class size, necessary translation of the documents, or other factors. PSA will keep counsel apprised of the estimated mailing date.

Claims: PSA's general policy is to not accept claims via facsimile. However, in the event that facsimile filing of claims must be accepted, PSA will not be held responsible for any issues and/or errors arising out of said filing. Furthermore, PSA will require disclaimer language regarding facsimile transmissions. PSA will not be responsible for any acts or omissions caused by the USPS. PSA shall not make payments to any claimants without verified, valid Social Security Numbers. All responses and class member information are held in strict confidentiality. Additional class members are $10.00 per opt-out.

Payment Terms: All postage charges and 50% of the final administration charges are due at the commencement of the case and will be billed immediately upon receipt of the data and/or notice documents. PSA bills are due upon receipt unless otherwise negotiated and agreed to with PSA by Counsel/Client. In the event the settlement terms provide that PSA is to be paid out of the settlement fund, PSA will request that Counsel/Client endeavor to make alternate payment arrangements for PSA charges that are due at the onset of the case. The entire remaining balance is due and payable at the time the settlement account is funded by Defendant, or no later than the time of disbursement. Amounts not paid within thirty (30) days are subject to a service charge of 1.5% per month or the highest rate permitted by law.

Tax Reporting Requirements

PSA will file the necessary tax returns under the EIN of the QSF, including federal and state returns. Payroll tax returns will be filed if necessary. Under the California Employment Development Department, all taxes are to be reported under the EIN of the QSF with the exception of the following taxes: Unemployment Insurance (UI) and Employment Training Tax (ETT), employer-side taxes, and State Disability Insurance (SDI), an employee-side tax. These are reported under Defendant's EIN. Therefore, to comply with the EDD payroll tax filing requirements we will need the following information:

1. Defendant's California State ID and Federal EIN.

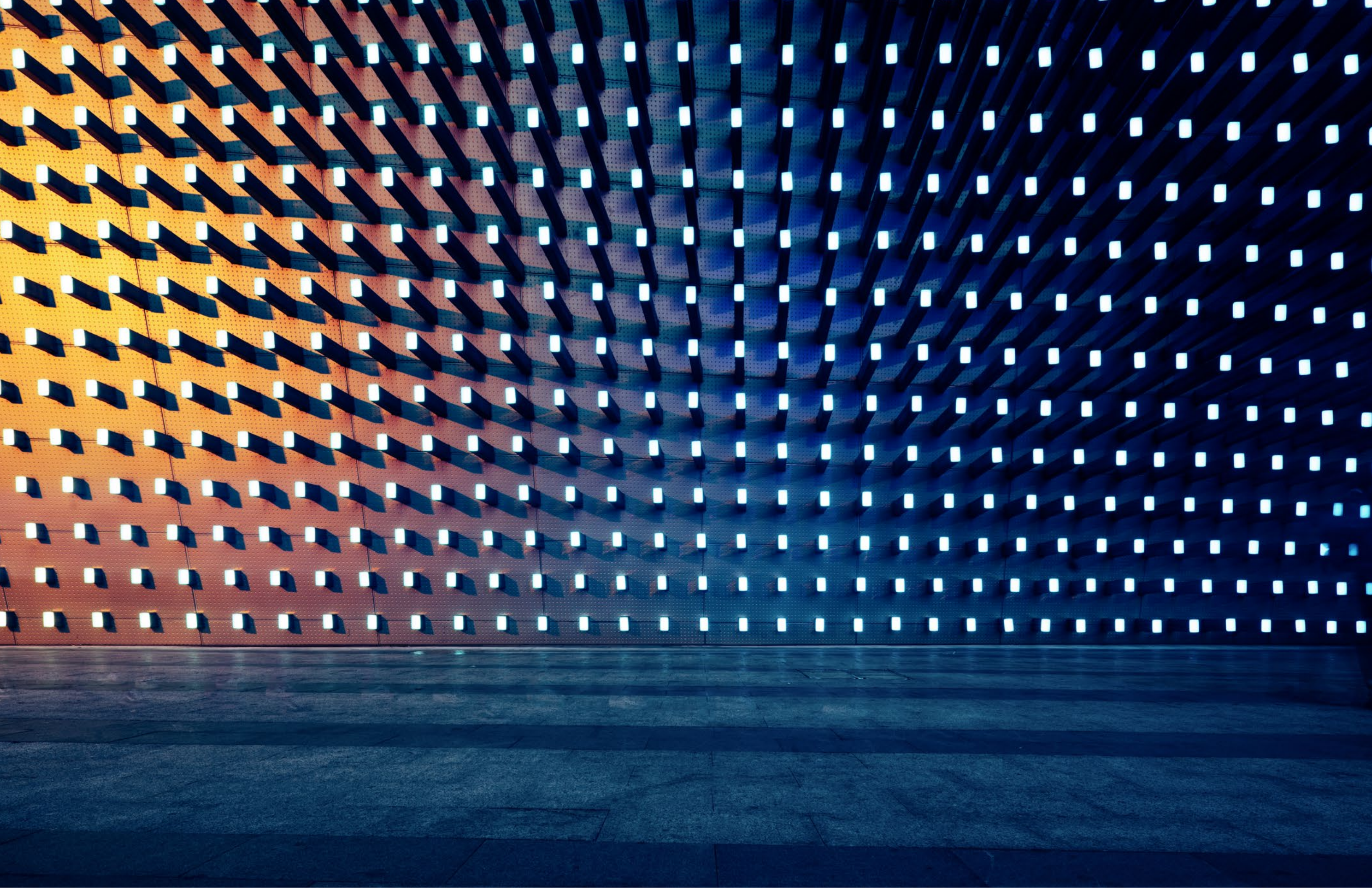
2. Defendant's current State Unemployment Insurance (UI) rate and Employment Training Tax (ETT) rate. This information can be found in the current year DE 2088, Notice of Contribution Rates, issued by the EDD.

3. Termination dates of the class members, or identification of current employee class members, so we can account for the periods that the wages relate to for each class member.

4. An executed Power of Attorney (Form DE 48) from Defendant. This form is needed so that we may report the UI, SDI, and ETT taxes under Defendant's EIN on their behalf. If this form is not provided we will work with the EDD auditors to transfer the tax payments to Defendant's EIN.

5. Defendant is responsible for reporting the SDI portion of the settlement payments on the class member's W-2. PSA will file these forms on Defendant's behalf for an additional fee and will issue an additional W-2 for each class member under Defendant's EIN, as SDI is reported under Defendant's EIN rather than the EIN of the QSF. The Power of Attorney (Form DE 48) will be needed in order for PSA to report SDI payments.

EXHIBIT "B"



ELM Solutions

2022 Real Rate Report®

The industry's leading analysis of law firm rates, trends, and practices

Wolters Kluwer

wolterskluwer.com

Table of Contents - 2022 Real Rate Report

Report Use Considerations

2022 Real Rate Report

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

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

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

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

Some key factors[1] that drive rates[2]:

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

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

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

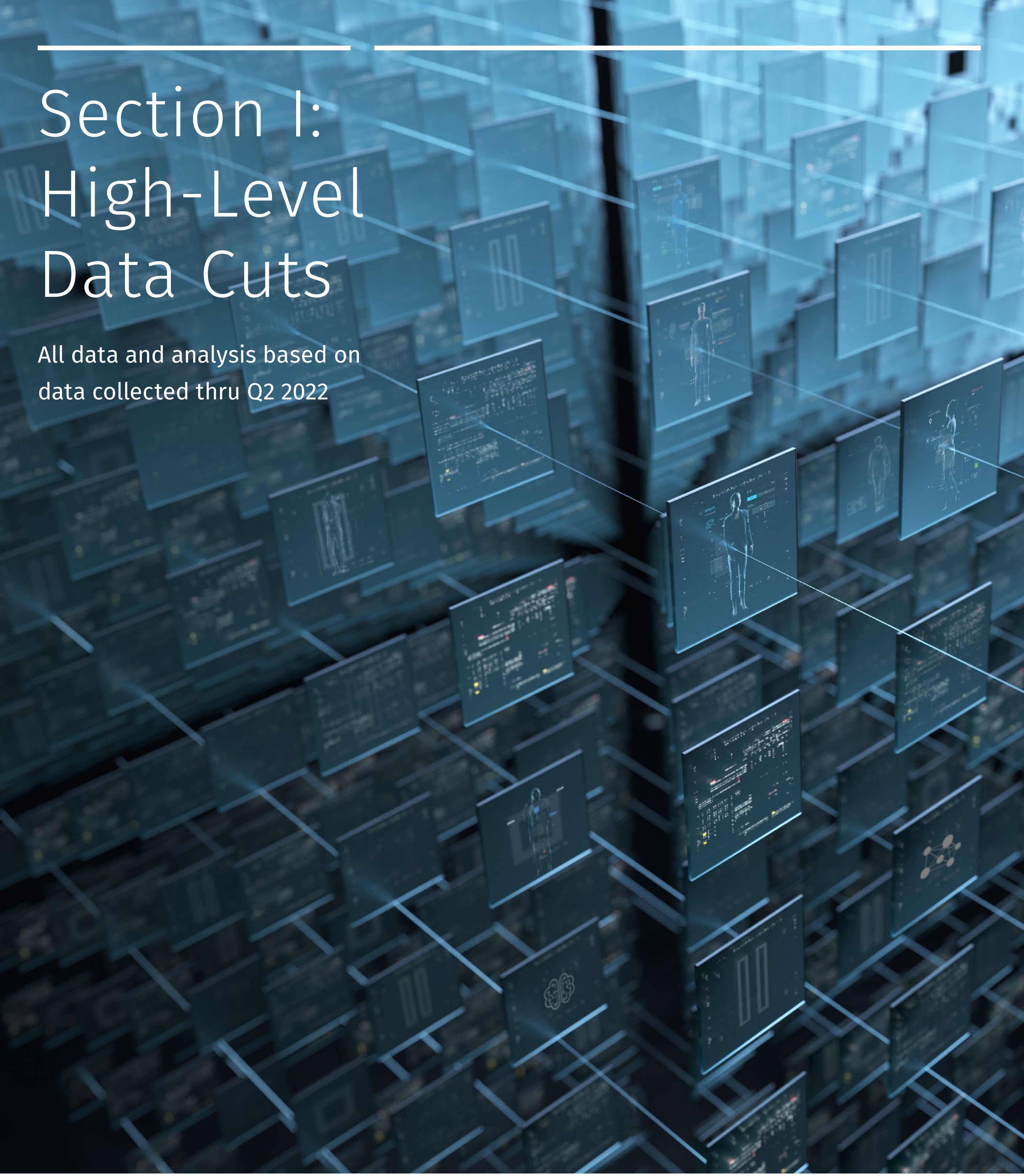
Overhead - The costs associated with the firm's support network (paralegals, clerks, and assistants), document preparation, consultants, research, and other expenses.

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

1 **David Goguen, J.D., University of San Francisco School of Law (2020) Guide to Legal Services Billing Retrieved from:** https://www.lawyers.com/legal-info/research/guide-to-legal-services-billing-rates.html
2 **Source: 2018 RRR.** Factor order validated in multiple analyses since 2010

Section I: High-Level Data Cuts

All data and analysis based on data collected thru Q2 2022



Section I: High-Level Data Cuts

Cities
By Matter Type

2022 - Real Rates for Associate and Partner | **Trend Analysis - Mean**

City	Matter Type	Role	n	First Quartile	Median	Third Quartile	2022	2021	2020
Jackson MS	Litigation	Associate	56	$55	$225	$250	$178	$203	$175
	Non-Litigation	Partner	24	$315	$420	$485	$418	$394	$375
		Associate	25	$55	$126	$255	$155	$125	$259
Kansas City MO	Litigation	Partner	74	$413	$450	$556	$472	$450	$450
		Associate	50	$252	$329	$385	$319	$316	$305
	Non-Litigation	Partner	101	$411	$487	$615	$519	$487	$464
		Associate	73	$250	$320	$385	$322	$312	$285
Las Vegas NV	Non-Litigation	Partner	20	$350	$425	$525	$440	$422	$432
		Associate	11	$238	$267	$368	$301	$297	$282
Little Rock AR	Non-Litigation	Partner	11	$215	$215	$308	$264	$256	$298
Los Angeles CA	Litigation	Partner	322	$516	$725	$1,045	$799	$739	$702
		Associate	408	$400	$615	$855	$642	$606	$564
	Non-Litigation	Partner	521	$596	$868	$1,201	$903	$902	$858
		Associate	667	$441	$603	$845	$653	$712	$648

Section I: High-Level Data Cuts

Cities

By Matter Type

2022 - Real Rates for Associate and Partner **Trend Analysis - Mean**

City	Matter Type	Role	n	First Quartile	Median	Third Quartile	2022	2021	2020
Minneapolis MN	Non-Litigation	Associate	83	$340	$421	$528	$425	$408	$384
Nashville TN	Litigation	Partner	24	$275	$320	$456	$363	$378	$403
	Non-Litigation	Partner	78	$412	$484	$576	$505	$481	$470
		Associate	59	$270	$330	$384	$340	$315	$285
New Orleans LA	Litigation	Partner	47	$290	$332	$412	$343	$330	$340
		Associate	42	$231	$243	$340	$278	$290	$275
	Non-Litigation	Partner	32	$295	$347	$405	$419	$380	$391
		Associate	21	$244	$250	$278	$273	$303	$258
New York NY	Litigation	Partner	614	$475	$675	$1,088	$808	$784	$746
		Associate	631	$323	$460	$729	$545	$527	$509
	Non-Litigation	Partner	1,376	$765	$1,235	$1,638	$1,189	$1,139	$1,090
		Associate	1,809	$550	$776	$1,050	$796	$766	$716
Oklahoma City OK	Non-Litigation	Partner	14	$235	$338	$393	$337	$319	$311
Omaha NE	Litigation	Partner	12	$293	$339	$353	$329	$338	$341

Section I: High-Level Data Cuts

Cities
By Matter Type

2022 - Real Rates for Associate and Partner — **Trend Analysis - Mean**

City	Matter Type	Role	n	First Quartile	Median	Third Quartile	2022	2021	2020
Rochester NY	Non-Litigation	Partner	12	$270	$360	$488	$386	$341	$446
		Associate	13	$220	$310	$375	$314	$278	$287
Sacramento CA	Non-Litigation	Partner	11	$381	$437	$682	$534	$559	$516
Salt Lake City UT	Litigation	Partner	14	$246	$353	$468	$363	$333	$379
	Non-Litigation	Partner	42	$297	$371	$447	$391	$363	$353
		Associate	22	$220	$240	$270	$248	$247	$228
San Diego CA	Litigation	Associate	23	$151	$225	$300	$255	$258	$264
	Non-Litigation	Partner	89	$332	$540	$1,066	$699	$667	$649
		Associate	71	$250	$325	$424	$373	$378	$351
San Francisco CA	Litigation	Partner	143	$423	$675	$995	$742	$711	$691
		Associate	98	$325	$430	$731	$525	$517	$470
	Non-Litigation	Partner	221	$475	$750	$950	$758	$746	$741
		Associate	151	$338	$486	$702	$545	$563	$507
San Jose CA	Litigation	Partner	33	$654	$921	$1,133	$916	$907	$864

Section I: High-Level Data Cuts

Cities
By Matter Type

2022 - Real Rates for Associate and Partner **Trend Analysis - Mean**

City	Matter Type	Role	n	First Quartile	Median	Third Quartile	2022	2021	2020
San Jose CA	Litigation	Associate	22	$461	$580	$745	$608	$593	$498
	Non-Litigation	Partner	50	$660	$864	$1,303	$969	$985	$887
		Associate	46	$380	$460	$775	$616	$639	$567
Seattle WA	Litigation	Partner	76	$497	$655	$760	$635	$567	$510
		Associate	61	$394	$468	$530	$447	$453	$395
	Non-Litigation	Partner	148	$410	$526	$760	$571	$547	$547
		Associate	113	$310	$395	$502	$422	$401	$377
St. Louis MO	Litigation	Partner	46	$260	$350	$435	$376	$373	$388
		Associate	17	$197	$225	$250	$228	$237	$232
	Non-Litigation	Partner	57	$352	$419	$540	$451	$446	$473
Tampa FL	Litigation	Partner	31	$369	$508	$595	$490	$467	$452
		Associate	15	$269	$298	$368	$316	$302	$306
Trenton NJ	Non-Litigation	Partner	21	$408	$600	$700	$569	$620	$581
		Associate	12	$480	$495	$500	$448	$376	$387

Section I: High-Level Data Cuts

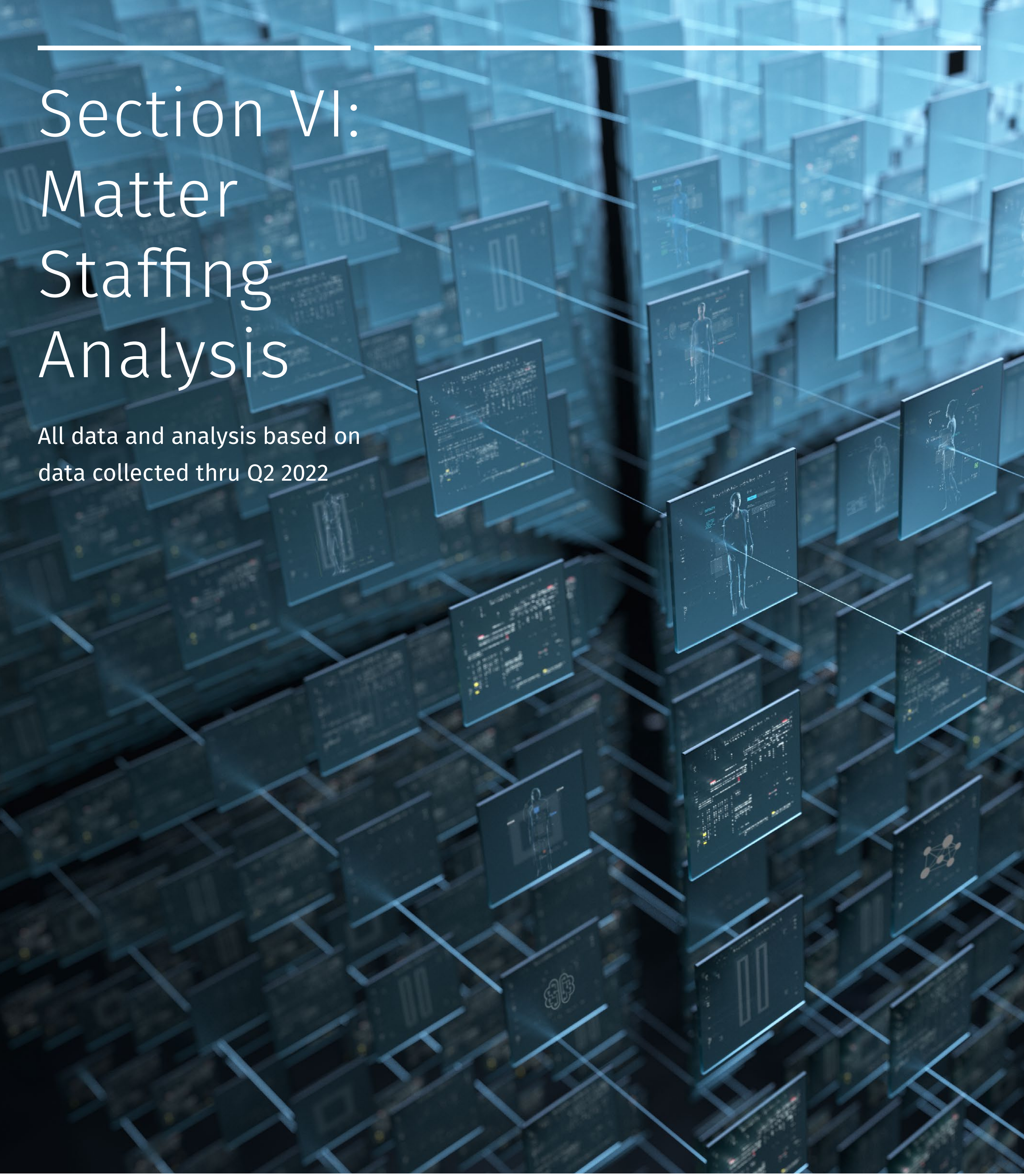
Cities
By Years of Experience

2022 - Real Rates for Associate | **Trend Analysis - Mean**

City	Years of Experience	n	First Quartile	Median	Third Quartile	2022	2021	2020
Kansas City MO	3 to Fewer Than 7 Years	15	$270	$325	$360	$318	$295	$283
	7 or More Years	28	$292	$334	$391	$333	$312	$302
Los Angeles CA	Fewer Than 3 Years	63	$429	$595	$654	$556	$524	$488
	3 to Fewer Than 7 Years	144	$486	$688	$838	$662	$626	$530
	7 or More Years	171	$351	$550	$840	$600	$634	$586
Miami FL	3 to Fewer Than 7 Years	19	$300	$360	$457	$380	$331	$313
	7 or More Years	36	$295	$450	$595	$460	$433	$385
Minneapolis MN	Fewer Than 3 Years	11	$374	$405	$446	$408		$230
	3 to Fewer Than 7 Years	27	$340	$451	$510	$421	$358	$356
	7 or More Years	27	$423	$468	$585	$478	$438	$392
Nashville TN	7 or More Years	12	$219	$245	$345	$282	$266	$262
New Orleans LA	3 to Fewer Than 7 Years	12	$232	$243	$265	$261	$242	$245
	7 or More Years	18	$243	$312	$343	$306	$318	$294
New York NY	Fewer Than 3 Years	142	$443	$622	$775	$629	$600	$652

2022 - Real Rates for Partner | **Trend Analysis - Mean**

City	Years of Experience	n	First Quartile	Median	Third Quartile	2022	2021	2020
Kansas City MO	Fewer Than 21 Years	46	$400	$450	$537	$473	$411	$397
	21 or More Years	68	$440	$553	$658	$539	$497	$491
Las Vegas NV	Fewer Than 21 Years	12	$284	$381	$495	$389	$349	$343
	21 or More Years	13	$350	$425	$515	$468	$456	$472
Los Angeles CA	Fewer Than 21 Years	183	$533	$801	$1,075	$804	$797	$682
	21 or More Years	333	$550	$765	$1,133	$863	$842	$808
Memphis TN	Fewer Than 21 Years	14	$288	$331	$380	$345	$317	$328
	21 or More Years	15	$355	$415	$425	$394	$382	$375
Miami FL	Fewer Than 21 Years	57	$370	$450	$598	$490	$498	$443
	21 or More Years	104	$388	$581	$749	$584	$580	$536
Milwaukee WI	21 or More Years	16	$302	$454	$613	$589	$515	$530
Minneapolis MN	Fewer Than 21 Years	36	$470	$530	$607	$532	$486	$499
	21 or More Years	84	$507	$675	$796	$656	$620	$589
Nashville TN	Fewer Than 21 Years	28	$375	$405	$535	$449	$405	$397



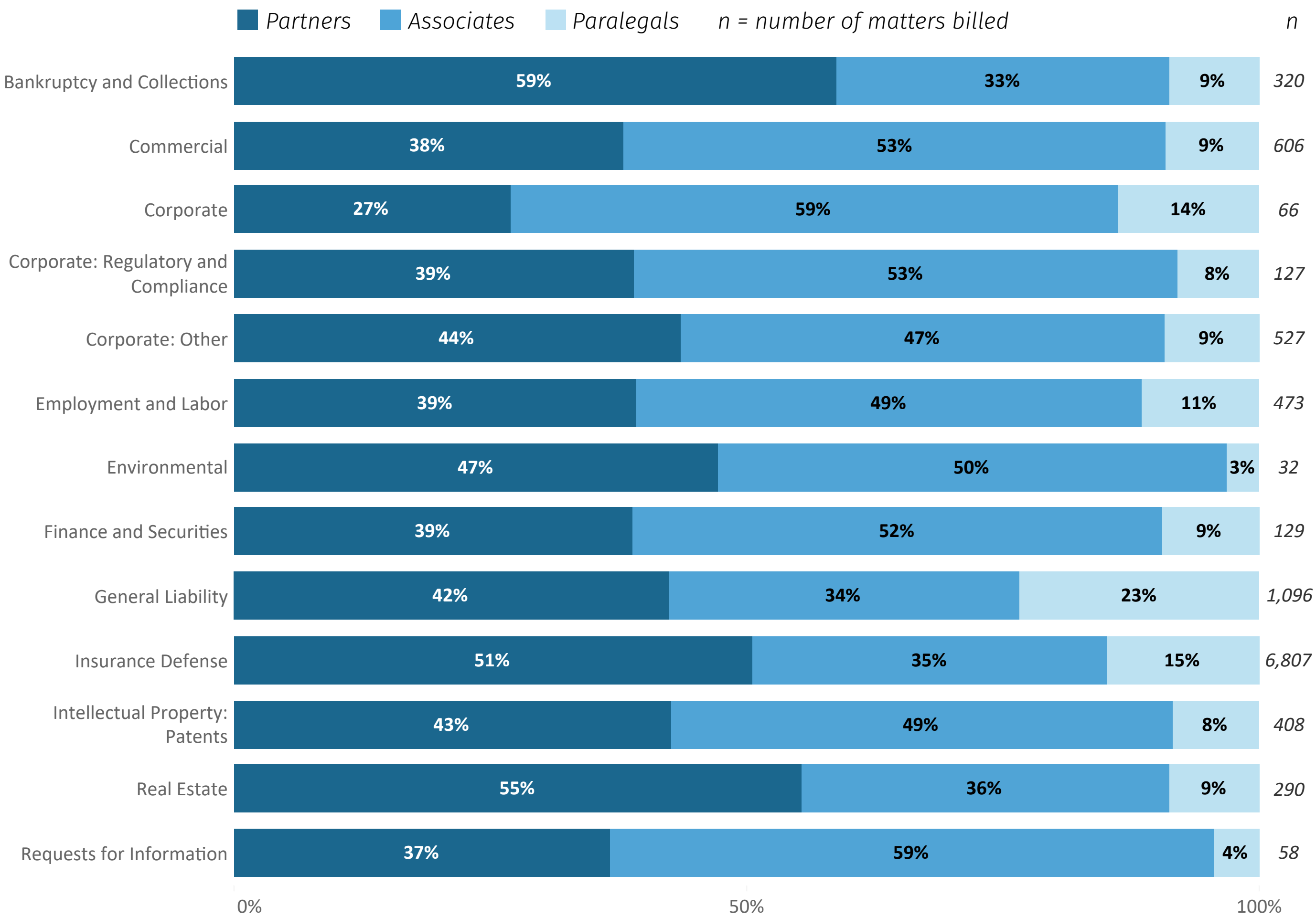
Section VI: Matter Staffing Analysis

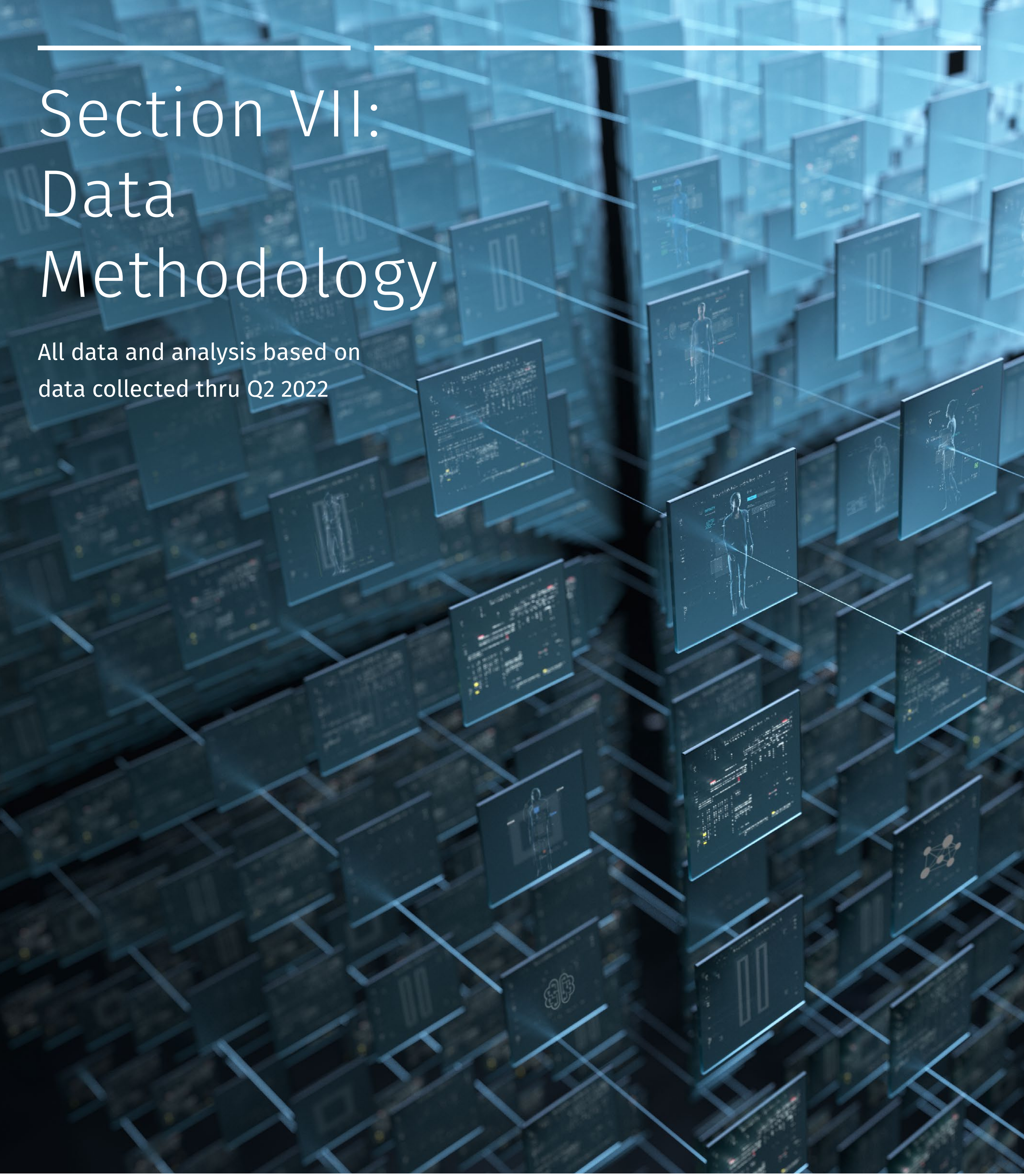
All data and analysis based on data collected thru Q2 2022

Section VI: Matter Staffing Analysis

Long Litigation Matters, More Than 100 Total Hours Billed

2019 to 2022 -- Percentage of Hours Billed per Matter





Section VII: Data Methodology

All data and analysis based on data collected thru Q2 2022

Appendix: Data Methodology

Invoice Information

Data in Wolters Kluwer ELM Solutions' reference database and the 2022 Real Rate Report were taken from invoice line-item entries contained in invoices received and approved by participating companies.

Invoice data were received in the Legal Electronic Data Exchange Standard (LEDES) format (LEDES.org). The following information was extracted from those invoices and their line items:

- Law firm (which exists as a random number in the ELM Solutions reference database)
- Timekeeper ID (which exists as a random number in the ELM Solutions reference database)
- Matter ID (which exists as a random number in the ELM Solutions reference database)
- Timekeeper's position (role) within the law firm (partner, associate, paralegal, etc.)
- Uniform Task-Based Management System Code Set, Task Codes, and Activity Codes (UTBMS.com)
- Date of service
- Hours billed
- Hourly rate billed
- Fees billed

Non-Invoice Information

To capture practice area details, the matter ID within each invoice was associated with matter profiles containing areas of work in the systems of each company. The areas of work were then systematically categorized into legal practice areas. Normalization of practice areas was done based on company mappings to system-level practice areas available in the ELM Solutions system and by naming convention.

The majority of analyses included in this report have been mapped to one of 11 practice areas, further divided into sub-areas and litigation/non-litigation (for more information on practice areas and sub-areas, please refer to pages 232-234).

To capture location and jurisdiction details, law firms and timekeepers were systematically mapped to the existing profiles within ELM Solutions systems, as well as with publicly available data sources for further validation and normalization. Where city location information is provided, it includes any address within that city's defined Core-Based Statistical Area (CBSA) as defined by the Office of Management and Budget (OMB). The CBSAs are urban centers with populations of 10,000 or more and include all adjacent counties that are economically integrated with that urban center.

Where the analyses focus on partners, associates, and paralegals, the underlying data occasionally included some sub-roles, such as "senior partner" or "junior associate." In such instances, those timekeeper sub-roles were placed within the broader partner, associate, and paralegal segments.

Demographics regarding law firm size, location, and lawyer years of experience were augmented by incorporating publicly available information.

Appendix: Data Methodology
A Note on US Cities

Principal City	CBSA Name
Hartford, CT	Hartford-East Hartford-Middletown, CT
Honolulu, HI	Urban Honolulu HI
Houston, TX	Houston-The Woodlands-Sugar Land, TX
Indianapolis, IN	Indianapolis-Carmel-Anderson, IN
Jackson, MS	Jackson, MS
Jacksonville, FL	Jacksonville, FL
Kansas City, MO	Kansas City, MO-KS
Lafayette, LA	Lafayette, LA
Las Vegas, NV	Las Vegas-Henderson-Paradise, NV
Lexington, KY	Lexington-Fayette, KY
Little Rock, AR	Little Rock-North Little Rock-Conway, AR
Los Angeles, CA	Los Angeles-Long Beach-Anaheim, CA
Louisville, KY	Louisville/Jefferson County, KY-IN
Madison, WI	Madison, WI
Memphis, TN	Memphis-Forrest City, TN-MS-AR
Miami, FL	Miami-Fort Lauderdale-Pompano Beach, FL
Milwaukee, WI	Milwaukee-Waukesha, WI
Minneapolis, MN	Minneapolis-St. Paul-Bloomington, MN-WI
Nashville, TN	Nashville-Davidson-Murfreesboro-Franklin, TN
New Haven, CT	New Haven-Milford, CT
New Orleans, LA	New Orleans-Metairie, LA
New York, NY	New York-Newark-Jersey City, NY-NJ-PA
Oklahoma City, OK	Oklahoma City, OK
Omaha, NE	Omaha-Council Bluffs, NE-IA
Orlando, FL	Orlando-Kissimmee-Sanford, FL
Philadelphia, PA	Philadelphia-Camden-Wilmington, PA-NJ-DE-MD
Phoenix, AZ	Phoenix-Mesa-Chandler, AZ
Pittsburgh, PA	Pittsburgh, PA
Portland, ME	Portland-South Portland, ME
Portland, OR	Portland-Vancouver-Hillsboro, OR-WA
Providence, RI	Providence-Warwick, RI-MA
Raleigh, NC	Raleigh-Cary, NC
Reno, NV	Reno-Carson City-Fernley, NV

Appendix: Data Methodology

Bankruptcy and Collections

Chapter 11
Collections
General/Other
Workouts and Restructuring

Commercial (Commercial Transactions and Agreements)

Contract Breach or Dispute
General, Drafting, and Review
General/Other

Corporate[1]

Antitrust and Competition
Corporate Development
General/Other
Governance
Information and Technology
Mergers, Acquisitions, and Divestitures
Partnerships and Joint Ventures
Regulatory and Compliance
Tax
Treasury
White Collar/Fraud/Abuse

Employment and Labor

ADA
Agreements
Compensation and Benefits
Discrimination, Retaliation, and Harassment/EEO
Employee Dishonesty/Misconduct
ERISA
General/Other
Immigration
Union Relations and Negotiations/NLRB
Wages, Tips, and Overtime
Wrongful Termination

Environmental

General/Other
Health and Safety
Superfund
Waste/Remediation

Finance and Securities

Commercial Loans and Financing
Debt/Equity Offerings
Fiduciary Services
General/Other
Investments and Other Financial Instruments
Loans and Financing
SEC Filings and Financial Reporting
Securities and Banking Regulations

General Liability

Asbestos/Mesothelioma
Auto and Transportation
Consumer Related Claims
Crime, Dishonesty and Fraud
General/Other
Personal Injury/Wrongful Death
Premises
Product and Product Liability
Property Damage
Toxic Tort

1 All references to “Corporate: General/Other” in the Real Rate Report are the aggregation of all Corporate sub-areas excluding the Mergers, Acquisitions, and Divestitures sub-area and the Regulatory and Compliance sub-area.

EXHIBIT "C"

Business & Practice

Big Law Rates Topping $2,000 Leave Value 'In Eye of Beholder'

By Roy Strom

Column
June 9, 2022, 2:30 AM

Welcome back to the Big Law Business column on the changing legal marketplace written by me, Roy Strom. Today, we look at a new threshold for lawyers' billing rates and why it's so difficult to put a price on high-powered attorneys. Sign up to receive this column in your inbox on Thursday mornings. Programming note: Big Law Business will be off next week.

Some of the nation's top law firms are charging more than $2,000 an hour, setting a new pinnacle after a two-year burst in demand.

Partners at Hogan Lovells and Latham & Watkins have crossed the threshold, according to court documents in bankruptcy cases filed within the past year.

Other firms came close to the mark, billing more than $1,900, according to the documents. They include Kirkland & Ellis, Simpson Thacher & Bartlett, Boies Schiller Flexner, and Sidley Austin.

Simpson Thacher & Bartlett litigator Bryce Friedman, who helps big-name clients out of jams, especially when they're accused of fraud, charges $1,965 every 60 minutes, according to a court document.

In need of a former acting US Solicitor General? Hogan Lovells partner Neal Katyal bills time at $2,465 an hour. Want to hire famous litigator David Boies? That'll cost $1,950 an hour (at least). Reuters was first to report their fees.

Eye-watering rates are nothing new for Big Law firms, which typically ask clients to pay higher prices at least once a year, regardless of broader market conditions.

"Value is in the eye of the beholder," said John O'Connor, a San Francisco-based expert on legal fees. "The perceived value of a good lawyer can reach into the multi-billions of dollars."

Kirkland & Ellis declined to comment on its billing rates. None of the other firms responded to requests to comment.

Charge It Up

Big Law firms are crossing the $2,000-an-hour threshold after two years of surging rates driven by an increase in demand for lawyers.

Firm	Highest Billing Rate
Hogan Lovells	$2,465
Latham & Watkins	$2,075
Kirkland & Ellis	$1,995
Simpson Thacher & Bartlett	$1,965
Boies Schiller Flexner	$1,950
Sidley Austin	$1,900

Source: Court documents

Bloomberg Law

Law firms have been more successful raising rates than most other businesses over the past 15 years.

Law firm rates rose by roughly 40 percent from 2007 to 2020, or just short of 3 percent per year, Thomson Reuters Peer Monitor data show. US inflation rose by about 28% during that time.

The 100 largest law firms in the past two years achieved their largest rate increases in more than a decade, Peer Monitor says. The rates surged more than 6% in 2020 and grew another 5.6% through November of last year. Neither level had been breached since 2008.

The price hikes occurred during a once-in-a-decade surge in demand for law services, which propelled profits at firms to new levels. Fourteen law firms reported average profits per equity partner in 2021 over $5 million, according to data from The American Lawyer. That was up from six the previous year.

The highest-performing firms, where lawyers charge the highest prices, have outperformed their smaller peers. Firms with leading practices in markets such as mergers and acquisitions, capital markets, and real estate were forced to turn away work at some points during the pandemic-fueled surge.

Firms receive relatively tepid pushback from their giant corporate clients, especially when advising on bet-the-company litigation or billion-dollar deals.

The portion of bills law firms collected—a sign of how willingly clients pay full-freight—rose during the previous two years after drifting lower following the Great Financial Crisis. Collection rates last year breached 90% for the first time since 2009, Peer Monitor data show.

Professional rules prohibit lawyers from charging “unconscionable” or “unreasonable” rates. But that doesn’t preclude clients from paying any price they perceive as valuable, said Jacqueline Vinaccia, a San Diego-based lawyer who testifies on lawyer fee disputes.

Lawyers’ fees are usually only contested when they will be paid by a third party.

That happened recently with Hogan Lovells’ Katyal, whose nearly $2,500 an hour fee was contested in May by a US trustee overseeing a bankruptcy case involving a Johnson & Johnson unit facing claims its talc-based powders caused cancer.

The trustee, who protects the financial interests of bankruptcy estates, argued Katyal’s fee was more than $1,000 an hour higher than rates charged by lawyers in the same case at Jones Day and Skadden Arps Slate Meagher & Flom.

A hearing on the trustee’s objection is scheduled for next week. Hogan Lovells did not respond to a request for comment on the objection.

Vinaccia said the firm’s options will be to reduce its fee, withdraw from the case, or argue the levy is reasonable, most likely based on Katyal’s extensive experience arguing appeals.

Still, the hourly rate shows just how valuable the most prestigious lawyers’ time can be—even compared to their highly compensated competitors.

“If the argument is that Jones Day and Skadden Arps are less expensive, then you’re already talking about the cream of the crop, the top-of-the-barrel law firms,” Vinaccia said. “I can’t imagine a case in which I might argue those two firms are more reasonable than the rates I’m dealing with.”

Worth Your Time

On Cravath: Cravath Swaine & Moore is heading to Washington, opening its first new office since 1973 by hiring former heads of the U.S. Securities and Exchange Commission and Federal Deposit Insurance Corporation. Meghan Tribe reports the move comes as Big Law firms are looking to add federal government expertise as clients face more regulatory scrutiny.

On Big Law Promotions: It’s rare that associates get promotions to partner in June, but Camille Vasquez is now a Brown Rudnick partner after she shot to fame representing Johnny Depp in his defamation trial against ex-wife Amber Heard.

On Working From Home: I spoke this week with Quinn Emanuel’s John Quinn about why he thinks law firm life is never going back to the office-first culture that was upset by the pandemic. Listen to the podcast here.

00:00:00

That's it for this week! Thanks for reading and please send me your thoughts, critiques, and tips.

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Documents

Trustee's Objection

Related Articles

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SONOMA

GABRIEL SAGER and ELIZABETH ADAMS, individually, on behalf of all others similarly situated, and on behalf of the State of California and other aggrieved persons, *Plaintiffs*, v. SUMMIT FOOD SERVICE, LLC, a limited liability company; and DOES 1 through 10, inclusive, *Defendants*.	CASE NO.: SCV-270486 *Assigned to Hon. Christopher M. Honigsberg* **CLASS & REPRESENTATIVE ACTION** **[PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT**

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The Honorable Christopher M. Honigsberg considered Plaintiffs Gabriel Sager and Elizabeth Adams' ("Plaintiffs") Motion for Preliminary Approval of Class Action Settlement ("Plaintiffs' Motion"), the Declarations of Justin Marquez, Mehrdad Bokhour, and Joshua Falakassa in Support of Plaintiffs' Motion, the Class Action and PAGA Settlement Agreement and Release ("Settlement Agreement" and/or "Settlement"), and Court Approved Notice of Class Action Settlement and Hearing Date for Final Court Approval ("Class Notice" or "Notice") and any other documents submitted in support of Plaintiffs' Motion.

Having considered Plaintiffs' Motion, the accompanying declarations in support thereof, and all supporting legal authorities and documents, the Court ordered as follows:

IT IS HEREBY ORDERED THAT:

1. This Order incorporates by reference the definitions in the Settlement Agreement, attached as **Exhibit "A"** to the Declaration of Mehrdad Bokhour, and all terms defined therein shall have the same meaning in this Order as set forth in the Settlement Agreement.

2. For settlement purposes only, the Court certifies the following Settlement Class: all individuals who are or were employed by Defendant Summit Food Service, LLC ("Defendant") as non-exempt hourly employees in California at any time from March 29, 2018, through September 1, 2023.

3. For settlement purposes only, the Court certifies the following Aggrieved Employees: all aggrieved employees who are or were by Defendant as non-exempt hourly employees in California from April 8, 2021, until September 1, 2023.

4. The Court preliminarily appoints the named Plaintiffs Gabriel Sager and Elizabeth Adams as the Class Representatives, and Justin Marquez, Benjamin H. Haber, and Arrash T. Fattahi of Wilshire Law Firm, PLC, Mehrdad Bokhour of Bokhour Law Group, P.C. and Joshua Falakassa of Falakassa Law, P.C. as Class Counsel.

5. The Court hereby preliminarily approves the proposed class action settlement and settlement of PAGA claims upon the terms and conditions set forth in the Settlement Agreement. The Court finds that on a preliminary basis that the Settlement appears to be within the range of reasonableness of settlement that could ultimately be given final approval by the Court. It appears to

the Court on a preliminary basis that the Settlement amount is fair, adequate, and reasonable as to all potential Settlement Class Members when balanced against the probable outcome of further litigation relating to liability and damages issues. It further appears that extensive and costly investigation and research has been conducted such that counsel for the Parties at this time are reasonably able to evaluate their respective positions. It further appears to the Court that the Settlement at this time will avoid substantial additional costs by all Parties, as well as the delay and risks that would be presented by the further prosecution of the Action. It further appears that the Settlement has been reached as the result of intensive, non-collusive, arms-length negotiations utilizing an experienced mediator.

6. The Court approves, as to form and content, the proposed Notice attached as **Exhibit "B"** to the Declaration of Mehrdad Bokhour.

7. The Court directs the mailing of the Notice by first-class mail to the Settlement Class members no later than as set forth in the Settlement Agreement. The Court finds that the dissemination of the Notice set forth in the Settlement Agreement complies with the requirements of due process of law and appears to be the best notice practicable under the circumstances.

8. The Court hereby preliminarily approves the definition and disposition of the Gross Settlement Amount of $312,500, which is inclusive of payment of Attorneys' Fees not to exceed $104,166.67, which is one-third of the Settlement Amount, Costs not to exceed $25,000, Service Awards not to exceed $10,000 each to Plaintiffs, PAGA civil penalties of $10,000 (of which 75% or $7,500 will be paid to the Labor and Workforce Development Agency and 25% or $2,500 will be paid to PAGA Members) and Settlement Administration Costs not to exceed $10,000. Defendant shall pay the employer's share of payroll taxes on the portion of the Settlement Amount payable to Participating Class Members as wages, in addition to the Settlement Amount.

9. The Court confirms Phoenix Class Action Administration Solutions ("Phoenix") as the Settlement Administrator, and payment of Settlement Administration Costs, not to exceed $10,000.00, out of the Settlement Amount for services to be rendered by Phoenix on behalf of the Settlement Class. The Settlement Administrator shall prepare and submit to Class Counsel and Defendant's counsel a declaration attesting to the completion of the notice process as set forth in the

Settlement Agreement, including an explanation of efforts to resend any Notice returned undeliverable and the total number of opt-outs and objections received before and after the deadline.

10. The Court directs Defendant to provide the Settlement Administrator with the "Class Data" for Class Members providing the following information: (1) full names; (2) last known addresses and telephone numbers; (3) the number of Workweeks (as defined in the Settlement Agreement) as non-exempt employees of Defendant in California during the Class and PAGA Periods; and (4) Social Security numbers. Defendant shall provide the "Class Data" as referenced herein to the Settlement Administrator as set forth in the Settlement Agreement, including within 15 days after entry of the Preliminary Approval Order.

11. The Settlement Administrator shall use the National Change of Address database (U.S. Postal Service) to check for updated addresses for Settlement Class Members and shall then mail, via first class U.S. mail, the Notice to Class Members as approved in paragraph 5 herein.

12. The deadline by which Settlement Class Members may dispute the number of Workweeks worked or opt-out of the Settlement Class shall be forty five (45) days from the date of mailing of the Notice, except as extended by an an additional fourteen (14) days for re-mailed Class Notices. Any Settlement Class Member who desires to be excluded from the Settlement must timely mail his or her written request for exclusion in accordance with the Notice. All such persons who properly and timely exclude themselves from the Settlement shall not be class participants and shall have no rights with respect to the Settlement, no interest in the Settlement proceeds, and no standing to object to the proposed Settlement.

13. The deadline for filing objections to any of the terms of the Settlement shall be forty five (45) days from the date of mailing of the Notice except as extended by an an additional fourteen (14) days for re-mailed Class Notices. Any Settlement Class Member who wishes to object to the Settlement may mail, email or fax a written objection to the Settlement Administrator, who will email a copy of the objection to Class Counsel and counsel for Defendant. Class Counsel will lodge a copy of the objection with the Court. The objection must set forth, in a clear and concise manner, the factual and legal basis for the objection. In the alternative, Settlement Class Members may appear in

Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval hearing.

14. All papers filed in support of Final Approval, including supporting documents for Attorneys' Fees and Costs shall be filed 16 court days before Final Approval hearing.

15. Class Counsel and Counsel for Defendant shall file any responses to any written objections submitted to the Court no later than five (5) court days before the Final Approval hearing.

16. A final approval hearing shall be held with the Court on ____________ at _____ a.m./p.m. in Courtroom "18" at 3055 Clevland Avenue, Santa Rosa, California 95403 to determine (1) whether the proposed Settlement is fair, reasonable, and adequate and should be finally approved by the Court; (2) the amount of Attorneys' Fees and Costs to award Class Counsel; (3) the amount of the Service Awards to the Class Representatives; and (4) other matters concerning final approval, including the disposition of any unpaid amounts to the agreed upon *cy pres* beneficiary

17. An implementation schedule is below:

Event	**Date**
Defendant to provide class contact information to Settlement Administrator no later than:	[*15 days after entry of the Preliminary Approval Order*]
Settlement Administrator to mail the Notice to the Settlement Class no later than:	[*7 calendar days after receipt of Class Data*]
Deadline for Class Members to submit disputes, request exclusion from, or object to the Settlement:	[*45 calendar days after the date of mailing of the Class Notice*]
Deadline for Plaintiffs to file Motion for Final Approval of Class Action Settlement:	[*16 court days before the hearing on Motion for Final Approval of Settlement*]
Hearing on Motion for Final Approval of Settlement	______________________

If any of the dates in this implementation schedule falls on a weekend, legal, or court holiday, the time to act shall be extended to the next business day.

18. Pending the Final Approval hearing, all proceedings in this action, other than

proceedings necessary to carry out or enforce the terms and conditions of the Settlement and this Order, are stayed.

19. In the event the Settlement does not become effective in accordance with the terms of the Settlement, or the Settlement is not finally approved, or is terminated, canceled, or fails to become effective for any reason, this Order shall be rendered null and void and shall be vacated, and the Parties shall revert to their respective positions as of the commencement of the Action. The Parties will be free to assert any claim or defense that could have been asserted at the outset of the Action.

IT IS SO ORDERED.

DATED: ____________________, 2024

____
HONORABLE CHRISTOPHER M. HONIGSBERG
JUDGE OF THE SUPERIOR COURT

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SONOMA

GABRIEL SAGER and ELIZABETH ADAMS, individually, on behalf of all others similarly situated, and on behalf of the State of California and other aggrieved persons, *Plaintiffs*, v. SUMMIT FOOD SERVICE, LLC, a limited liability company; and DOES 1 through 10, inclusive, *Defendants*.	CASE NO.: SCV-270486 *Assigned to Hon. Christopher M. Honigsberg* **CLASS & REPRESENTATIVE ACTION** **PROOF OF SERVICE**

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I am employed in the County of Los Angeles, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 1901 Avenue of the Stars, Suite 450, Los Angeles, California 90067.

On October 21, 2024, I served the following document(s) described as**:**

1. **PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT; DECLARATIONS IN SUPPORT THEREOF; [PROPOSED] ORDER**

2. **DECLARATION OF MEHRDAD BOKHOUR IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

3. **DECLARATION OF JUSTIN F. MARQUEZ IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

4. **[PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT**

on the interested parties in this action:

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BY ELECTRONIC SERVICE: I transmitted the above-referenced document(s) via electronic service provider First Legal to the person(s) identified above at the email address(es) indicated and did not, within a reasonable time after transmission, receive any message or communication indicating that delivery failed or that any other error had occurred which would delay or caused failure in transmission and delivery of the document and/or any attachments thereto.

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

Executed on October 21, 2024, in Los Angeles, California.

/s/ Cynthia Garcia
Cynthia Garcia