

CLASS AND COLLECTIVE ACTION SETTLEMENT AGREEMENT AND RELEASE

This Class Action Settlement Agreement and Release (the “Agreement”) is entered into between Plaintiffs Robert Shannon, Brenell Whitfield, and Adriana Valdez (“Plaintiffs”), individually and on behalf of the putative class and collective members, the State of California, and the allegedly aggrieved employees, on the one hand, and Defendants Burton Restaurants, LLC and High Performance Hospitality LLC (“Defendants”), on the other hand. The Agreement refers to Plaintiffs and Defendants collectively as “Parties,” or individually as a “Party.”

1. DEFINITIONS

The following terms used in this Agreement shall have the meanings ascribed to them below:

1.1 **“Action”** means each and all of the following lawsuits subject to this Settlement:

1.1.1 *Robert Shannon v. Dunkin Donuts LLC; Burton Restaurants, LLC*, filed in the Superior Court of California for the County of San Diego, Case No. 37-2022-00025778-CU-OE-CTL.

1.1.2 *Brenell Whitfield and Adriana Valdez v. Burton Restaurants, LLC; High Performance Hospitality LLC*, filed in the Superior Court of California for the County of San Diego, Case No. 37-2023-00001045-CU-OE-CTL.

1.1.3 *Brenell Whitfield and Adriana Valdez v. Burton Restaurants, LLC; High Performance Hospitality, LLC*, filed in the Superior Court of California for the County of Orange, Case No. 30-2023-01320264-CU-OE-CXC.

1.2 **“Administrator”** means Phoenix Settlement Administrators, the third-party class action settlement administrator the Parties have selected to handle the administration of this Settlement, subject to approval by the Court.

1.3 **“Administration Costs”** means the amount estimated to not exceed Eighteen Thousand Seven Hundred and Fifty Dollars (\$18,750.00), which is the portion of the Gross Settlement Amount to be paid to the Administrator for its costs in connection with administering the terms of this Agreement, including the costs associated with sending The Class and Collective Notice, the Collective Notice, and the Settlement Payments to Participating Individuals.

1.4 **“Aggrieved Employees”** means all individuals who were employed by Defendants in non-exempt positions in the State of California at any time during the PAGA Period.

1.5 **“Claim Form”** means the form for a Collective Member to fill out and timely submit to opt-in to the FLSA component of the Action and consent to the terms of the FLSA Release in the form attached hereto as **Exhibit C**, or as approved by the Court.

1.6 **“Class Counsel”** means Aegis Law Firm, PC and Blumenthal Nordrehaug Bhowmik De Blouw LLP.

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- 1.7 **“Class Counsel’s Costs Award”** means the amount, if any, from the Gross Settlement Amount that the Court authorizes to be paid to Class Counsel in reimbursement of reasonable litigation expenses Class Counsel incurred in connection with this Action, up to Twenty-Five Thousand Dollars (\$25,000), including in connection with Class Counsel’s pre-filing investigation, their filing of the Action, all related litigation activities, and all post-Settlement compliance efforts.
- 1.8 **“Class List”** means the following information regarding Class Members, Collective Members, and Aggrieved Employees that Defendants will in good faith compile from their records and provide to the Administrator: each such individual’s full name, last known mailing address, email address (if available), telephone number (if available), and social security numbers or tax ID numbers of each Class Member. The Class List shall also include the total number of Workweek(s) during which each Class Member was employed by Defendants in a non-exempt position in the State of California during the Class Period, the total number of PAGA Pay Period(s) during which each Aggrieved Employee was employed by Defendants in a non-exempt position in the State of California during the PAGA Period, the total number of Workweeks during which each Collective Member was employed by Defendants in a non-exempt position in the State of California during the Collective Period, and whether the Class Member, Aggrieved Employee, and/or Collective Member worked for Defendants exclusively on a military base(s) during the relevant time period.
- 1.9 **“Class Members”** means all individuals who were employed by Defendants as non-exempt employees in California at any time during the Class Period.
- 1.10 **“Class and Collective Notice”** means the Notice of Class Action and Collective Settlement to be sent to Class Members, Collective Members and Aggrieved Employees substantially in the form attached as **Exhibit B** hereto, or as approved by the Court.
- 1.11 **“Class Period”** means the time period from January 3, 2018, to March 30, 2023.
- 1.12 **“Collective Members”** means a certified collective for settlement purposes only pursuant to 29 U.S.C. § 216(b) and includes all individuals who were employed by Defendants in non-exempt positions during the Collective Period.
- 1.13 **“Collective Period”** means the time period from June 30, 2019, to March 30, 2023.
- 1.14 **“Court”** means the Superior Court of California for the County of San Diego.
- 1.15 **“Defendants”** means Burton Restaurants, LLC and High Performance Hospitality LLC.
- 1.16 **“Defense Counsel”** means Christy D. Joseph, Erin D. Leach, and Kevin M. Brown of Snell & Wilmer, L.L.P.
- 1.17 **“Effective Date”** means the date Defendants submits its second settlement payment thereby fully funding the Gross Settlement Amount.

- 1.18 **“Fee Award”** means the award of attorneys’ fees, if any, that the Court authorizes to be paid to Class Counsel from the Gross Settlement Amount for the services they rendered to the Class Members, Collective Members, and Aggrieved Employees in the Action. Class Counsel will not seek more than one-third (1/3rd) of the Gross Settlement Amount as their Fee Award.
- 1.19 **“Final”** means that the Judgment or a court order is final and appealable and either (a) no appeal, motion, or petition to review or intervene has been taken with respect to the Judgment or order as of the date on which all times to appeal, move, or petition to review or intervene therefrom have expired, or (b) if an appeal, motion or petition to intervene or other review proceeding of the Judgment or order has been commenced, such appeal, motion or petition to intervene or other review is finally concluded and no longer is subject to review by any court, whether by appeal, petition for rehearing or re-argument, petition for rehearing *en banc*, petition for writ of certiorari or otherwise, and such appeal or other review has been finally resolved in such manner that affirms the Judgment or order in its entirety. Notwithstanding the foregoing, any proceeding, order, or appeal pertaining solely to the Fee Award, Class Counsel’s Costs Award, or any Service Award shall not by itself delay or preclude the Judgment from becoming a final judgment or delay or preclude the Effective Date of this Agreement.
- 1.20 **“Final Approval”** means the Court’s order granting final approval of the Settlement and entering judgment.
- 1.21 **“Final Approval Hearing”** means the hearing to be held by the Court on the Motion for Final Approval of the Settlement.
- 1.22 **“FLSA”** means the Fair Labor Standards Act, as amended, 29 U.S.C. § 201, *et seq.*
- 1.23 **“Gross Settlement Amount”** means Seven Hundred Fifty Thousand Dollars (\$750,000.00), the sum of which represents the total and non-reversionary amount payable pursuant to this Settlement by Defendants, including the Fee Award, Class Counsel’s Costs Award, Service Awards, the PAGA Settlement Amount, Administration Costs, and all amounts payable to Participating Individuals. No portion of the Gross Settlement Amount will revert to Defendants for any reason. Under no circumstances will Defendants be required to pay or cause to be paid more than the Gross Settlement Amount in connection with this Settlement, except for the employers’ share of any payroll taxes to be paid in connection with the Settlement and as set forth in Paragraph 7 below.
- 1.24 **“Judgment”** means the judgment entered by the Court upon granting Final Approval.
- 1.25 **“Net Settlement Amount”** means the Gross Settlement Amount less the following payments in the amounts approved by the Court: (a) the Service Awards; (b) the Fee Award; (c) Class Counsels’ Costs Award; (d) Administration Costs; and (e) the PAGA Settlement Amount.

- 1.26 **“Non-Participating Class Members”** means any and all Class Members who opt out of the Settlement’s release of class action claims by timely submitting a valid Request for Exclusion to the Administrator.
- 1.27 **“Operative Complaint”** means the Second Amended Complaint attached to this Settlement as **Exhibit A** which includes all claims Plaintiffs have asserted against Defendants in the Action and which the Parties stipulate to filing subject to the terms of this Agreement.
- 1.28 **“Opt-In Plaintiffs”** include all Collective Members who opt-in to the FLSA component of the Action and consent to the terms of the FLSA Release by timely submitting a Claim Form.
- 1.29 **“PAGA”** means the California Private Attorneys General Act of 2004, Cal. Lab. Code § 2698, *et seq.*
- 1.30 **“PAGA Pay Period”** means any pay period during which an Aggrieved Employee worked for Defendants in a non-exempt position in the State of California during the PAGA Period.
- 1.31 **“PAGA Period”** means the period from June 30, 2021, through March 30, 2023.
- 1.32 **“PAGA Settlement Amount”** means the total amount of Fifty Thousand Dollars (\$50,000), which is the portion of the Gross Settlement Amount that the Parties have agreed to allocate to resolution of all claims and remedies under PAGA, subject to Court approval. Pursuant to the PAGA, 75% of the PAGA Settlement Amount (\$37,500) shall be paid to the California Labor and Workforce Development Agency, and 25% of the PAGA Settlement Amount (\$12,500) shall be held for distribution of Settlement Awards to Aggrieved Employees.
- 1.33 **“Participating Class Members”** means any and all Class Members who do not timely submit a valid Request for Exclusion from the class action component of the Settlement.
- 1.34 **“Participating Individuals”** means and includes all Participating Class Members, all Opt-In Plaintiffs, and all Aggrieved Employees.
- 1.35 **“Plaintiffs”** means the named plaintiffs in the Action, Robert Shannon, Brenell Whitfield, and Adriana Valdez.
- 1.36 **“Preliminary Approval”** means the Court’s order preliminarily approving the terms and conditions of this Settlement.
- 1.37 **“Qualified Settlement Fund” or “QSF”** means a qualified settlement fund under Section 468B of the Internal Revenue Code established by the Administrator for the purpose of administering this Settlement.
- 1.38 **“Released Parties”** means Burton Restaurants, LLC and High Performance Hospital LLC, their past, present and future parent companies, divisions, predecessors, successors,

subsidiaries, related or affiliated companies and organizations, joint venturers, and each of their respective past, present, and future shareholders, owners, officers, directors, partners, employees, trustees, agents, attorneys, fiduciaries, contractors, representatives, partners, joint venturers, benefit plans sponsored or administered by them, insurers, successors and assigns, divisions, units, branches and other persons or entities acting on their behalf.

- 1.39 **“Response Deadline”** means sixty (60) days after The Class and Collective Notice is initially mailed to Class Members and Aggrieved Employees and shall be the last date on which Class Members may: (a) fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax, email, or mail written objections to class and collective action components of the Settlement. For Class Members to whom Class Notices are re-mailed after having been returned undeliverable, the Response Deadline shall be extended by an additional 14 days.
- 1.40 **“Service Award”** means the payment, if any, to Plaintiffs for their efforts in bringing and prosecuting this matter. The Service Award will not exceed the following amounts: Ten Thousand Dollars (\$10,000.00) for Plaintiff Robert Shannon, Ten Thousand Dollars (\$10,000.00) for Plaintiff Brenell Whitfield, and Ten Thousand Dollars (\$10,000.00) for Plaintiff Adriana Valdez.
- 1.41 **“Settlement”** means the disposition of the Action effected by this Agreement and the Judgment.
- 1.42 **“Settlement Award”** means the payment that each Participating Individual shall be entitled to receive pursuant to the terms of this Agreement.
- 1.43 **“Workweek”** means any week during which a Class Member was employed by Defendants in a non-exempt position in the State of California during the Class Period, or any week during which a Collective Member was employed by Defendants in a non-exempt position during the Collective Period.

2. RECITALS

- 2.1 On June 30, 2022, Plaintiff Robert Shannon filed a putative class action against Defendant Burton Restaurants, LLC in the Superior Court of California for the County of San Diego, Case No. 37-2022-00025778-CU-OE-CTL, asserting claims under the California Labor Code and the California Business & Professions Code for: (1) failure to pay minimum wages, (2) failure to pay overtime wages, (3) failure to provide meal breaks, (4) failure to provide rest breaks, (5) failure to reimburse all necessary business expenses, (6) failure to provide accurate wage statements, (7) failure to pay wages timely during employment; (8) failure to pay all wages due upon separation of employment, and (9) violation of California’s unfair competition law (“*Shannon*”).
- 2.2 On January 9, 2023, Plaintiffs Brenell Whitfield and Adriana Valdez filed a putative class action against Defendants in the Superior Court of California for the County of San Diego, Case No. 37-2023-00001045-CU-OE-CTL, asserting claims under the California Labor

Code and the California Business & Professions Code for: (1) unfair competition in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*; (2) failure to pay minimum wages; (3) failure to pay overtime wages; (4) failure to provide required meal periods; (5) failure to provide required rest periods; (6) failure to provide accurate itemized wage statements; (7) failure to reimburse employees for required expenses; (8) failure to provide wages when due; and (9) failure to pay sick wages (“*Whitfield I*”)

- 2.5 On April 19, 2024, Plaintiffs Brenell Whitfield and Adriana Valdez filed a representative action against Defendants asserting a cause of action for civil penalties under PAGA based on the following alleged violations of Cal. Lab. Code §§201, 202, 203, 204 *et seq.*, 210, 218, 221, 226(a), 226.7, 227.3, 246 *et seq.*, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 11070(14) (Failure to Provide Seating), Violation of Applicable Industrial Welfare Commission Wage Order(s) (“*Whitfield II*”).
- 2.6 On March 30, 2023, Plaintiffs and Defendants attended a full-day, global mediation before reputable employment mediator Hon. Carl J. West (Ret.). The Parties did not reach a settlement at the mediation but continued to engage in arms’ length negotiations with the assistance of the mediator.
- 2.7 On June 16, 2023, with the assistance of the mediator, the Parties reached a tentative settlement agreement. The Parties thereafter negotiated the specific terms of the Settlement and have agreed to settle all pending litigation pursuant to the mediator’s proposal and as set forth in this Agreement.
- 2.8 In order to avoid duplication of settlement approval proceedings, the Parties agreed to consolidate the operative complaints for settlement purposes only, by stipulating to filing a Second Amended Complaint in the *Shannon* matter that includes all claims subject to the Settlement.
- 2.9 Class Counsel have made a thorough and independent investigation of the facts and law relating to the allegations in the Action. In agreeing to this Agreement, Plaintiffs have considered: (a) the facts developed during discovery and the Parties’ mediation process and the law applicable thereto; (b) the attendant risks of continued litigation and the uncertainty of the outcome of the claims alleged against Defendants; and (c) the desirability of consummating the Settlement according to the terms of this Agreement. Plaintiffs have concluded that the terms of the Settlement are fair, reasonable and adequate, and that it is in the best interests of Plaintiffs, the Collective Members, the Class Members, and the Aggrieved Employees to settle their claims against Defendants pursuant to the terms set forth in this Agreement.
- 2.10 Defendants deny all allegations asserted in the Action and deny that they are liable for any claim for alleged damages, penalties, interest, fees, and all other forms of relief. Defendants have agreed to resolve the Action and enter into this Agreement as a compromise and settlement of highly disputed claims. However, to the extent this Agreement is deemed void or the Effective Date does not occur, Defendants do not waive, but rather expressly

reserve, all rights to challenge all such claims and allegations in the Action upon all procedural and factual grounds, including, without limitation, the ability to challenge class, collective and/or representative action treatment on any grounds, as well as asserting any and all other privileges and potential defenses.

- 2.11 To the extent this Agreement is deemed void or the Effective Date does not occur, Plaintiffs and Class Counsel agree that Defendants retain and reserve these rights stated in the preceding section. To the extent this Agreement is deemed void or the Effective Date does not occur, Plaintiffs and Class Counsel agree not to argue or present any argument, and hereby waive any argument, that based on this Agreement, Defendants cannot contest class certification, collective certification, or representative action treatment on any grounds whatsoever or assert any and all privileges or potential defenses.
- 2.12 The Parties recognize that notice to the Settlement Class of the material terms of this Settlement, as well as Court approval of this Settlement, are required to effectuate the Settlement, and that the Settlement will not become operative until the Court grants Final Approval of the Settlement, the Settlement becomes Final, and the Effective Date occurs.
- 2.13 The Parties stipulate and agree that, for settlement purposes only, the requisites for establishing collective action certification under the FLSA pursuant to 29 U.S.C. § 216(b), and class certification pursuant to Cal. Code Civ. Proc. § 382 are met. The Parties agree to the designation of Class Counsel as counsel for the Class Members and Collective Members for settlement purposes only. Should this Settlement not become Final, such stipulation to certification shall become null and void and shall have no bearing on, and shall not be admissible in connection with, any issue of whether or not collective or class certification would be appropriate in a non-settlement context. Defendant denies that class, collective or representative action treatment is appropriate outside the settlement context.

3. CONDITIONS PRECEDENT TO EFFECTIVENESS OF SETTLEMENT

- 3.1 Solely for the purpose of facilitating this Settlement of the Action on a consolidated basis, in a single action pending in one court, the Parties stipulate to the filing of the Second Amended Complaint in the *Shannon* matter, which shall be filed promptly after execution of this Settlement Agreement and is attached hereto as **Exhibit A**. The Parties agree that Defendants are not required to file a response to the Second Amended Complaint and maintain all available defenses to the allegations in the Second Amended Complaint. The Parties stipulate and agree that for settlement purposes only, Defendants consent to the filing of the Second Amended Complaint.
- 3.2 If the Court denies Final Approval of the Settlement, or if Defendants void the Settlement pursuant to Paragraph 7 of this Agreement, or if the Settlement does not become effective for any reason, the following will occur:
- 3.2.1 The Parties' stipulation to the filing of the Second Amended Complaint will be deemed revoked as of the date the Court denies Final Approval, or as of the date that Defendants void the Settlement, or if the Settlement does not become

effective for any other reason, then as of the date such reason occurs, the Second Amended Complaint will be deemed stricken and the original Complaint in *Shannon* will be the operative complaint in that action;

3.2.2 The status of *Shannon*, *Whitfield I*, and *Whitfield II* will be deemed to return to their status at the time immediately prior to the Parties' execution of this Agreement, as if the Parties had never executed this Agreement and as if the Second Amended Complaint had never been filed. Upon such occurrence, the period between the execution of this Agreement and the Court's denial of Final Approval will be treated as a full stay on all proceedings for purposes of calculating all required filing and trial deadlines; and

3.2.3 To the extent required by any court or otherwise necessary, the Parties will take all necessary steps to give effect to Paragraph 3.2.

4. RELEASES. Upon the Effective Date, and except as to such rights or claims as may be created by this Agreement, Plaintiffs and all Participating Individuals shall be deemed to have, and by operation of the Judgment shall have, released, and discharged finally, forever and with prejudice claims against Released Parties as follows:

4.1 **Claims Released by Plaintiffs.** Plaintiffs and their respective spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release and discharge Released Parties, in exchange for consideration provided in this Agreement, from any and all causes of action, claims, rights, damages, punitive or statutory damages, penalties, interest, attorneys' fees, costs, liabilities, expenses, and losses arising from or related to all facts, transactions, and occurrences – known or unknown – as of the date they execute this Agreement, including, but not limited to, all Released FLSA Claims, Released Class Claims, and Released PAGA Claims, as defined in Paragraphs 3.4 through 3.6 below ("Plaintiffs' Release"). Plaintiffs' Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time, or to claims or actions based on occurrences after they execute this Agreement. Each Plaintiff acknowledges he or she may discover facts or law different from, or in addition to, the facts or law that he or she now knows or believes to be true but agrees, nonetheless, that Plaintiffs' Release shall be and remain effective in all respects, notwithstanding such different or additional facts, or their discovery thereof.

For purposes of Plaintiffs' Release only, each Plaintiff expressly waives and relinquishes the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

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.

- 4.2 **Claims Released by Opt-In Plaintiffs.** All Opt-In Plaintiffs shall release and discharge Released Parties from any and all causes of action, claims, rights, damages, punitive or statutory damages, penalties, interest, attorneys' fees, costs, liabilities, expenses, and losses under the FLSA during the Collective Period, which are based on or arising from the factual predicates that were alleged, or reasonably could have been alleged, in the Operative Complaint ("Released FLSA Claims").
- 4.3 **Claims Released by Participating Class Members.** All Participating Class Members shall release and discharge Released Parties from any and all causes of action, claims, rights, damages, punitive or statutory damages, penalties, interest, attorneys' fees, costs, liabilities, expenses, and losses based on or arising from factual predicates alleged, or reasonably could have been alleged, in the Operative Complaint, including, but not limited to: (a) any alleged failure to pay all wages due including minimum wages or overtime wages; (b) any alleged failure to timely pay wages at termination or during employment; (c) any alleged failure to provide meal or rest periods or to pay meal or rest period premiums; (d) any alleged failure to maintain and preserve, in a centralized location in California, any required payroll or employee records; (e) any alleged failure to provide compliant and accurate wage statements; (f) any alleged failure to reimburse business expenses; (g) any alleged failure to pay sick wage; (h) any right or claim for civil penalties pursuant to the California Labor Code, the California Industrial Welfare Commission Wage Orders, the California Private Attorneys General Act of 2004 (Cal. Lab. Code § 2698, *et seq.*) based on the foregoing alleged claims; (i) any right or claim for unfair business practices in violation of California Business & Professions Code § 17200 *et seq.* based on the foregoing alleged claims; and (j) any violation or breach of the California Labor Code arising from or related to the conduct or omission alleged, or could have reasonably been alleged, in the Operative Complaint and the conduct or omission ascertained in the course of the Action, including without limitation, any violation or breach of California Labor Code §§ 200, 201, 201.3, 202, 203, 204, 223, 226, 226.7, 233, 246, 510, 512, 1174, 1182.11, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2800, 2802, or any other similar state or local statute, wage order, rule, regulation, ordinance, or authority, during the Class Period ("Released Class Claims"). Except as set forth in Paragraphs 4.2 and 4.4, of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.
- 4.4 **Claims Released by Aggrieved Employees.** All Aggrieved Employees shall release and discharge, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all individual and representative claims for civil penalties under PAGA that were alleged, or reasonably could have been alleged, in the Action based on the facts stated in the Operative Complaint and ascertained in the course of the Action, including, but not limited to, any right or claim for PAGA penalties predicated on alleged nonpayment or under-payment of minimum and overtime wages, failure to pay or under-payment of wages, overtime, meal and rest period premiums, failure to provide meal and rest periods, nonpayment or under-payment of premiums for meal or rest period violations, failure to

timely pay wages, failure to pay all wages due at termination, failure to maintain accurate records, failure to provide and/or maintain accurate and itemized wage statements, failure to reimburse business expenses, failure to pay sick wages, and any claims for PAGA civil penalties based on the foregoing alleged claims under the California Labor Code, Wage Orders, regulations, and/or other provisions of law, including any alleged violations of the California Labor Code §§ 200, 201, 201.3, 202, 203, 204, 223, 226, 226.7, 233, 246, 510, 512, 1174, 1182.11, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2800 and 2802, during the PAGA Period (“Released PAGA Claims”). The Parties agree that there shall be no right for any Aggrieved Employee to opt out or otherwise exclude himself or herself from the PAGA component of the Settlement.

4.5 Release Language on Settlement Checks. The Administrator shall include the following release language on the back of each Settlement Award check, as appropriate for (a) Opt-in Plaintiffs, (b) Participating Class Members, and (c) Aggrieved Employees:

4.5.1 For Opt-In Plaintiffs: “This check is your FLSA settlement payment in connection with the court-approved class action Settlement in *Shannon v. Burton Restaurants, LLC, et al.*, Superior Court of California, County of San Diego, Case No. 37-2022-00025778-CU-OE-CTL. By opting in to the collective portion of this Action, you have acknowledged that you have read the Collective Notice, that you consented to join the Action and participate in the Settlement and that you have released the Released FLSA Claims against Released Parties.” This is referred to as the “FLSA Collective Settlement Check”.

4.5.2 For Participating Class Members: “This check is your state law settlement payment in connection with the court-approved class action Settlement in *Shannon v. Burton Restaurants, LLC, et al.*, Superior Court of California, County of San Diego, Case No. 37-2022-00025778-CU-OE-CTL. By not opting out of the Settlement, you have released Burton Restaurants, LLC and High Performance Hospitality LLC and other Released Parties of all Released Class Claims as defined in the Agreement. By depositing or cashing your check, you acknowledge that you have read The Class and Collective Notice, that you consent to join the Action, and that you are releasing the Released FLSA Claims against Released Parties.” This is referred to as the “State Law Class Settlement Check”.

4.5.3 For Aggrieved Employees Who Are Not Participating Class Members Nor Opt-in Plaintiffs: “This check is your settlement payment in connection with the court-approved PAGA Settlement in *Shannon v. Burton Restaurants, LLC, et al.*,

5. MOTION FOR PRELIMINARY APPROVAL. The Parties agree to jointly prepare and file a Motion for Preliminary Approval of the Settlement upon full execution of this Agreement, as set forth below:

5.1.1 Request for Class Certification and Preliminary Approval Order. Plaintiffs will prepare and deliver to Defense Counsel all documents necessary for obtaining Preliminary Approval, including: (a) a draft of the Notice of Motion and Memorandum in Support of the Motion for Preliminary Approval of the Settlement, requesting that the Court certify a class, for the sole purpose of settlement, pursuant to 29 U.S.C. § 216 and Cal. Code Civ. Proc. § 382, and approval of the PAGA Settlement under Labor Code § 2699(f)(2); (b) a draft proposed Order Granting Preliminary Approval of the Settlement; (c) a draft proposed Class Notice; (d) a draft proposed Collective Notice; (e) a signed declaration from the Administrator attaching its “not to exceed” bid for administering the Settlement and attesting to its willingness to serve as the Administrator, competency, operative procedures for protecting the security of Class Data, amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance, all facts relevant to any actual or potential conflicts of interest with Class Members or Collective Members, and the nature and extent of any financial relationship with Plaintiffs, Class Counsel, or Defense Counsel; (f) a signed declaration from each Class Counsel firm attesting to its competency to represent the Class Members, its timely transmission to the LWDA of all necessary PAGA documents, including Plaintiffs’ PAGA Notices, the Operative Complaint, and this Agreement; and (g) all facts relevant to any actual or potential conflict of interest with Class Members and/or the Administrator.

5.1.2 Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for Preliminary Approval and/or the supporting declarations and documents, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant Preliminary Approval or conditions Preliminary Approval on any material change to this Agreement, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court’s concerns.

6. SETTLEMENT ADMINISTRATION

6.1 Selection of Administrator. The Parties have jointly selected Phoenix Settlement Administrators to serve as the Administrator and verified that, as a condition of appointment, Phoenix Settlement Administrators agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel represent that they have no

interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.

- 6.2 **Employer Identification Number.** The Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports state and federal tax authorities.
- 6.3 **Qualified Settlement Fund.** The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund under US Treasury Regulation section 468B-1.
- 6.4 **Transmission of Class List to the Administrator.** Within ten (10) business days after the Preliminary Approval of the Settlement, Defendants shall provide the Class List to the Administrator. Class Counsel shall provide the Administrator with updated addresses or contact information for Opt-In Plaintiffs in their possession.
- 6.5 **Notice to Class and Collective Members.** The Administrator shall be responsible for preparing, printing, and mailing the Class and Collective Notice and the Collective Notice, in English and Spanish as set forth below:
 - 6.5.1 Settlement Website and Call Center. The Administrator will create a website for the Settlement, which will allow Class Members to view the Class and Collective Notice (in generic form), this Agreement, and all papers filed by Class Counsel to obtain preliminary and final approval of the Agreement. Additionally, the Settlement website will provide the contact information for Class Counsel and for the Administrator. The website will also allow Collective Members to submit their Opt-In Claim Forms electronically. The Administrator will provide Class Counsel and Defense Counsel with a preview of the proposed website. Class Counsel and Defense Counsel must approve the website before it goes live and must approve any modifications to the website. The Administrator shall also create a toll-free call center to field telephone inquiries from Class Members and Collective Members during the notice and settlement administration periods. The Administrator will be directed to take the website and call center down after the 180-day check cashing period for Settlement Award checks.
 - 6.5.2 Mailing of Class and Collective Notice. In order to provide the best notice practicable, prior to mailing the Class and Collective Notice, the Administrator will take reasonable efforts to identify current addresses using the National Change of Address database within five (5) business days after receiving the Class List. Within ten (10) business days after taking such efforts to identify current addresses, the Administrator shall mail, via first-class United States Postal Service (“USPS”) mail, the Class and Collective Notice approved by the Court to Class Members, Collective Members, and Aggrieved Employees . The

Administrator shall provide notice to Class Counsel and Defense Counsel that the Class and Collective Notice has been mailed.

- 6.5.3 Returned Notice. Any Class and Collective Notice returned to the Administrator with a forwarding address shall be re-mailed within three (3) business days following receipt of the returned mail. If no forwarding address is provided, the Administrator shall promptly attempt to determine a correct address using a skip-trace, or other search using the name, address and/or Social Security number of the Class Member or Collective Member involved and shall re-mail the Class and Collective Notice.
- 6.5.4 Administrator's Report After Response Deadline. Within ten (10) business days after the Response Deadline, the Administrator shall provide Defense Counsel and Class Counsel, respectively, a report showing: (i) the Settlement Awards to be paid to each Participating Class Member (the State Law Class Settlement Check amount) and each Opt-In Plaintiff (the FLSA Collective Settlement Check amount); (ii) the final number of Class Members who have submitted objections or valid Requests for Exclusion from the class action component of the Settlement;; and (iii) the number of undeliverable Class Notices.
- 6.6 **No Retaliation or Encouragement.** Defendants will not take any adverse action against any current or former employee on the grounds that he/she is eligible to participate and/or does participate in the Settlement. The Parties, Class Counsel, and Defense Counsel will not discourage participation in the Settlement or encourage objections or opt-outs.
- 6.7 **Disputes Regarding Workweeks.** To the extent that any Class Member disputes the number of workweeks that the Class Member worked or whether they worked for Defendants exclusively on a military base(s), as shown in his or her Class and Collective Notice, such Class Member may produce evidence to the Administrator evidencing the dates they contend to have worked for Defendants and what location(s) he or she worked at. The deadline for Class Members to submit disputes pursuant to this paragraph shall be the Response Deadline (and disputes postmarked by the Response Deadline shall be considered to have met the deadline). Unless the Class Member presents convincing evidence showing he or she worked other workweeks than shown by Defendants' records or at different location(s) than shown by Defendants' records, his/her Settlement Award will be determined based on Defendants' records. The Administrator shall notify counsel for the Parties of any disputes it receives. Defendants shall review their records and provide further information to the Administrator, as necessary. The Administrator shall provide a recommendation to counsel for the Parties. Counsel for the Parties shall then meet and confer in an effort to resolve the dispute. If the dispute cannot be resolved by the Parties, it shall be decided by the Administrator.
- 6.8 **Objection to Class Action Settlement by Participating Class Members.** Participating Class Members will have up to and including the Response Deadline to object to the class action component of the Settlement. Non-Participating Class Members shall not be entitled to object to the class action component of the Settlement. To object, a Participating Class

Member must mail to the Administrator a written objection stating the basis for the objection and include any supporting documents. The postmark date shall be deemed the exclusive means for determining if the objection is timely. The Administrator shall provide counsel for the Parties with complete copies of all objections received, including the postmark dates for each objection, within two (2) business days of receipt. Class Counsel shall file the objections with the Court in connection with the motion for Final Approval. The Parties and their counsel agree that neither they, nor any person on their behalf, will solicit, encourage, or advise any individual to object to the Settlement. The Class and Collective Notice shall advise Participating Class Members of the right to object and state the following requirements for objections: (1) the objection must be mailed to the Administrator no later than the Response Deadline, the date of which shall be stated in the Class and Collective Notice; (2) the objection shall state the full name, address, telephone number, and employee ID of the Participating Class Member; (3) it shall state the factual and legal basis for the objection and include any supporting documents, and (4) it shall be signed personally by the Participating Class Member. The Class and Collective Notice shall state that if the Participating Class Member wishes to be represented by an attorney with respect to the objection, it will be at his or her own expense. The Class and Collective Notice shall also state that Class Members may appear at the Final Approval Hearing and that for administrative purposes the objection should state if the Class Member or his or her attorney intends to appear at the Final Approval Hearing. The Class and Collective Notice shall state that objections shall only be considered if the Class Member has not opted out of the class action component of the Settlement. Participating Class Members who fail to make timely written objections in the manner specified above shall be deemed to have waived any objections and oppositions to the Settlement's fairness, reasonableness, and adequacy, and shall be foreclosed from making any objection (whether by appeal or otherwise) to the Settlement, unless otherwise excused by the Court upon a showing of good cause.

6.9 Requests for Exclusion from Class Action Settlement. The Class and Collective Notice shall provide that Class Members, other than Plaintiffs, who wish to exclude themselves from the class action component of the Settlement ("opt out") must mail to the Administrator a written statement indicating that they do not wish to participate or be bound by the Settlement. The written Request for Exclusion must contain the Class Member's full name, address, telephone number, email address (if applicable), and last four digits of their social security number, and must be signed individually by the Class Member. No Request for Exclusion may be made on behalf of a group of Class Members. Requests for Exclusion must be postmarked by the Response Deadline. None of the Parties, their counsel, nor any person on their behalf, shall seek to solicit or otherwise encourage anyone to exclude themselves from the Settlement.

6.10 Cure Period. In the event any request for exclusion is timely submitted but does not contain sufficient information to be valid, the Administrator shall provide the Class Member, within seven (7) days of receipt of such request for exclusion, a letter requesting the information that was not provided and giving the Class Member fourteen (14) days from the mailing of such cure letter to respond. Any invalid submission that is not timely cured will be considered a nullity.

- 6.11 **Opt-Ins by Collective Members.** The Class and Collective Notice shall provide that Collective Members may “opt in” to the Collective portion of this Settlement by submitting a completed Claim Form, which will be included in the Class and Collective Notice. To be valid, the Claim Form must: (1) include the Collective Member’s full name, (2) be personally signed by the Collective Member, and (3) be returned to the Administrator by the Response Deadline. Claim Forms may be completed and signed electronically. Individuals who are not Collective Members may not submit valid Claim Forms. The Administrator shall provide Class Counsel and Defense Counsel with all valid Claim Forms no later than seven (7) days following the Response Deadline. Class Counsel shall file the valid Claim Forms with the Court in connection with the motion for Final Approval, and Defendant shall not oppose the filing of these Claim Forms. No Claim Form may be made on behalf of a group of Collective Members. Claim Forms must be postmarked by the Response Deadline. None of the Parties, their counsel, nor any person on their behalf, shall seek to solicit or otherwise encourage anyone not to opt in to the collective portion of the Settlement.
- 6.12 **Administrator’s Declaration.** No later than fourteen (14) days before the date by which Plaintiffs are required to file the Motion for Final Approval of the Settlement, the Administrator will provide to Class Counsel and Defense Counsel, a signed declaration for filing in Court attesting to its due diligence and compliance with all of its obligations under this Agreement, including, but not limited to, its mailing of Class Notice, the Class and Collective Notices returned as undeliverable, the re-mailing of Class and Collective Notices, attempts to locate Class Members or Collective Members, the total number of Requests for Exclusion from Settlement it received (both valid or invalid) from Class Members, the number of written objections received from Class Members, and attach a list of the names and other identifying information of Class Members who have submitted timely and valid Requests for Exclusion (“Exclusion List”). The Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator’s declaration(s) in Court.
- 6.13 **Final Report by the Administrator.** Within ten (10) days after the Administrator disburses all funds in the Gross Settlement Amount, the Administrator shall provide written certification of such completion to counsel for all Parties and the Court. This written certification shall include the total number of Participating Class Members, the total number of Collective Members who are not also Participating Class Members, the average recovery per Participating Class Member, the average recovery per Collective Member who is not also a Participating Class Member and for whom the Administrator was able to obtain a verified address, the median recovery per Participating Class Member, the median recovery per Collective Member who is not also a Participating Class Member for whom the Administrator was able to obtain a verified address, the largest and smallest amounts paid to Participating Class Members, the largest and smallest amounts paid to Collective Members who are not also Participating Class Members, and the number and value of checks not cashed.

7. CLASS SIZE ESTIMATES AND ESCALATOR CLAUSE. Based on their records, Defendants estimate that (1) there are approximately 1,060 Class Members who did not work for

Class and Collective Action Settlement Agreement and Release

Defendants exclusively on a military base(s) who worked approximately 38,500 Workweeks during the Class Period and there are approximately 374 Class Members who worked for Defendants exclusively on a military base(s) who worked approximately 16,500 during the Class Period; and (2) there are 501 Aggrieved Employees who worked 4,412 Pay Periods during the PAGA Period. Plaintiffs are entering into this Settlement Agreement based on such representations. If the number of Workweeks in the Class Period for those that did not work for Defendants exclusively on a military base(s) exceeds 38,500 by more than 10% (which is 42,350 Workweeks), the Gross Settlement Amount will increase pro rata per additional workweek beyond 10%. For example, if the number of workweeks for non-exclusively on base workers is 11% more than 38,500, then the Gross Settlement Amount will increase by 1%.

8. DEFENDANTS' RIGHT TO WITHDRAW If the number of valid Requests for Exclusion identified in the Exclusion List exceeds 10% of the total number of Class Members, Defendants may, within their sole discretion, elect to withdraw from the Settlement. The Parties agree that, if Defendants withdraw, the Settlement shall be null and void *ab initio*, have no force or effect whatsoever, and that neither Party will have any further obligation to perform under this Agreement; provided, however, that Defendants remain responsible for paying all Settlement Administration Expenses actually incurred up to that time. Defendants must notify Class Counsel and the Court of their election to withdraw no later than seven (7) calendar days after the Administrator sends the final Exclusion List to Defense Counsel.

9. MOTION FOR FINAL APPROVAL.

9.1 Plaintiffs' Responsibilities. Plaintiffs and Class Counsel will be responsible for drafting the Motion for Final Approval of the Settlement, and approval of the requested Service Awards, Fee Award, Class Counsel's Costs Award, and Administration Costs to be heard at the Final Approval Hearing. Class Counsel shall provide Defense Counsel a copy of a draft Unopposed Motion for Final Approval of the Settlement at least five (5) days in advance of filing it with the Court. Plaintiffs shall reserve with the Court a date for the Final Approval Hearing no earlier than thirty (30) days after the Response Deadline to consider final approval of the Settlement and entry of a Final Approval Order (a) certifying this Action as an FLSA collective action under 29 U.S.C. § 216(b) and as a class action under Cal. Code Civ. Proc. § 382 for purposes of settlement only; (b) finding dissemination of the Class and Collective Notice and Collective Notice was accomplished as directed and met the requirements of due process; (c) approving the Settlement as final and its terms as fair, reasonable and adequate; (d) approving the payment of the Service Awards to Plaintiffs; (e) approving Class Counsel's application for an award of attorneys' fees and reimbursement of out-of-pocket litigation costs and expenses; (f) directing that the Settlement funds be distributed in accordance with the terms of this Agreement; (g) directing that the Action be dismissed finally, fully, forever and with prejudice and, with respect to each Participating Individual, in full and final discharge of any and all Participating Individuals' Released Claims; and (h) retaining continuing jurisdiction over this Action for purposes only of overseeing all settlement administration matters.

9.2 Response to Objections. Each Party retains the right to respond to any objection raised by a Participating Class Member, including the right to file responsive documents in Court

no later than five (5) court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.

- 9.3 **Duty to Cooperate.** If the Court does not grant Final Approval or conditions Final Approval on any material modification to the Settlement (including, but not limited to, the scope of release by Participating Class Members), the Parties will expeditiously work together in good faith to address the Court's concerns by revising the Agreement as necessary to obtain Final Approval. The Court's decision to award less than the amounts requested for the Service Awards, Class Counsel's Fee Award, Class Counsel's Cost Award, and/or Administration Costs shall not constitute a material modification to the Agreement within the meaning of this Paragraph.
- 9.4 **Continuing Jurisdiction of the Court.** The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, the Action, and the Settlement solely for purposes of (a) enforcing this Agreement and/or the Judgment, (b) addressing settlement administration matters, and (c) addressing such post-Judgment matters as permitted by law.
- 9.5 **Waiver of Right to Appeal.** Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the Fee Award and Class Counsel's Cost Award set forth in this Agreement, the Parties, their respective counsel, and all Participating Class Members who did not object to the Settlement as provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the Parties' obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.
- 9.6 **Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment.** If the reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material modification of this Agreement (including, but not limited to, the scope of release to be granted by Class Members), this Agreement shall be null and void. The Parties shall nevertheless expeditiously work together in good faith to address the reviewing Court's concerns and to obtain Final Approval and entry of Judgment. An appellate decision to vacate, reverse, or modify the Court's award of the Service Awards or any payments to Class Counsel shall not constitute a material modification of the Judgment within the meaning of this Paragraph, as long as the Gross Settlement Amount remains unchanged.

10. SETTLEMENT FUNDS AND AWARD CALCULATION

- 10.1 **Funding of Settlement.** Within sixty (60) calendar days after the final approval order, Defendants shall deposit half of the Gross Settlement Amount into an interest-bearing Qualified Settlement Fund ("QSF") established by the Administrator. Within six (6) months of the final approval order, Defendants shall deposit the remaining half of the Gross Settlement Amount into an interest-bearing QSF established by the Administrator along

with the employer portion of payroll taxes. Defendants shall not otherwise have access to the Gross Settlement Amount, or to any earned interest, once those funds are deposited into the interest-bearing settlement fund, except by joint agreement of the parties or by order of the Court. The Parties agree that the QSF (a) shall be established pursuant to an order of the Court prior to the receipt of any monies from Defendants; (b) that it shall be established to resolve and satisfy the contested claims that have resulted, or may result, from the matters that are the subject of this litigation and that are released by this Settlement; and (c) that the QSF that is established and its assets are segregated and shall be segregated (within a separately established fund or account) from the assets of Defendants and all related other persons. The Administrator shall be responsible for establishing, administering, and otherwise operating the QSF, including the preparation and filing of federal, state, and local tax returns. All disbursements shall be made from the Qualified Settlement Fund. The Administrator shall be the only entity authorized to make withdrawals or payments from the Qualified Settlement Fund.

10.2 Payments from the Gross Settlement Amount. Subject to the Court's Final Approval Order and the occurrence of the Effective Date, the following amounts shall be paid by the Administrator from the Gross Settlement Amount:

10.2.1 Service Awards to Plaintiffs. Subject to the Court's approval, Payment of the Service Awards shall be made within ten (10) days after the Effective Date or as soon as reasonably practicable thereafter. The Qualified Settlement Fund shall issue an IRS Form 1099 for these payments. If the Court approves a Service Award in an amount less than requested, the reduction in the Service Award shall not be a basis for nullification of this Settlement. Nor shall a reduction in the Service Award in any way delay or preclude the Judgment from becoming Final or delay or preclude the Effective Date. Plaintiffs assume full responsibility for paying all taxes, if any, due as a result of the Service Awards and agree to respectively indemnify Defendants for any such taxes owed by them related to the Service Awards.

10.2.2 Fee Awards and Class Counsel's Costs Awards.

10.2.2.1 Subject to the Court's approval, the Fee Award and Class Counsel's Costs Award shall be made within ten (10) days after the Effective Date or as soon as reasonably practicable thereafter. These amounts shall be paid from the Gross Settlement Amount.

10.2.2.2 The approved Fee Award and Class Counsels' Costs, even if less than what Class Counsel request, shall constitute full satisfaction of Defendants' obligations to pay amounts to any person, attorney or law firm for attorneys' fees or costs in this Action on behalf of Plaintiffs and/or any other Class Member, and shall relieve Defendants from any other claims or liability to any other attorney or law firm for any attorneys' fees or costs to which any of them may claim to be entitled on behalf of Plaintiffs or any other Class Member. If the Court approves

a Fee Award and/or Class Counsel's Costs Award in an amount less than what Class Counsel request, the reduction in the Fee Award and/or Class Counsels' Costs Award shall not be a basis for nullification of this Settlement. Nor shall a reduction in the Fee Award and/or Class Counsels' Costs Award in any way delay or preclude the Judgment from becoming Final or delay or preclude the Effective Date.

10.2.2.3 An IRS Form 1099 shall be provided to Class Counsel for the payments made to Class Counsel. Class Counsel shall be solely and legally responsible to pay any and all applicable taxes on the payment made to them.

10.2.3 Payment to the Labor and Workforce Development Agency. Subject to Court approval, the Parties agree that the PAGA Settlement Amount will be paid from the Gross Settlement Amount in settlement of all individual and representative claims brought in the Action by or on behalf of Plaintiffs and Aggrieved Employees under PAGA. Pursuant to PAGA, Seventy-Five Percent (75%) of this sum, or \$37,500, will be paid to the LWDA and Twenty-Five Percent (25%), or \$12,500, will be allocated as the "Net PAGA Amount." The LWDA Payment shall be made within ten (10) days after the Effective Date or as soon as reasonably practicable.

10.2.4 Settlement Administration Costs. Settlement Administration costs shall be paid from the Gross Settlement Amount. The Parties agree to cooperate in the settlement administration process and to make all reasonable efforts to control and minimize the costs incurred in the administration of the Settlement.

10.2.5 Settlement Awards to Participating Individuals. Settlement Awards shall be made to Participating Individuals as follows and shall be paid from the Gross Settlement Amount:

10.2.5.1 *Settlement Award Eligibility.* All Participating Class Members, Aggrieved Employees, and Opt-In Plaintiffs shall be mailed a check(s) in the amount of their Settlement Award from the Net Settlement Amount. If a Participating Class Member or Aggrieved Employee is also an Opt-In Plaintiff, they will receive two checks: (1) a State Law Class Settlement Check and (2) a FLSA Collective Settlement Check.

10.2.5.2 *Settlement Award Calculations.* The Administrator shall be responsible for determining the amount of the Settlement Award made up of the State Law Class Settlement Check and/or the FLSA Collective Settlement Check to be paid to each Participating Class Member, Aggrieved Employee, and Opt-In Plaintiff based on the formulas below:

10.2.5.3 The Net Settlement Amount shall be split into 2/3 towards the State Law Class Settlement with Participating Class Members and 1/3

towards the FLSA Collective Settlement with Opt-In Plaintiffs further broken down as follows:

10.2.5.4 The State Law Class Settlement Checks of Participating Class

Members, shall be a *pro rata* portion of the 2/3 of the Net Settlement Amount based on their individual workweeks during the Class Period as follows:

- (a) For each Workweek during which a Participating Class Member was employed by Defendants during the Class Period, he or she shall be eligible to receive a *pro rata* portion of the 2/3 of the Net Settlement Amount based on the number of Workweeks he or she was employed during such period. For those Participating Class Members that worked for Defendants exclusively on a military base(s), each workweek during which the individual was employed by Defendants in California during the relevant time period will be equal to one (1) settlement share. To reflect the increased value of claims under California law for work not performed on a military base(s), for those Participating Class Members that did not work for Defendants exclusively on a military base(s), workweeks during which such Participating Class Member was employed by Defendants in California will instead be equal to three (3) settlement shares.
- (b) The total number of settlement shares for all Participating Class Members will be added together and the resulting sum will be divided into the 2/3 of the Net Settlement Amount to reach a per share dollar figure. That figure will then be multiplied by each Participating Class Member's number of settlement shares to determine his or her *pro rata* portion of the 2/3 of the Net Settlement Amount towards the State Law Class Settlement.

10.2.5.5 The FLSA Collective Settlement Checks of Opt-In Plaintiffs, shall be a *pro rata* portion of the 1/3 of the Net Settlement Amount based on their individual workweeks during the Collective Period as follows:

- (a) For each Workweek during which an Opt-In Plaintiff was employed by Defendants during the Collective Period, he or she shall be eligible to receive a *pro rata*

portion of the 1/3 of the Net Settlement Amount based on the number of Workweeks he or she was employed during such Collective Period.

- (b) The total number of such Workweeks during the Collective Period will be added together, and the resulting sum will be divided into the 1/3 of the Net Settlement Amount to reach a per Workweek dollar figure for the FLSA Collective Settlement. That figure will then be multiplied by each Opt-In Plaintiff's number of Workweeks during the Collective Period to determine his or her pro rata portion of the 1/3 of the Net Settlement Amount towards the FLSA Collective Settlement.

10.2.6 The Net PAGA Amount shall be distributed as follows: Each Aggrieved Employee shall be eligible to receive a *pro rata* portion of the Net PAGA Amount based on his or her PAGA Pay Periods during which he or she was employed by Defendants in non-exempt positions in California during the PAGA Period. The resulting Net PAGA Amount per Aggrieved Employee, if any, will be added to that Aggrieved Employee's Settlement Award.

- 10.3 In addition to other information contained on the Class and Collective Notice, The Class and Collective Notice shall state the estimated minimum payment the class member is expected to receive assuming full participation of all Class Members.
- 10.4 All Settlement Award determinations shall be based on Defendants' timekeeping, payroll, and/or other records. If the Parties determine, based upon further review of available data, that a person previously identified as being a Class Member is not a Class Member, or an individual who was not previously identified as a Class Member is in fact a Class Member but was not so included, the Administrator shall promptly make such addition or deletion as appropriate.
- 10.5 Settlement Award Allocations. Any portion of each Settlement Award that is provided from the Net PAGA Amount shall be allocated as penalties. For the remainder of each Settlement Award, twenty percent (20%) of each Settlement Award shall be allocated as wages, seventy percent (70%) of each Settlement Award shall be allocated as penalties, and ten percent (10%) of each Settlement Award shall be allocated as expense reimbursements. Settlement Awards will be paid out to Participating Class Members, Collective Members, and Aggrieved Employees subject to reduction for their share of withholdings and taxes associated with the wage-portion of the Settlement Awards. The wage-portion of a Settlement Award, if any, will be reported on an IRS Form W-2. Portions of the Settlement Awards that are allocated to penalties and expense reimbursements will be reported on an IRS Form 1099. The employee's share of all required FICA and FUTA

taxes on the wage portions of the Settlement Awards shall be withheld from the Settlement Awards.

- 10.6 The Administrator shall calculate the employer share of taxes and provide Class Counsel and Defense Counsel Defendants' total employer tax contributions within five (5) business days after the final Settlement Award calculations are approved. Defendants shall pay the employer's share of all required FICA and FUTA taxes on the wage portions of the Settlement Awards to the Administrator with the second settlement payment. The Administrator shall remit such payments on behalf of Defendants to the appropriate governmental authorities.
- 10.7 The Administrator will not make any deductions, withholdings, or additional payments, including without limitation, medical or other insurance payments or premiums, employee 401(k) contributions or matching employer contributions, wage garnishments except to the extent clearly required by law, or charity withholdings, from or with respect to the payments to Participating Class Members, Collective Members, and Aggrieved Employees, and entry of the Final Approval Order by the Court shall be deemed authority not to make any such deductions, withholdings, or additional payments.
- 10.8 Class Counsel and Defense Counsel do not intend this Agreement to constitute legal advice relating to the tax liability of any Class Member. To the extent that this Agreement, or any of its attachments, is interpreted to contain or constitute advice regarding any federal, state or local tax issue, such advice is not intended or written to be used, and cannot be used, by any person for the purpose of avoiding any tax liability or penalties.
- 10.9 The Parties make no representations as to the tax treatment or legal effect of the payments called for hereunder, and Plaintiffs and Class Members are not relying on any statement or representation by the Parties in this regard. Plaintiffs and Class Members understand and agree that they will be responsible for the payment of any taxes and penalties assessed on the payments to them described herein and as to those portions of the Settlement Payments reported as non-wage income, agree to pay any taxes due or owing by them with respect to such payment.
- 10.10 The Administrator shall provide Class Counsel and Defense Counsel with a final report of all Settlement Awards, at least five (5) business days before the Settlement Awards to Participating Class Members, Collective Members, and Aggrieved Employees are mailed.
- 10.11 The Administrator shall mail all Settlement Awards to Participating Class Members, Opt-In Plaintiffs, and Aggrieved Employees within ten (10) days after the Effective Date or as soon as reasonably practicable thereafter. The Administrator shall then provide written certification of mailing to Class Counsel and Defense Counsel.
- 10.12 All Settlement Award checks shall remain valid and negotiable for one hundred eighty (180) days from the date of their issuance and may thereafter automatically be canceled if not cashed within that time, at which time the right to recover any Settlement Award will be deemed void and of no further force and effect. With ninety (90) days remaining, a

reminder letter will be sent via U.S. mail and, if applicable, email to those who have not yet cashed their settlement check. Regardless of whether they cash their State Law Class Settlement Check, Plaintiffs, Aggrieved Employees, Opt-In Plaintiffs, and Participating Class Members shall be deemed to have finally and forever released Plaintiffs' Released Claims, Released PAGA Claims, Released FLSA Claims, and Released Class Claims, respectively.

- 10.13 **Remaining Monies.** If at the conclusion of the 180-day check cashing period set forth above, any funds remain from checks that are returned as undeliverable or are not negotiated, those monies shall be tendered to the State of California Controller's Office, Unclaimed Property Fund, in the name of the Participating Individual or Opt-In Plaintiff until such time as he or she claims his or her property, as allowed by law, thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure § 384(b).

10.13.1 Within twenty-one (21) days after the distribution of any remaining monies to Participating Individuals who were sent and cashed their Settlement Award check or to the California Controller's Unclaimed Property Fund, Plaintiffs will file a Post-Distribution Accounting. The Post-Distribution Accounting will set forth the total settlement fund, the total number of Class Members, the total number of Class Members to whom Class and Collective Notice was sent and not returned as undeliverable, the number and percentage of valid Requests for Exclusion, the number and percentage of objections, the average and median recovery per Participating Individual, the largest and smallest amounts paid to Participating Individuals, the method(s) of notice and the method(s) of payment to Participating Individuals, the number and value of checks not cashed, the amounts distributed to the California Controller's Unclaimed Property Fund (if applicable), the administrative costs, the attorneys' fees and costs, and the attorneys' fees in terms of percentage of the settlement fund.

11. MISCELLANEOUS PROVISIONS

- 11.1 **Submissions to the LWDA.** At the same time as they submit this Class Action Agreement to the Court for Preliminary Approval, Class Counsel shall submit a copy of this Agreement to the LWDA, as required by California Labor Code § 2699(1)(2). Within ten (10) days following the Effective Date, Class Counsel shall submit a copy of the Final Approval Order and Judgment entered by the Court to the LWDA, as required by California Labor Code § 2699(1)(3).
- 11.2 **Dismissal of Other Lawsuits.** Within five (5) business days following the Effective Date, Class Counsel shall take all necessary steps to effectuate the dismissal of all pending lawsuits subject to this Settlement in their entirety with prejudice as to all Released Parties.
- 11.3 **No Admission of Liability.** This Agreement and all related documents are not and shall not be construed as an admission by Defendants or any of the Released Parties of any fault or liability or wrongdoing.

- 11.4 **Publicity.** The Parties and their Counsel agree that they will not publicize this case and/or the fact, amount or terms of the Settlement, or the names of Defendants associated with the claims in the Complaint/this Settlement, through any mass media, including any social media, websites, or the press (press releases, contact with a member of the press, or press conferences), except as provided for by the Agreement for purposes of effectuating notice required by this Agreement, which shall include the provision of notice to Class Members by mail, and which shall include a settlement website to be established and maintained by the settlement administrator as approved by the Court. If the Parties are contacted by the press about the Settlement, they will respond only that the case has been resolved. Nothing in this paragraph shall prevent Class Counsel from communicating with the Class Members, the LWDA, or the court in which the Action is pending, as may be required in response to inquiries about the terms of this Settlement and/or to fulfill their ethical responsibilities under the Settlement and to their respective clients. Nothing in this paragraph shall prevent Class Counsel from identifying this case for purposes of establishing adequacy in other cases.
- 11.5 **Defendants' Legal Fees.** Defendants' legal fees and expenses in this Action shall be borne by Defendants.
- 11.7 **Cooperation.** The Parties agree to cooperate fully with one another to accomplish and implement the terms of this Settlement. Such cooperation shall include, but not be limited to, execution of such other documents and the taking of such other action as may reasonably be necessary to fulfill the terms of this Settlement. The Parties to this Settlement shall exercise reasonable efforts, including all efforts contemplated by this Settlement and any other efforts that may become necessary by Court order, or otherwise, to effectuate this Settlement and the terms set forth herein.
- 11.8 **Nullification of the Agreement.** In the event: (a) the Court does not preliminarily or finally approve the Settlement as provided herein; or (b) the Settlement does not become Final for any other reason, the Parties agree to engage in follow up negotiations with the intent of resolving the Court's concerns that precluded approval, and if feasible, to resubmit the settlement for approval within thirty (30) days. If the Settlement is not approved as resubmitted or if the Parties are not able to reach another agreement, then either Party may void this Agreement; at that point, the Parties agree that each shall return to their respective positions on the day before this Agreement, that this Agreement shall not be used in evidence or argument in any other aspect of their litigation, and that the Administration Costs incurred to that date shall be split evenly between Plaintiffs, on the one hand, and Defendants, on the other.
- 11.9 **Reduced Service Awards, Fee Award, or Class Counsels' Costs Not a Basis for Voiding Settlement.** If the Court approves Service Awards, a Fee Award, and/or Class Counsels' Costs Award in amounts less than what Plaintiffs and/or Class Counsel request, the Parties agree that the reduction in the Service Award(s), Fee Awards, and/or Class Counsels' Costs Award will not be a basis for nullification of this Settlement. Nor will a reduction in the Service Awards, Fee Award, or Class Counsels' Cost Award in any way

delay or preclude the judgment from becoming Final or the Settlement from becoming effective.

- 11.10 **Inadmissibility of Agreement.** Except for purposes of settling this Action, or enforcing its terms (including that claims were settled and released), resolving an alleged breach, or for resolution of other tax or legal issues arising from a payment under this Agreement, neither this Agreement, nor its terms, nor any document, statement, proceeding or conduct related to this Agreement, nor any reports or accounts thereof, shall be construed as, offered or admitted in evidence as, received as, or deemed to be evidence for any purpose adverse to the Parties, including, without limitation, evidence of a presumption, concession, indication or admission by any of the Parties of any liability, fault, wrongdoing, omission, concession or damage.
- 11.11 **Other Claims.** Plaintiffs are not currently aware of any claims by themselves that are not covered by the Class Members' Released Claims.
- 11.12 **Computation of Time.** For purposes of this Agreement, if the prescribed time period in which to complete any required or permitted action expires on a Saturday, Sunday, or legal holiday, such time period shall be continued to the following business day. The term "days" shall mean calendar days unless otherwise noted.
- 11.13 **Interim Stay of Proceedings.** The Parties agree to hold in abeyance all proceedings in the Action, except such proceedings necessary to implement and complete the Settlement. Further, without further order of the Court, the Parties hereto may agree in writing to reasonable extensions of time to carry out any of the provisions of the Settlement.
- 11.14 **Amendment or Modification.** This Agreement may be amended or modified only by a written instrument signed by counsel for all Parties or their successors in interest. This Agreement may not be discharged except by performance in accordance with its terms or by a writing signed by the Parties hereto.
- 11.15 **Entire Agreement.** This Agreement with exhibits constitutes the entire Agreement among the Parties, and no oral or written representations, warranties or inducements have been made to any Party concerning this Agreement other than the representations, warranties, and covenants contained and memorialized in such documents. All prior or contemporaneous negotiations, memoranda, agreements, understandings, and representations, whether written or oral, are expressly superseded hereby and are of no further force and effect. Each of the Parties acknowledges that they have not relied on any promise, representation or warranty, express or implied, not contained in this Agreement. No rights hereunder may be waived except in writing.
- 11.16 **Authorization to Enter into Agreement.** The Parties warrant and represent that they are authorized to enter into this Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement. The Parties and their counsel shall cooperate with each other and use their best efforts to effect

the implementation of the Agreement. In the event that the Parties are unable to reach resolution on the form or content of any document needed to implement this Agreement, or on any supplemental provisions or actions that may become necessary to effectuate the terms of this Agreement, the Parties shall seek the assistance of the mediator, Hon. Carl J. West (Ret.), to resolve such disagreement.

- 11.17 **Binding on Successors and Assigns.** This Agreement shall be binding upon, and inure to the benefit of Named Plaintiffs, Defendants, Opt-In Plaintiffs, the Class Members, Aggrieved Employees, and their heirs, beneficiaries, executors, administrators, successors, transferees, successors, assigns, or any corporation or any entity with which any party may merge, consolidate or reorganize. 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 herein released and discharged except as set forth herein.
- 11.18 **Counterparts.** This Agreement may be executed in one or more counterparts, including by facsimile or email. All executed counterparts and each of them shall be deemed to be one and the same instrument. All executed copies of this Agreement, and photocopies thereof (including facsimile and/or emailed copies of the signature pages), shall have the same force and effect and shall be as legally binding and enforceable as the original.
- 11.19 **No Signature Required by Class Members.** Only Plaintiffs will be required to execute this Agreement. The Class and Collective Notice will advise all Class Members, Collective Members, and Aggrieved Employees of the binding nature of the releases of claims set forth herein and such shall have the same force and effect as if this Agreement were executed by each Participating Individual.
- 11.20 **Cooperation and Drafting.** The Parties have cooperated in the drafting and preparation of this Agreement; hence the drafting of this Agreement shall not be construed against any of the Parties. The Parties agree that the terms and conditions of this Agreement were negotiated at arm's length and in good faith by the Parties, and reflect a settlement that was reached voluntarily based upon adequate information and sufficient discovery and after consultation with experienced legal counsel.
- 11.21 **Governing Law.** All terms of this Agreement and the exhibits hereto shall be governed by and interpreted according to the laws of the State of California.
- 11.22 **Jurisdiction of the Court.** The Court shall retain jurisdiction with respect to the interpretation, implementation, and enforcement of the terms of this Settlement and all orders and judgments entered in connection therewith, and the Parties and their Counsel submit to the jurisdiction of the Court for this purpose.

* * * **SIGNATURES ON NEXT PAGE** * * *

IN WITNESS WHEREOF, the Parties and their Counsel have executed this Agreement as follows:

Plaintiff: 
Robert Shannon

Date: 10/20/23

Plaintiff: _____
Brenell Whitfield

Date: _____

Plaintiff: _____
Adriana Valdez

Date: _____

Approved as to Form by Class Counsel:

AEGIS LAW FIRM, PC

By: 
Fawn F. Bekam

Date: 10/20/2023

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: _____
Aparajit Bhowmik

Date: _____

Defendants:

BURTON RESTAURANTS, LLC

By: _____
Talisin Burton, Managing Member

Date: _____

HIGH PERFORMANCE HOSPITALITY LLC

By: _____
Daniel Gomes, Managing Member

Date: _____

IN WITNESS WHEREOF, the Parties and their Counsel have executed this Agreement as follows:

Plaintiff: _____
Robert Shannon

Date: _____

Plaintiff:  _____
Brenell Whitfield (Oct 24, 2023 16:44 PDT)

Date: Oct 24, 2023

Plaintiff:  _____
Adriana Valdez (Oct 25, 2023 08:25 PDT)

Date: Oct 25, 2023

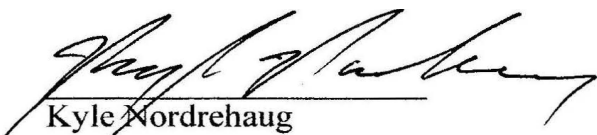
Approved as to Form by Class Counsel:

AEGIS LAW FIRM, PC

By: _____
Fawn F. Bekam

Date: _____

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By:  _____
Kyle Nordrehaug

Date: 10/25/2023

Defendants:

BURTON RESTAURANTS, LLC

By: _____
Talisin Burton, Managing Member

Date: _____

HIGH PERFORMANCE HOSPITALITY LLC

By: _____
Daniel Gomes, Managing Member

Date: _____

IN WITNESS WHEREOF, the Parties and their Counsel have executed this Agreement as follows:

Plaintiff: _____
Robert Shannon

Date: _____

Plaintiff: _____
Brenell Whitfield

Date: _____

Plaintiff: _____
Adriana Valdez

Date: _____

Approved as to Form by Class Counsel:

AEGIS LAW FIRM, PC

By: _____
Fawn F. Bekam

Date: _____

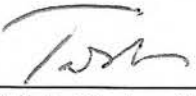
BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: _____
Aparajit Bhowmik

Date: _____

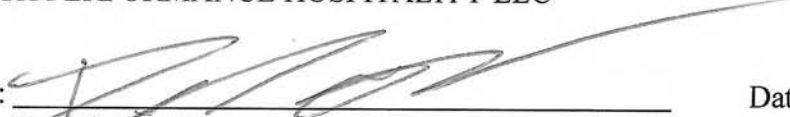
Defendants:

BURTON RESTAURANTS, LLC

By:  _____
Talisin Burton, Managing Member

Date: 10/24/2023

HIGH PERFORMANCE HOSPITALITY LLC

By:  _____
Daniel Gomes, Managing Member

Date: 10/10/2023

**NOTICE OF CLASS AND COLLECTIVE ACTION SETTLEMENT
PLEASE READ THIS NOTICE CAREFULLY**

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

You have been sent this Notice because there is a proposed settlement (the “Settlement”) of a class and collective action lawsuit that Plaintiffs Robert Shannon, Brenell Whitfield, and Adriana Valdez (“Plaintiffs”) filed against Burton Restaurants, LLC and High Performance Hospitality LLC (“Defendants”). Defendants’ records show that you were employed as a non-exempt employee by Defendants in the State of California at some time between January 3, 2018, and March 30, 2023, did not work for Defendants on a military base, and are therefore eligible to participate in the Settlement. The purpose of this Notice is to inform you of the pending Settlement and your rights under it. This Settlement is broken down into both a settlement of State Law Class claims and a settlement of the FLSA Collective claims.

Please understand that this is not a notice of a lawsuit against you. You have not been sued. You are not required to appear in Court in response to this Notice. Please review this Notice and consider your options carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THE SETTLEMENT WITH RESPECT TO THE STATE LAW CLASS CLAIMS	
DO NOTHING	If you do nothing, you will be sent a settlement payment following the later of (a) the date the Court enters a Judgment based on its Final Approval of the Settlement; and (b) the date the Judgment becomes Final, and the releases of claims under California law will apply to you. By cashing your settlement check, you will also release claims under federal law, as described below in Section 6.
EXCLUDE YOURSELF (“OPT OUT”)	If you “opt out” of the lawsuit and choose not to be part of the Settlement as described below in Section 6, the release of claims under federal law and California law will not apply to you, and you <u>will not</u> receive any payment under this Settlement, except as described in the following sentence. If you are an Aggrieved Employee (defined below), you will receive a <i>pro rata</i> portion of the Net PAGA Amount (defined below) whether or not you “opt out” of the Settlement.

OBJECT	You may write an objection to the Court stating why you do not like the Settlement, as described below in Section 6. You may also appear in Court and explain why you do not like the Settlement or use an attorney to appear for you. If you object, this does not mean you opt out of the Settlement (as explained below, if you opt out of the Settlement, you will not be permitted to object to the Settlement).
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YOUR LEGAL RIGHTS AND OPTIONS IN THE SETTLEMENT WITH RESPECT TO THE FLSA COLLECTIVE CLAIMS	
COMPLETE AND RETURN CLAIM FORM	If you fill out and sign the attached Claim Form, you will be “opting in” to the Settlement, you will receive a Settlement Award under the Settlement, and the Settlement and the release of claims described below will apply to you. (Please note that the check is not enclosed with this notice — it will be sent later if you complete and submit the Opt-In Consent Form and after the Court finally approves the Settlement.)
DO NOTHING AND DO NOT RECEIVE YOUR	If you do not fill out and sign the attached Opt-In Consent Form, you will be choosing not to be part of the Settlement, you will not be entitled to a Settlement Award under the Settlement, and the release of claims will not apply to you.

1. Why Should You Read This Notice?

This Notice explains your right to share in the monetary proceeds of this Settlement, exclude yourself from (or “opt out” of) the Settlement, or object to the Settlement. If you object to the Settlement, you cannot opt out of the Settlement, and you will be bound by the terms of Settlement in the event the Court denies your objection.

The Superior Court of California County of Alameda has preliminarily approved the Settlement as fair and reasonable. The Court will hold a Final Approval Hearing on _____ at _____, before the Honorable Keri Katz at the Superior Court of California for the County of San Diego, Department C-74, 330 W. Broadway, San Diego, CA 92101.

2. What Is This Case About?

The claims in this lawsuit are brought under California law and under the federal Fair Labor Standards Act (“FLSA”).

The lawsuit alleges that individuals whom Defendants employed as non-exempt employees in California but not on military bases, between January 3, 2018, and March 30, 2023 were not provided meal and rest breaks, were not compensated for all hours worked, were not paid minimum, straight time, overtime, or double time wages, were not paid all wages due upon termination, were not provided timely and compliant itemized wage statements, and were not reimbursed for necessary business expenses. This lawsuit seeks recovery of unpaid wages, statutory damages, civil penalties under the California Labor Code Private Attorneys General Act (“PAGA”), unreimbursed business-related expenses, restitution, interest, attorneys’ fees and costs.

The lawsuit also alleges that individuals whom Defendants employed as non-exempt employees on military bases between June 30, 2019, through March 30, 2023, were not appropriately paid minimum and overtime wages pursuant to the requirements of the FLSA.

Defendants deny these claims and believe that they have strong legal and factual defenses to them. Defendants also do not believe that Plaintiffs’ claims meet the requirements for class or collective certification. Nevertheless, in order to avoid the expense and delay associated with further litigation and appeals, Defendants have chosen to settle this matter and to make payments to current and former employees.

This Settlement is the result of good faith, arm’s length negotiations between Plaintiffs and Defendants, through their respective attorneys. Both sides agree that in light of the risks and expenses associated with continued litigation, this Settlement is fair and appropriate under the circumstances, and in the best interests of the Class Members. This Settlement is a compromise and is not an admission of liability on the part of Defendants.

The Court has not ruled on the merits of Plaintiffs’ claims or Defendants’ defenses.

The Administrator has created a Settlement website, which can be accessed at [\[INSERT URL\]](#). The Settlement website allows interested persons to view the Agreement, all papers filed by Class

Counsel to obtain Court approval of the Agreement, and this Notice of Class and Collective Action Settlement (in generic form). The Settlement website also provides contact information for Class Counsel and the Administrator, and may be accessed to submit electronically-completed Claim Forms.

3. How Will the Settlement Payment Be Distributed?

The total settlement amount is \$750,000.00, which Defendants will pay into a settlement fund as follows: (1) \$375,000.00 will be paid within sixty (60) days of final approval; and (2) \$375,000.00 will be paid within six (6) months of final approval. This amount will mostly be distributed to the current and former employees who meet the definitions for participating in the Settlement, but it will also be used to pay for attorneys' fees and costs awarded by the Court, any enhancement payments to Plaintiffs that are awarded by the Court, the settlement administration costs, and a payment to the California Labor and Workforce Development Agency ("LWDA") that is required by the California Private Attorneys General Act ("PAGA").

The attorneys for Plaintiffs and the Settlement Class (referred to as "Class Counsel") will ask the Court to award them one-third of the settlement amount, which is \$250,000.00, to compensate them for their services in this matter. Class Counsel will also request reimbursement for their costs spent in litigating this case, not to exceed \$25,000.00. Class Counsel will file a motion with the Court setting forth the bases for their requested costs and fees.

Plaintiffs Robert Shannon, Brenell Whitfield, and Adriana Valdez will ask the Court to award them \$10,000.00 each, respectively, for their role as the named plaintiffs prosecuting this lawsuit on the behalf of all Class Members. This payment would also come from the settlement fund.

The settlement administration costs are capped at \$18,750.00, and this payment will also come from the settlement fund.

The payment to the LWDA and Aggrieved Employees in connection with the PAGA component of the Settlement will be \$50,000, and this payment will also come from the settlement fund.

The remainder of the settlement fund after subtracting the amounts described above is the Net Settlement Amount that will be distributed to Participating Individuals, which include Participating Class Members, Opt-In Plaintiffs, and Aggrieved Employees. Opt-In Plaintiffs are Collective Members who submit a valid Claim Form.

4. If I Choose to Participate in the Settlement, How Do I Receive Payment and How Much Can I Expect to Receive?

You do not need to do anything to be sent your State Law Class Settlement Check. Just watch your mail for a check and cash it when you get it. You will have 180 days from issuance of the check to cash it. However, if you want to also receive your FLSA Collective Settlement Check, you must timely submit a Claim Form.

- The State Law Class Settlement Checks of Participating Class Members, shall be a pro rata portion of the 2/3 of the Net Settlement Amount based on the participating Class Member's individual eligible workweeks that the individual was employed by Defendants from January 3, 2018, through March 30, 2023 in the State of California. For those Participating Class Members that worked for Defendants exclusively on a military base(s), each workweek during which the individual was employed by Defendants in California during the relevant time period will be equal to one (1) settlement share. For those Participating Class Members that did not work for Defendants exclusively on a military base(s), workweeks during which such Participating Class Member was employed by Defendants in California will instead be equal to three (3) settlement shares to reflect the increased value of state law claims for work not on military base(s). The total number of settlement shares for all Participating Class Members will be added together and the resulting sum will be divided into the 2/3 of the Net Settlement Amount to reach a per share dollar figure. That figure will then be multiplied by each Participating

Payments to participating Class Members and Opt-In Plaintiffs will be calculated on the number of eligible workweeks. The Net Settlement Amount shall be split into 2/3 towards the State Law Class Settlement with Participating Class Members and 1/3 towards the FLISA Collective Settlement with Opt-In Plaintiffs further broken down as follows:

If you dispute the number of workweeks as shown on this Notice or whether or not you worked for Defendants exclusively on a military base, you may produce evidence to the Administrator establishing the dates you contend to have worked for Defendants and where you contend you worked for Defendants. To do so, send a letter to the Administrator explaining the basis for your dispute and attach copies of the supporting evidence. Unless you present convincing evidence proving you worked more workweeks than shown by Defendants' records, your Settlement Award will be determined based on Defendants' records. Any disputes must be postmarked by **[Insert Response Deadline]** and should be mailed to **[Insert Administrator Address]**. The Administrator will notify you of the decision on the dispute.

All Settlement Award determinations will be based on Defendants' timekeeping, payroll, and/or other records for Class and Collective Members. Based on Defendants' records, you are estimated to have worked **[]** workweeks for Defendants during the relevant Class Period in the State of California and **[]** workweeks for Defendants during the relevant Collective Period in the State of California. In addition, based on Defendants' records, you **[did/did not]** work for Defendants exclusively on a military base during such time periods.

According to records maintained by Defendants, your total estimated gross settlement payment including both your State Law Class Settlement Check and your FLISA Collective Settlement Check will be at least \$ **[]**. Breaking this down, your State Law Class Settlement Check is estimated to be at least \$ **[]** and your FLISA Collective Settlement Check is estimated to be at least \$ **[]**. These amounts are estimated amounts, and your final settlement payment is expected to differ from this amount (i.e., it could be higher) and will be calculated as set forth below. **As set forth above, to receive the FLISA Collective Settlement Check, you MUST complete, sign, and submit the Claim Form enclosed with this Notice.**

Class Member's number of settlement shares to determine his or her pro rata portion of the 2/3 of the Net Settlement Amount towards the State Law Class Settlement .

- The FLSA Collective Settlement Checks of Opt-In Plaintiffs, shall be a pro rata portion of the 1/3 of the Net Settlement Amount based on their individual workweeks during the Collective Period as follows: For each Workweek during which an Opt-In Plaintiff was employed by Defendants during the Collective Period, he or she shall be eligible to receive a pro rata portion of the 1/3 of the Net Settlement Amount based on the number of Workweeks he or she was employed during such Collective Period. The total number of such Workweeks during the Collective Period will be added together and the resulting sum will be divided into the 1/3 of the Net Settlement Amount to reach a per Workweek dollar figure for the FLSA Collective Settlement. That figure will then be multiplied by each Opt-In Plaintiff's number of Workweeks during the Collective Period to determine his or her pro rata portion of the 1/3 of the Net Settlement Amount towards the FLSA Collective Settlement.

When calculating the individual Settlement Awards (both State Law Class Settlement Checks and FLSA Collective Settlement Checks) for purposes of these Notices of Settlement, the Administrator has assumed that no Class Members opt-out and all Collective Members opt-in. When calculating the individual Settlement Awards to Class Members following Final Approval (for purposes of preparing individual Settlement Award checks), the Administrator will not include Class Members who validly request exclusion from the Settlement or any Collective Member who fails to timely opt-in to this Action by submitting a Claim Form. This means that for purposes of the Notices of Settlement, the Administrator has assumed that all potential Class Members and Collective Members will participate in this Settlement, even though that may not remain the case following Final Approval. It is thus likely that your total estimated settlement payment will be higher than indicated in this Notice.

Whether or not they otherwise opt out of the Settlement, Aggrieved Employees who worked for Defendant between June 30, 2021, and March 30, 2023 (the "PAGA Period") in the State of California will be Participating Individuals for purposes of the settlement of the PAGA claim in the lawsuit and will receive a *pro rata* share of the Net PAGA Amount (*i.e.*, \$12,500) based on their number of workweeks employed by Defendants as non-exempt employees during the PAGA Period.

For tax reporting purposes, Settlement Awards to Participating Individuals and participating Collective Members will be allocated as follows: any portion of each Settlement Award that is provided from the Net PAGA Amount shall be allocated as penalties; for the remainder of each Settlement Award, twenty percent (20%) of each Settlement Award shall be allocated as wages, seventy (70%) of each Settlement Award shall be allocated as penalties and interest, and ten percent (10%) of each Settlement Award shall be allocated as expense reimbursements. None of the Parties or attorneys makes any representations concerning the tax consequences of this Settlement or your participation in it. Participating Individuals and participating Collective Members should consult with their own tax advisors concerning the tax consequences of the Settlement.

If you participate in the Settlement, you will have 180 days to cash the check that will be sent to you. If at the conclusion of the 180-day check void period, there are any uncashed checks, those monies will be paid to the California Unclaimed Property Fund in the name of the respective Participating Individuals, subject to the Court's approval in the Final Approval Order.

It is your responsibility to keep a current address on file with the Administrator to ensure receipt of your monetary Settlement Award. If you fail to keep your address current, you may not receive your Settlement Award.

5. What Are the Releases?

Upon Final Approval of the Agreement and payment of amounts set forth under the Settlement, Participating Individuals and all Collective Members who opt in by submitting their completed and signed Claim Forms will release claims as follows ("Released Claims") against Defendants, their present and former parent companies, subsidiaries, related or affiliated companies, and their shareholders, officers, directors, employees, agents, attorneys, insurers, successors and assigns, and any individual or entity that could be liable for any of the Released Claims (collectively, the "Released Parties"):

- **Released Class Claims:** All Participating Class Members shall, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release and discharge Released Parties from any and all causes of action, claims, rights, damages, punitive or statutory damages, penalties, interest, attorneys' fees, costs, liabilities, expenses, and losses arising from or related to the acts, facts, transactions, theories, occurrences, representations, or omissions that were alleged, or reasonably could have been alleged, in the Operative Complaint based on the factual predicates alleged in the Operative Complaint, including, but not limited to: (a) any alleged failure to pay all wages due including minimum wages or overtime wages; (b) any alleged failure to timely pay wages at termination or during employment; (c) any alleged failure to provide meal or rest periods or to pay meal or rest period premiums; (d) any alleged failure to maintain and preserve, in a centralized location in California, any required payroll or employee records; (e) any alleged failure to provide compliant wage statements; (f) any alleged failure to reimburse business expenses; (g) any right or claim for civil penalties pursuant to the California Labor Code, the California Industrial Welfare Commission Wage Orders, the California Private Attorneys General Act of 2004 (Cal. Lab. Code § 2698, *et seq.*); (h) any right or claim for unfair business practices in violation of California Business & Professions Code § 17200 *et seq.*; and (i) any violation or breach of the California Labor Code arising from or related to the conduct or omission alleged, or could have reasonably been alleged, in the Operative Complaint and the conduct or omission ascertained in the course of the Action, including without limitation, any violation or breach of California Labor Code §§ 200, 201, 201.3, 202, 203, 204, 223, 226, 226.7, 510, 512, 1174, 1182.11, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2802, or any other similar state or local statute, wage order, rule, regulation, ordinance, or authority. Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act,

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

- **Released PAGA Claims:** All Aggrieved Employees shall release and discharge, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all individual and representative claims for civil penalties under PAGA that were alleged, or reasonably could have been alleged, in the Action based on the facts stated in the Operative Complaint and ascertained in the course of the Action, including, but not limited to, any right or claim for PAGA penalties predicated on alleged nonpayment or under-payment of minimum and overtime wages, failure to pay or under-payment of wages, overtime, meal and rest period premiums, failure to provide meal and rest periods, nonpayment or under-payment of premiums for meal or rest period violations, failure to timely pay wages, failure to pay all wages due at termination, failure to maintain accurate records, failure to provide and/or maintain accurate and itemized wage statements, failure to reimburse business expenses, and any claims for PAGA civil penalties under the California Labor Code, Wage Orders, regulations, and/or other provisions of law, including any alleged violations of the California Labor Code §§ 200, 201, 201.3, 202, 203, 204, 223, 226, 226.7, 510, 512, 1174, 1182.11, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2800 and 2802.
- In addition, if you opt in by submitting your completed and signed Claim Form, you will be deemed to have opted-in to this action pursuant to the FLSA and will thereby release, and agree to release, the **Released FLSA Claims**, which include any and all causes of action, claims, rights, damages, punitive or statutory damages, penalties, interest, attorneys' fees, costs, liabilities, expenses, and losses under the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.* or under any applicable state law, statute, rule, or regulation during the period from June 30, 2019 through March 30, 2023, which arise from or are related to the acts, facts, transactions, theories, occurrences, representations, or omissions that were alleged, or reasonably could have been alleged, in the Operative Complaint.

6. What Are My Rights?

Please see Section 4 above for an estimate of how much you will receive under the settlement if you (1) do not opt out of the Settlement Class and (2) choose to opt in as a Collective Member. To receive an FLSA Collective Settlement Payment as an Opt-In Plaintiff, you **MUST** fill out and return the attached claim form. Therefore, you have the following options:

Opt-In to the FLSA Collective Settlement and Do Not Opt Out of the State Law Class Settlement: Fill out, sign, and return the attached Claim Form to participate in the FLSA Collective Settlement and receive your FLSA Collective Settlement Payment as an Opt-In Plaintiff and do not timely and validly opt-out of the State Law Class Settlement. If you do not timely and validly opt-out, you will automatically become a Participating Class Member and receive your prorated State Law Class Settlement Payment, and will be bound by the Settlement including its release provisions.

Do Nothing: If you are a Class Member and do not timely and validly opt-out and do not timely fill out and return the attached Claim Form, you will automatically become a Participating Class Member and receive your prorated State Law Class Settlement Payment, and will be bound by the Settlement including its Released Class Claims and Released PAGA Claims. However, you will not receive your FLSA Collective Settlement Payment.

Opt-Out of the State Law Class Settlement and Opt-In to the FLSA Collective Settlement: If you are a Class Member and do not wish to be bound by the State Law Class Settlement, you must submit a written request for exclusion from the Settlement (“opt-out”), postmarked by **[Insert Response Deadline]**. The written request for exclusion must contain your full name, address, telephone number, email address (if applicable), employee ID, and must be signed individually by you. No opt-out request may be made on behalf of a group. The opt-out request must be sent by mail to the Administrator at **[Insert Administrator Address]**. Any person who requests exclusion (opts out) of the settlement will not be entitled to any State Law Class Settlement Payment and will not release the Released Class Claims or have any right to object, appeal or comment thereon. However, you can still fill out, sign, and return the attached Claim Form to participate in the FLSA Collective Settlement and receive your FLSA Collective Settlement Payment as an Opt-In Plaintiff though you will release the Released FLSA Claims. (Notwithstanding the foregoing, you cannot opt out or otherwise exclude yourself from the PAGA component of the Settlement—if you are an Aggrieved Employee, whether or not you submit a written request for exclusion from the Settlement, you will receive a pro rata portion of the Net PAGA Amount and you will be bound by the release of the Released PAGA Claims described above.)

Opt-Out of the State Law Class Settlement and Do Not Opt-In to the FLSA Collective Settlement: If you are a Class Member and do not wish to be bound by the State Law Class Settlement, you must submit a written request for exclusion from the Settlement (“opt-out”), postmarked by **[Insert Response Deadline]**. The written request for exclusion must contain your full name, address, telephone number, email address (if applicable), employee ID, and must be signed individually by you. No opt-out request may be made on behalf of a group. The opt-out request must be sent by mail to the Administrator at **[Insert Administrator Address]**. Any person who requests exclusion (opts out) of the settlement will not be entitled to any State Law Class Settlement Payment and will not release the Released Class Claims or have any right to object, appeal or comment thereon. In addition, if you do not want to be bound by the FLSA Collective Settlement, then do not fill out the Claim Form and you will not receive your FLSA Collective Settlement Payment or release the Released FLSA Claims. (Notwithstanding the foregoing, you cannot opt out or otherwise exclude yourself from the PAGA component of the Settlement—if you are an Aggrieved Employee, whether or not you submit a written request for exclusion from the Settlement, you will receive a pro rata portion of the Net PAGA Amount and you will be bound by the release of the Released PAGA Claims described above.)

Object: If you received this Notice and wish to object to the Settlement, you must submit a written statement objecting to the Settlement by **[Insert Response Deadline]**. The statement must state the factual and legal grounds for your objection to the settlement. The statement must state your full name, address, telephone number, and email address (if applicable), and must be signed by you. The statement must be mailed to the Administrator at the following address: **[Insert Administrator’s Address]**.

If you mail a written objection, you may also, if you wish, appear at the Final Approval Hearing to discuss your objection with the Court and the parties to the Lawsuit. Your written objection must state whether you will attend the Final Approval Hearing, and your written notice of your intention to appear at the Final Approval Hearing must be filed with the Court and served upon Class Counsel and Defense Counsel on or before the Response Deadline. To be heard at the Final Approval Hearing you must also not opt out of the Settlement. If you wish to object to the Settlement but fail to return your timely written objection in the manner specified above, you shall be deemed to have waived any objection and shall be foreclosed from making any objection (whether by appeal or otherwise) to the Settlement. The postmark date of mailing to Class Counsel and Defense Counsel shall be the exclusive means for determining that an objection is timely mailed to counsel. Objections shall only be considered if the Class Member has not opted out of the Settlement. The failure to submit a written objection as a prerequisite to appearing in court to object to the settlement may be excused upon a showing of good cause.

You may also withdraw your objection in writing by mailing a withdrawal statement to the Court and counsel for the Parties postmarked no later than **INSERT DATE – 10 business days before final approval hearing**, orally at the Final Approval hearing, or as otherwise ordered by the Court.

7. Can Defendant Retaliate Against Me for Participating in this Lawsuit?

No. Your decision as to whether or not to participate in this Lawsuit will in no way affect your work or employment with Defendant or future work or employment with Defendants. It is unlawful for Defendants to take any adverse action against you as a result of your participation in this Settlement. In fact, Defendants encourage you to participate in this Settlement.

8. Who Are the Attorneys Representing Plaintiffs and the Settlement Class and Collective and Defendants?

Plaintiffs and individuals participating in the Settlement are represented by the following attorneys acting as Class Counsel:

AEGIS LAW FIRM, PC

Samuel A. Wong
Kashif Haque
Jessica L. Campbell
Fawn F. Bekam
9811 Irvine Center Drive, Suite 100
Irvine, California 92618

BLUMENTHAL NORDREHAUD BHOWMIK DE BLOUW LLP

Norman B. Blumenthal
Kyle R. Nordrehaud
Aparajit Bhowmik
Nicholas J. De Blouw
2255 Calle Clara
La Jolla, CA 92037

Defendants are represented by the following attorneys:

SNELL & WILMER L.L.P.

Christy D. Joseph

Erin D. Leach

Kevin M. Brown

12230 El Camino Real, Suite 300

San Diego, CA 92130

9. How Will the Attorneys for the Settlement Class Be Paid?

Class Counsel will be paid from the Gross Settlement Amount of \$750,000. You do not have to pay the attorneys who represent the Settlement Class. The Agreement provides that Class Counsel will receive attorneys' fees of up to one-third (1/3rd) of \$750,000.00 (i.e., \$250,000.00) plus their out-of-pocket costs, not to exceed \$25,000.00. Class Counsel will file a Motion for Attorneys' Fees and Costs with the Court. The amount of attorneys' fees and costs awarded will be determined by the Court at the Final Approval Hearing.

10. Where Can I Get More Information?

If you have questions about this Notice, or the Settlement, or if you did not receive this Notice in the mail and you believe that you are or may be a member of the Settlement, you should contact the Class Counsel.

This Notice is only a summary. For the precise terms and conditions of the Settlement, please see the Agreement available at the Settlement website at [\[Insert URL\]](#), by contacting Class Counsel at 949-379-6250.

PLEASE DO NOT CONTACT THE COURT, THE CLERK OF THE COURT, THE JUDGE, OR DEFENDANTS FOR INFORMATION ABOUT THE PROPOSED SETTLEMENT OR THIS LAWSUIT.

CLAIM FORM

To claim your full settlement payment of \$

Shannon, et al. v. Burton Restaurants, LLC, et al. (San Diego County Superior Court Case No. 37-2022-00025778-CU-OE-CTL): Class and Collective Action Settlement

YOU MUST SUBMIT THIS CLAIM FORM BY [insert opt-in deadline] to receive a FLSA settlement payment in addition to your state law payment (if you do not opt out of the state law class action component), for a combined total gross amount of \$ from the settlement. You can submit this claim form by following the instructions below in Section 3.

NOTE: Please read the enclosed Class and Collective Notice before completing this Claim Form. This Claim Form is being sent by the Administrator, Phoenix Settlement Administrators.

YOUR SETTLEMENT SHARE: Your FLSA Settlement Payment, which will only be claimed and paid if you timely submit this Claim Form, is a gross total amount of \$. If you properly submit this Claim Form by the deadline, and the Court approves the settlement, you should receive approximately this amount as an additional settlement payment, minus applicable taxes. If you submit your Claim Form by the deadline, and this amount increases due to certain Court rulings or redistribution of unclaimed funds, you will receive a higher amount.

If you do not submit this Claim Form to claim your additional FLSA Settlement Payment, you will not release the Released FLSA Claims, but you will only receive your State Law Settlement Payment in exchange for your release of “Released State Law Claims,” as specifically defined and explained in the Release set forth in the Settlement Agreement and in the Notice. The gross total amount of the settlement payment you will receive if you do not timely return this Claim Form is: \$.

1. Signature and Confirmation of Consent to Join Collective Action and Claim FLSA Payment

I declare that:

1. I have read the Notice and I understand that, in signing this form, I consent to claim my FLSA Settlement Payment by joining this collective action for settlement purposes pursuant to the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 216(b). I also understand that I am releasing the “Released FLSA Claims” in this litigation, as specifically defined and explained in the Release set forth in the Settlement Agreement and in the Notice.

2. I wish to claim and receive my full share of the proposed Settlement including the FLSA Settlement Payment.

Signed: _____ Dated: _____, 2023.

2. Postmark Deadline

Your Claim Form must be POSTMARKED (or e-mailed/faxed/submitted online) by [insert opt in deadline]. Late Claim Forms will not be accepted absent good cause shown. A self-addressed, postage pre-paid stamped envelope has been enclosed for your convenience. This Claim Form must be mailed or delivered to the Administrator at:

***Shannon, et al. v. Burton Restaurants, LLC, et al. (San Diego County Superior Court
Case No. 37-2022-00025778-CU-OE-CTL)***

[insert Claims Administrator's contact information]

You can also email the Claim Form to [insert email], or fax it to [insert fax #], or electronically sign and submit it via the Claims Administrator's online portal at [insert URL]

3. Questions?

If you have questions regarding this Claim Form or the Settlement, please contact the Administrator at the number above. If your question requires legal advice, please contact Class Counsel (the attorneys who represent you and the other Class Members) as follows:

AEGIS LAW FIRM, PC

Samuel A. Wong
Kashif Haque
Jessica L. Campbell
Fawn F. Bekam
9811 Irvine Center Drive, Suite 100
Irvine, California 92618

BLUMENTHAL NORDREHAUD BHOWMIK DE BLOUW LLP

Norman B. Blumenthal
Kyle R. Nordrehaud
Aparajit Bhowmik
Nicholas J. De Blouw
2255 Calle Clara
La Jolla, CA 92037

4. Your Contact Information (The confidential contact information you provide to the Administrator below will not be filed with the Court)

Please review, correct, and complete your contact information so that we can get your Settlement check to you once the Court grants final approval of the Settlement. The address listed is where we will send your Settlement check.

<<Name>> _____
<<Address>> _____
<<City>> <<State>> <<Zip Code>> _____
<<Email>> _____
Employee ID #: << Employee ID #>> _____
Last four digits of Social Security number: <<SSN>> _____

The following additional information will help us reach you if we have questions or difficulty sending you your settlement check.

Telephone number (cell): _____
Telephone number (home): _____
Additional E-mail: _____

Please do not provide your work e-mail addresses or other work contact information.