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1. I am an attorney licensed and admitted to practice before all courts of the State of California. I am an attorney for the law firm of Makarem & Associates APLC, the counsel of record for the Plaintiff in this case. I make this declaration in support of Plaintiff's Motion For Preliminary Approval of a Class Action Settlement. I have personal knowledge of the facts herein, and if called as a witness I could and would competently testify to them under oath.

2. **Defendant and Plaintiff** - This case is a putative class action alleging violations of California state law. Defendant operates a restaurant inside of Ventura Harbor.

4. **Plaintiff's Allegations** - This action was initially filed on June 22, 2023, asserting a wage and hour class action filed by Plaintiff on behalf of herself and all nonexempt employees employed by Defendants in the State of California within the statutory period, and was amended on August 29, 2023 to also include an action for civil penalties under the Labor Code Private Attorneys General Act, Cal. Labor Code § 2698, et seq. The First Amended Class Action Complaint sets forth claims for (i) failure to pay minimum wages; (ii) failure to pay overtime wages; (iii) failure to provide meal periods; (iv) failure to provide rest periods; (v) failure to furnish accurate wage statements; (vi) failure to indemnify employees for necessary expenditures and losses; (vii) failure to pay earned wages upon termination or discharge; (viii) unfair competition in violation of Business & Professions Code Section 17200; and (ix) violation of Labor Code section 2698, et. seq. Plaintiff alleged these claims on behalf of all of Defendants' non-exempt employees in California.

1 practice, required employees to skip or take non-compliant meal and rest periods in order to
2 complete additional work, resulting in meal periods that were regularly less than thirty minutes in
3 length and were frequently taken after the fifth hour of work. As a result of these violations, Plaintiff
4 sought to recover meal and rest period premiums, unpaid minimum wages, penalties for unpaid
5 wages upon termination, penalties for non-compliant wage statements, prejudgment interest, costs
6 of suit, and attorneys' fees.

7 **6. Defendant's Response** – Defendants contend that at all times they complied with
8 California law. Defendants assert that they properly paid employees for all time worked.
9 Defendants further contend that they provided Plaintiff and other putative class members with
10 compliant meal and rest periods, and that to the extent any employee did not take a compliant meal
11 or rest period, the reason for the non-compliant meal or rest period would be an individualized issue
12 that would preclude class certification.

13 **7. Investigation** - Before filing the lawsuit, Class Counsel investigated and researched
14 the facts and circumstances underlying the pertinent issues and the laws applicable thereto. This
15 required thorough discussions between Class Counsel and the Plaintiff, as well as preliminary
16 research into the various legal issues and employment practices involved in the case. After
17 conducting their initial investigation, Class Counsel determined that Plaintiff's claims were well-
18 suited for class action adjudication owing to what appeared to be a common set of policies and
19 procedures that impacted Plaintiff and other putative class members in a similar fashion.

20 **8.** After filing the lawsuit, Class Counsel conducted an extensive investigation of the
21 facts and claims giving rise to the action, including: (1) reviewing and analyzing time and payroll
22 records and Defendants' written policies and procedures;(2) researching the applicable law and
23 evaluating potential defenses; (3) evaluating the damages based on countervailing interpretations
24 of California law; (4) Conducting formal discovery; and (5) reviewing other documentation
25 provided in litigation, including information relating to Defendants' operations, policies and
26 procedures, meal and rest breaks, premium pay for non-compliant meal and rest breaks,
27 timekeeping records, and recording of hours worked.

28 **9.** Defendants, for their part, vigorously contested liability, the amount of claimed

1 damages, and the propriety of class certification. After Class Counsel analyzed the relevant
2 documentary and testamentary evidence, reviewed Defendants’ policies and procedures, and
3 prepared for mediation, Class Counsel determined that this case was appropriate for resolution via
4 settlement.

5 10. **Mediation** - The parties agreed to participate in settlement discussions over the
6 course of the litigation, including mediation. Specifically, the Parties conducted a private mediation
7 with experienced mediator Henry Bongiovi on June 7, 2024. A settlement in principle was
8 eventually reached and the Parties thereafter negotiated the details of a long form settlement
9 agreement. As a result, the Parties eventually negotiated the details of the settlement agreement
10 which cut-off the settlement class at a specific date to not increase the negotiated class size and
11 which Plaintiff now seeks the Court’s approval thereof.

12 **TERMS OF THE SETTLEMENT**

13 11. Attached hereto as Exhibit “A” is a true and correct copy of the Long-Form
14 Stipulation of Settlement Regarding Putative Class Action Settlement and PAGA Settlement
15 (“Settlement Agreement”).

16 12. **Settlement Class** - “Class” means all persons employed by Defendant The
17 Boatyard, Inc. and paid on an hourly basis at any location in California at any time between June
18 22, 2019 and June 7, 2024. (There is one person who meets this definition of “Class” who entered
19 into a settlement and release agreement with Defendant prior to the mediation of the Action. This
20 individual is specifically excluded from the Class and shall not participate in the Settlement in any
21 manner, including in the receipt of any notices related to the Settlement. Defendant shall identify
22 this individual to the Claims Administrator upon preliminary approval of the Settlement).
23 Defendant represents that the Class consists of 119 Class Members that worked a total of
24 approximately 8,721 workweeks during the Class Period.

25 13. **Gross Settlement Amount** – Under the terms of the proposed agreement, the parties
26 have agreed resolve the claims of the Class for Five Hundred Thousand Dollars and No Cents
27 (\$500,000.00) which is non-reversionary, and no portion of the Settlement Amount will be returned
28 to Defendants (“Gross Settlement Amount”).

1 14. **Class Counsel’s Attorneys’ Fees:** The settlement calls for up to 35% of the Gross
2 Settlement Amount or One Hundred Seventy-Five Thousand Dollars (\$175,000), in attorneys’ fees
3 and up to eighteen thousand dollars (\$18,000) in litigation costs (including any expert costs). The
4 fee request is in line with fee awards commonly granted across this state as well as the fee
5 percentage commonly contracted for by attorneys within this state

6 15. **Class Representative Incentive Award:** Up to Twenty Thousand Dollars
7 (\$20,000) to the named Plaintiff for her services as the class representative. The payment is for the
8 service rendered in furtherance of class members claims, for the risk undertaken for payment of
9 costs in the event such litigation was unsuccessful, for any stigma the plaintiff may suffer going
10 forward due to the public information available via the Internet for having filed a class action
11 against an employer, and for her agreement to provide a full release of his claims as compared to
12 the limited release required of class members.

13 16. Here, the class representative was not simply a bystander in the prosecution of this
14 action. From the time that this case was filed, the representative whenever needed, actively
15 provided information and evidence. Further, the class representative was always available to
16 consult with, and regularly did consult with counsel, both in person and via telephone. The class
17 representative was also actively involved in discussions regarding the resolution of this matter and
18 approved the settlement terms on behalf of herself and the class members.

19 17. **Settlement Administration Costs:** The proposed settlement administrator is CPT
20 Group, Inc. (“CPT”). CPT is an experienced class notice administration company, and has acted as
21 claims administrator in numerous wage and hour cases throughout the country. The settlement
22 authorizes up to Eleven Thousand Dollars (\$11,000) for the reasonable costs of administration of
23 the settlement.

24 18. **Labor Workforce Development Agency’s (“LWDA”) portion of the PAGA**
25 **Payment** – 75% of the Ten Thousand Dollars (\$10,000) PAGA Allocation to the LWDA for the
26 release of the PAGA claim.
27
28

1 19. **Net Settlement Amount and Payout to Class Members:** The Net Settlement
2 Amount will be approximately \$266,000, plus the \$2,500 representing the 25% of the PAGA
3 Allocation not paid to the LWDA.

4 20. The Settlement Administrator shall divide the Net Settlement Amount by the
5 aggregate Individual Workweeks for all Settlement Class Members during the Class Period, in
6 order to determine the amount each Settlement Class Member is entitled to for each workweek s/he
7 was employed by Defendants (the “Weekly Amount”). The Settlement Administrator will multiply
8 the Weekly Amount by the total number of workweeks that each Settlement Class Member was
9 employed and deduct all Employee’s Taxes and Required Withholding from the portion attributable
10 to wages to arrive at the Individual Settlement Amount for each Class Member. Defendants will
11 provide the Settlement Administrator with any information reasonably necessary to perform the
12 calculation of Individual Workweeks for each Settlement Class Member, and any other reasonably
13 required information the Settlement Administrator requests to perform the calculations required
14 under this Settlement Agreement.

15 21. The individual settlement payments will be apportioned as ten percent (10%) wages;
16 ninety percent (90%) penalties and interest.

17 22. There are estimated to be 119 Class Members. The estimated 119 Class Members
18 worked approximately 8,721 workweeks between June 22, 2019 to June 7, 2024 meaning
19 participating class members will receive approximately \$30.79 per week (\$268,500 / 8,721
20 workweeks) they worked with the Defendants. Assuming this Court makes no modification, Class
21 Members would recover approximately \$2,256.30 on average (\$268,500 / 119 Class Members).

22 23. The Parties agree that Ten Thousand Dollars (\$10,000) of the Gross Settlement
23 Amount will be allocated to resolving Plaintiff’s claims brought pursuant to PAGA, with seventy-
24 five percent (75%) of this amount, or Seven Thousand Five Hundred Dollars (\$7,500) to the LWDA
25 for the release of the PAGA claim, and twenty-five percent (25%), or Two Thousand Five Hundred
26 Dollars (\$2,500) to be paid to Class Members employed during the PAGA Period. A true and
27 correct copy of this declaration, the corresponding motion and the settlement agreement will be
28 uploaded to the LWDA’s website concurrently with filing.

1 24. **Release By Participating Class Members:** Participating Class Members, on behalf
2 of themselves and their respective former and present representatives, agents, attorneys, heirs,
3 administrators, successors, and assigns, release Released Parties from (i) all claims that were
4 alleged, or reasonably could have been alleged, based on the Class Period facts stated in the
5 Operative Complaint including, e.g., (a) any and all claims involving any alleged failure to pay
6 minimum wage; (b) any and all claims involving any alleged failure to pay overtime wages; (c) any
7 and all claims involving any alleged failure to provide meal periods or to pay meal period
8 premiums; (d) any and all claims involving any alleged failure to provide rest periods or to pay rest
9 period premiums; (e) any and all claims involving the alleged failure to provide accurate wage
10 statements; (f) any and all claims involving the alleged failure to indemnify for expenses and losses;
11 (g) any and all claims for waiting-time penalties; (h) any and all claims involving alleged unfair
12 competition; (i) any and all claims involving individual claims for civil penalties under the Private
13 Attorneys General Act of 2004, Labor Code section 2698 et seq.; and, (j) any and all claims alleged
14 that involve the statutes and/or regulations identified in the Operative Complaint, including
15 California Labor Code sections 201, 202, 203, 226, 226.7, 510, 512, 1194, 1194.2, 1197.1, and
16 2802, Business and Professions Code sections 17200 and 17203, and all applicable IWC Wage
17 Orders. Participating Class Members do not release any other claims, including claims for vested
18 benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment
19 insurance, disability, social security, workers' compensation, or claims based on facts occurring
20 outside the Class Period.

21 25. All Non-Participating Class Members who are Aggrieved Employees are deemed to
22 release, on behalf of themselves and their respective former and present representatives, agents,
23 attorneys, heirs, administrators, successors and assigns, the Released Parties from all claims for
24 PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA
25 Period facts stated in the Operative Complaint, and the PAGA Notice.

26 26. **Notice Procedure** - The Parties selected CPT Group, Inc. to serve as the
27 Administrator. The Parties have agreed on the form of notice to be mailed to the Class and the
28 method of notice to the class specifically the Court Approved Notice of Class Action Settlement

and Hearing Date for Final Court Approval [Exhibit A to the Settlement Agreement] (“Notice” herein).

1. Settlement Notice Timeline

Timeframe	Event
Within fifteen (15) calendar days of entry of Preliminary Approval	Defendants shall provide the Settlement Administrator with the Class Data for purposes of mailing the Notice to Settlement Class Members.
Within fourteen (14) calendar days of receiving the Class Data	Settlement Administrator will mail copies of the Notice to all Settlement Class Members via regular First Class U.S. Mail.
Sixty (60) calendar days after the Settlement Administrator mails the Notice to Settlement Class Members (plus an additional 14 days for Class Members whose Class Notice is re-mailed)	The last date on which Settlement Class Members may postmark written requests for exclusion or a Notice of Objection to the Settlement.
No later than five (5) calendar days after the Response Deadline	Settlement Administrator shall provide counsel with a complete list of all Settlement Class Members who have timely submitted written requests for exclusion.

2. Details Regarding Dissemination of Notice

27. The Notice, in materially the form attached to the Bass Declaration as Exhibit “A” and as approved by the Court, shall be sent by the Claims Administrator to the Settlement Class Members, by first class mail to those addresses provided by Defendants. Each Settlement Class Member will have sixty (60) days (plus an additional 14 days for Class Members whose Class Notice is re-mailed) from the date the Notice is initially mailed to postmark any Requests for Exclusion or Objections to the Settlement.

28. Using best efforts to perform as soon as possible, and in no event later than 14 days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service (“USPS”) mail, the Notice. The first page of the Notice shall prominently estimate the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member, and the number of Workweeks and PAGA Pay Periods (if applicable) used to calculate these amounts. Before mailing Notices, the Administrator shall update Class Member addresses using the National Change of Address

1 database. Not later than three (3) business days after the Administrator's receipt of any Notice
2 returned by the USPS as undelivered, the Administrator shall re-mail the Notice using any
3 forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the
4 Administrator shall conduct a Class Member Address Search, and re-mail the Notice to the most
5 current address obtained. The Administrator has no obligation to make further attempts to locate or
6 send Notice to Class Members whose Notice is returned by the USPS a second time.

7 29. For any Class Member whose Individual Class Payment check is uncashed and
8 cancelled after the void date, the Administrator shall transmit the funds represented by such checks
9 to the California Controller's Unclaimed Property Fund in the name of the Class Member thereby
10 leaving no "unpaid residue."

11 30. **The Claims, Opt-Out and Objection Process** - All Class Members who do not
12 submit a Request for Exclusion will be eligible to receive an Individual Payment Amount, which
13 shall be mailed to them if and when the Court enters an order granting final approval to this
14 Settlement. In order to elect not to participate in the Settlement, a Class Member must send the
15 Administrator, by fax, email, or mail, a signed written Request for Exclusion not later than 60 days
16 after the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose
17 Class Notice is re-mailed).

18 31. Any Settlement Class Member who wishes to object to the Class Settlement may
19 send written objections to the Administrator, by fax, email, or mail. A Participating Class Member
20 who elects to send a written objection to the Administrator must do so not later than 60 days after
21 the Administrator's mailing of the Class Notice (plus an additional 14 days for Class Members
22 whose Class Notice was re-mailed). Only Settlement Class Members who do not opt out of the
23 Settlement may object to the Settlement. The written objection must (1) identify the case name and
24 number of the Action; (2) include the Class Member's full name, address and telephone number,
25 and email address (if the objector has one); (3) state the reason for the Class Member's objection;
26 (4) state whether the Class Member or their attorney intend to appear at the final approval hearing
27 and their attorney's name, if applicable; and (5) be signed by the Class Member. In the alternative
28 to sending such written objections to the Administrator, Participating Class Members may appear

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

3 32. Each Class Member shall have 60 days after the Administrator mails the Class
4 Notice (plus an additional 14 days for Class Members whose Class Notice is re-mailed) to challenge
5 the number of Class Workweeks and PAGA Pay Periods (if any) allocated to the Class Member in
6 the Class Notice. The Class Member may challenge the allocation by communicating with the
7 Administrator via fax, email or mail. The Administrator must encourage the challenging Class
8 Member to submit supporting documentation. In the absence of any contrary documentation, the
9 Administrator is entitled to presume that the Workweeks contained in the Class Notice are correct
10 so long as they are consistent with the Class Data. The Administrator's determination of each Class
11 Member's allocation of Workweeks and/or Pay Periods shall be final and not appealable or
12 otherwise susceptible to challenge. The Administrator shall promptly provide copies of all
13 challenges to calculation of Workweeks to Defense Counsel and Class Counsel and the
14 Administrator's determination the challenges.

15 **THE STRENGTH OF PLAINTIFF'S CASE AND COMPLEXITIES OF FURTHER**
16 **LITIGATION**

17 33. The proposed settlement here is the product of arm's-length negotiations for which
18 the Parties prepared by engaging in formal and informal discovery, preparing for class certification
19 and mediation. Counsel for the Parties have investigated the applicable law, as applied to the facts
20 discovered, regarding the alleged claims of the Class and potential defenses thereto, as well as the
21 damages claimed thereon. Armed with this extensive body of knowledge, the Parties engaged in
22 full, complete, and ultimately successful settlement discussions. At all times, the negotiations
23 leading to the Settlement have been adversarial, non-collusive and at arm's length.

24 34. Plaintiff believes that the Settlement Class claims in this action are legally
25 meritorious and present a reasonable probability of a favorable determination on behalf of the Class.
26 At the same time, there is undeniably significant litigation risk avoided by the proposed Settlement,
27 moving for class certification, at trial, and in the appellate courts.

28 35. Liability remains highly contested by Defendants, who deny that they engaged in

1 any violations of the law, and further deny any liability or engagement in wrongdoing of any kind
2 associated with the claims alleged in the Action. Defendants contend that, at all times, they
3 complied with all wage-and-hour laws in connection with the employment of the Class Members.

4 36. Plaintiff's counsel understood and appreciated the defenses and position of
5 Defendants but believed that Plaintiff would ultimately succeed in the action. In light of the
6 strongly divergent views, the parties were able to negotiate a fair settlement, considering the costs
7 and risks of continued litigation, class certification and trial. The negotiations were at all times
8 conducted professionally and at arm's length and have produced a result that the Parties believe to
9 be in their respective best interests.

10 37. The Parties have also considered the uncertainty and risk of the outcome of further
11 litigation, and the difficulties and delays inherent in such litigation. Plaintiff is also aware of the
12 burdens of proof necessary to establish liability for the claims asserted in the action, the defenses
13 thereto, and the difficulties in establishing damages.

14 38. Here, in preparation for settlement discussions, Plaintiff calculated Defendants'
15 liability to Class Members to be in excess of the settlement amount. Plaintiff's valuation assumed
16 that Plaintiff: (1) prevailed in certifying the class; (2) prevailed in establishing liability on the
17 merits; and (3) was awarded the full amount of all discretionary penalties.

18 39. The realistic range of outcomes for this litigation took into account the present state
19 of the law regarding meal and rest break claims and the other claims brought in the Action,
20 Defendant's defenses for each claim, and the likelihood of prevailing on a class certification motion
21 as well as trial and any appeals. Moreover, Plaintiff had to consider the significant difficulties in
22 adding class claims against the Defendant and thus factor in how much they could realistically
23 consider for settlement.

24 40. ***Kullar v. Footlocker Analysis*** - To allow this Court to make an informed
25 assessment pursuant to *Kullar v. Foot Locker Retail, Inc.* (2008) 18 Cal.App.4th 116, Plaintiff's
26 Counsel provides the following assessment of the case and settlement. Plaintiff's Counsel believes
27 the settlement is a very good one for the class members. In this case, Plaintiff sought unpaid wages
28 and statutory penalties as well as the equitable remedies of declaratory relief, disgorgement,

1 accounting, and restitution.

2 41. Plaintiff estimated Defendants' total exposure unpaid wages and penalties pursuant
3 to Labor Code section 203 approximately \$3,775,446.35. Of that exposure approximately
4 \$1,944,401.95 is due to unpaid wages, and the remaining \$1,831,044.40 represents potential
5 penalties pursuant to Labor Code section 203. As such, the \$500,000 settlement represents over
6 13% of the estimated unpaid wages due in this case. This in a reasonable recovery, particularly
7 given the number of class members at issue and the size of Defendants' operations.

8 42. As explained further below, Plaintiff details the issues that necessitated deductions
9 from the maximum potential value of this case to arrive at the reasonable Maximum Settlement
10 Amount derived in this action: Here there are approximately 119 Class Members who collectively
11 worked a total of 8,721 Workweeks during the Class period. Plaintiff's analysis of Defendants'
12 time records showed that employees worked an average of 4.1 shifts per workweek for an average
13 of \$21.89 per hour. Increases of more that 5% of the 8,721 Workweeks during the Class period (ie
14 increases to over 9,157 workweeks) will proportionately increase the settlement.

15 43. **Rest Periods**

16 Plaintiff calculated Defendants' potential liability based on the records reviewed in advance
17 of mediation. Plaintiff calculated Defendant's maximum liability to be 4.1 violations per employee
18 per workweek at the average hourly rate of \$21.89 per violation. As such, with the pre-mediation
19 estimate of 8,100 workweeks during the class period, Plaintiff estimated that Defendant's exposure
20 could be as high as \$726,966.90. Plaintiff did not discount this number or the calculations that
21 follow in order to arrive at the settlement; rather, Plaintiff discounted the number in order to reach
22 a settlement that understood the risks of continued litigation and difficulties in showing a 100%
23 violation rate for rest breaks during employee shifts. Here the realities of case supported settlement.
24 Though Plaintiff was confident in certifying such a claim given the Defendants lacked any written
25 meal policy, often the necessary testimony at trial to prove such a claim will raise manageability
26 concerns for the court. Moreover, as Defendants need only authorize such breaks an employee's
27 individual choice on when to or whether to take a break can be a determinative factor for liability
28 and damages. With these issues in mind, maintaining the cause of action's viability could even be

1 in question, so Plaintiff's counsel believed settlement an appropriate path.

2 **44. Meal Periods**

3 Plaintiff calculated Defendants' potential liability based on the records reviewed in advance
4 of mediation. Those time records showed an 87.8% violation rate, most of which were meal break
5 eligible shifts that simply did not show a meal break was taken. A 87.8% violation rate at 4.1 shifts
6 per week at the average hourly rate of \$21.89 per violation over 8,100 workweeks, Plaintiff
7 estimated that Defendant's exposure could be as high as \$638,276.94. Plaintiff did not discount
8 this number or the calculations that follow in order to arrive at the settlement; rather, Plaintiff
9 discounted the number in order to reach a settlement that understood the risks of continued litigation
10 and difficulties in showing high violation rate for meal breaks during employee shifts based on a
11 lack of records.

12 **45. Unpaid Overtime and Doubletime**

13 From a review of Plaintiff's time records Defendant did not pay daily overtime whenever
14 an employee worked over 8 hours. To calculate unpaid overtime, Plaintiff estimated that 28.5% of
15 shifts were 8 hours or longer, and 1 hour was underpaid per shift. At an average of 4.1 shifts per
16 week and 8,100 workweeks in the class period, and an average rate of pay of \$10.95 above the
17 regular rate, Plaintiff estimated \$103,592.78 in unpaid overtime. To calculate unpaid doubletime,
18 Plaintiff estimated that 7.9% of shifts were 10 hours or longer and 1 hour was underpaid per shift/
19 At an average of 4.1 shifts per week and 8,100 workweeks in the class period, and an average rate
20 of pay of \$10.95 above the overtime rate, Plaintiff estimated \$28,715.19 in unpaid doubletime.
21 Plaintiff discounted the number in order to reach a settlement that understood the risks of continued
22 litigation and difficulties in showing these violation rates given Defendant's inconsistent records.

23 **46. Unfair Competition**

24 Plaintiff did not maintain a standalone claim for unfair competition, but rather as detailed
25 in Plaintiff's operative Complaint "As alleged herein, Defendants' failure to, inter alia, pay all
26 wages earned, including minimum and overtime wages, and failure to pay premium wages in lieu
27 of missed or non-compliant meal and rest periods, all in violation of the Labor Code and Wage
28 Orders, constitutes an unlawful, unfair or fraudulent business act or practice, in violation of

1 Business & Professions Code sections 17200, et seq.” Plaintiff’s claims pursuant to the Business
2 & Professions Code are not separately analyzed, but rather extended period for recovering from
3 three years before filing to four years before filing for Plaintiff’s Meal Period, Rest Period and
4 Unpaid Wage claims.

5 **47. Penalties: Waiting Time, Wage Statement and PAGA**

6 Although the Class arguably could have seen a payout of approximately \$1,831,044.40 for
7 waiting time penalties, wage statement penalties, unpaid wage penalties, overtime penalties, failure
8 to maintain records penalties, and PAGA penalties, Plaintiff’s Counsel had to weigh the likelihood
9 of recovery against probable defenses and the wide discretion Courts have exercised in awarding
10 Labor code penalties. Along these lines, Plaintiff considered that Defendant would argue that
11 Plaintiff could not prove the “willful” prong needed to obtain waiting time penalties under Cal.
12 Lab. Code § 203 and would further argue that Plaintiff could not show that Class Members suffered
13 an “injury” as a result of wage statement violations, as required by Cal. Lab. Code § 226. Further,
14 Plaintiff arguably could not recover any waiting time penalties for meal and rest claims. Moreover,
15 Plaintiff would not recover any derivative penalties if he failed to prove the underlying claims. In
16 addition, given Defendants’ operations, Plaintiff considered the likelihood of the Court using its
17 discretion to reduce the substantial PAGA penalties as unjust, arbitrary, oppressive, or confiscatory.
18 *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157. These reductions can be quite
19 substantial, reducing the proven PAGA penalties down to a few percentage points of what they
20 were initially, even after being successfully proven. Plaintiff, in agreeing to the settlement had to
21 take into account the difficulties in certifying a class and maintaining any such certification. What’s
22 more, Plaintiff had to take into account the uncertainties, including business uncertainties facing
23 Defendants and similar employers during the COVID 19 pandemic. Each of these concerns
24 weighed into Plaintiff’s analysis to eventually agree to a settlement that is less than Defendant’s
25 total projected liability even if Plaintiff eventually won every aspect of this case including potential
26 appeal. A settlement now guarantees that class members will 1) obtain a recovery and 2) that they
27 will get the recovery in a time period that is shorter than one if the case went through a full trial
28 and appeal process.

1 48. The settlement amount was a negotiated compromise, factoring in the risks related
2 to certification, liability, and damages. Taking into account all of the circumstances of the action
3 and the significant factual and legal defenses raised by Defendant against certification, liability,
4 and damages, Class Counsel believe that the settlement is fair and reasonable. Each Class
5 Member's individual share of the settlement amount is tailored to the number of shifts worked by
6 each Class Member during the class period so the distribution is weighted in favor of those Class
7 Members who were potentially most affected by the alleged violations. Moreover, because the
8 class consists of several employees, it was unlikely that the potential monetary claims of individual
9 Class Members would have proved viable without the class-action mechanism.

10 **CLASS REPRESENTATIVE INCENTIVE AWARD**

11 49. Plaintiff has taken the extraordinary step of challenging her former employer's
12 actions by bringing this case. Plaintiff did so in the belief that she, and the members of the
13 Settlement Class, were, in fact, entitled to the relief sought in this case. Until this case was filed,
14 no one was pursuing the claims raised in this matter. Plaintiff's actions have resulted in a recovery
15 for the members of the Settlement Class, and the incentive award she seeks is reasonable.

16 50. Plaintiff has fulfilled her duties as class representative throughout the litigation,
17 spending time and effort to gather relevant documents and information, providing the facts and
18 evidence necessary to prove the allegations, and discussing her employment with Class Counsel.

19 51. Plaintiff fully participated in this action throughout the pendency of the litigation.
20 She was kept well informed of the nature and extent of settlement discussions and approved the
21 same. As such, the incentive award sought for Plaintiff is reasonable and represents a small
22 percentage of the Net Settlement Amount. Absent the actions taken by Plaintiff, none of the Class
23 Members would have reaped the rewards of this action.

24 **EXPERIENCE AND VIEWS OF COUNSEL**

25 52. My firm has litigated numerous complex business matters, including employment
26 cases. We have settled multiple cases for seven-figures and several more for six-figure amounts.
27 We have obtained seven-figure judgments in complex litigation matters. This is a nine-attorney
28 law firm in West Los Angeles. The firm practices in the area of employment litigation and complex

1 business litigation. My colleague, Ronald W. Makarem, was named a Top 20 Attorney under the
2 Age of 40, in California, by the Daily Journal in 2007, and a California SuperLawyer from 2010 to
3 the present.

4 53. I have been litigating for over a decade, almost all of which was representing
5 employees in similar complex employment actions, including class actions and representative
6 actions. I have been approved as class counsel in wage and hour class actions over 30 times,
7 including matters certified on contested motions. I was named a California Super Lawyer “Rising
8 Star” each year from 2020 to the present.

9 54. I and the other attorneys at Makarem & Associates have engaged in all aspects of
10 class action litigation, including having interviewed potential class action representatives to
11 determine the potential merits of their allegations, conducted pre-litigation investigation, including
12 interview, research and analysis, drafted class action complaints, drafted class action discovery and
13 responses thereto, conducted and defended depositions, drafted, opposed and orally argued
14 numerous class action law and motion pleadings (including oppositions to removal, oppositions to
15 demurrer, oppositions to motions to strike, motions to compel, oppositions to motions to compel,
16 class certification motions, oppositions to motions to decertify, and preliminary and final approval
17 motions), conducted class member interviews, legal research, settlement negotiations and meetings
18 with defense counsel, statistical analysis of potential damages, and attended numerous mediation
19 sessions for purposes of negotiating class action settlements.

20 55. Makarem & Associates presently has in excess of 30 wage and hour class actions
21 pending in various stages of the litigation process, from pre-litigation investigation to final-
22 approval pending.

23 56. Makarem & Associates is well qualified because of our experience, knowledge, and
24 resources to act as counsel and represent Plaintiff and the putative class in this action. A substantial
25 percentage of our practice is devoted to litigating wage, hour, and working-conditions violations,
26 and the bulk of these cases are class actions.

27 57. This experience is helpful in assessing the reasonableness of settlements such as the
28 one at issue here, and from this experience Class Counsel concluded that this lawsuit could not

1 have been settled on better terms than provided under the present settlement agreement.

2 58. In sum, Class Counsel is experienced in employment class action litigation, and is
3 adequate to represent the putative class in the instant action.

4 **REQUEST FOR ATTORNEYS' FEES AND COSTS**

5 59. The settlement calls for the payment of up to 35% of the Gross Settlement Amount
6 or One Hundred Seventy-Five Thousand Dollars (\$175,000) for attorneys' fees. This request is
7 fair, reasonable, and adequate to compensate Class Counsel for the substantial work they have put
8 into this case and, moreover, the risk they assumed by taking it in the first place. The attorneys'
9 fees award is intended to reimburse Class Counsel for all uncompensated work that they have
10 already done and for all the work they will continue to do in carrying out and overseeing the
11 notification to class members, communicating with class members regarding their claims, and
12 assisting in the administration of the settlement if it is preliminarily approved.

13 60. The up to \$18,000 litigation costs reflect the type of expenses typically billed by
14 attorneys to their paying clients in the marketplace, and include such costs as the payments to
15 analysts and mediation expenses to date. Plaintiff will provide a complete list of these expenses for
16 final approval, but they are currently estimated to be less than \$18,000.

17 61. My firm took this case on a contingent-fee basis against a business represented by a
18 reputable defense firm. Plaintiff signed a contingency-fee agreement stating that Class Counsel
19 could receive a fee of up to 40% of the overall recovery. When we take contingent cases, we must
20 pay careful attention to the economics involved or one bad case can destroy years of work.
21 Accordingly, when we take contingency cases, we anticipate that we shall, if successful, receive a
22 fee that exceeds our normal hourly rate; otherwise, the risk is often too great to bear. Even when
23 we work long hours, the number of hours in a day is limited. Because of this, when we take on one
24 particular matter, we are unable to take on other matters. When Class Counsel became involved in
25 this case, we realized the time commitment that it would entail and we were forced to turn down
26 matters that we otherwise should have been able to handle. In sum, this case claimed a significant
27 portion of Class Counsel's time and attention throughout its pendency.

28 62. In this case, my firm has incurred substantial attorney's fees conducting pre-filing

1 investigation, analyzing the claims, conducting legal research, reviewing records and speaking with
2 class members, negotiating the class settlement, preparing the long-form settlement agreement,
3 preparing this motion for preliminary approval, and otherwise litigating the case.

4 63. The requested fee is reasonable for the services provided to class members and for
5 the benefits they are to receive. Indeed, courts frequently approve multipliers under the lodestar
6 theory, *see Bihun v. AT&T Information System* (1993) 13 Cal.App.4th 976, 997, meaning Class
7 Counsel's fees are still justified even when the requested fee exceeds the lodestar calculation. Class
8 Counsel will more fully brief the Court on its lodestar in the motion for final approval.

9 I declare under penalty of perjury of the laws of United States of America in the state of
10 California that the foregoing is true and correct. Executed on October 10, 2024 in Los Angeles,
11 California.

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13 Daniel J. Bass
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EXHIBIT A

LONG-FORM STIPULATION OF SETTLEMENT

Regarding Putative Class Action Settlement and PAGA Settlement

Ziyah Blackstone v. The Boatyard Inc.

Ventura County Superior Court, Case No. 2023CUOE010578

1. DEFINITIONS.

- 1.1. “Action” means the Plaintiff’s lawsuit alleging wage and hour violations against Defendant captioned Ziyah Blackstone, individually and on behalf of all others similarly situated v. The Boatyard, Inc. dba The Boatyard Pub Seafood Restaurant, a California Corporation, and DOES 1 through 20, initiated on June 22, 2023 and pending in Superior Court of the State of California, County of Ventura, as case number 2023CUOE010578.
- 1.2. “Administrator” means CPT Group, Inc., the neutral entity the Parties have agreed to appoint to administer the Settlement.
- 1.3. “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with Preliminary Approval of the Settlement.
- 1.4. “Aggrieved Employee” means a person employed by Defendant in California and classified as a non-exempt employee who worked for Defendant during the PAGA Period.
- 1.5. “Class” means all persons employed by The Boatyard, Inc. and paid on an hourly basis at any location in California at any time between June 22, 2019 and June 7, 2024.¹
- 1.6. “Class Counsel” means Ronald W. Makarem and Daniel J. Bass of Makarem & Associates, APLC.
- 1.7. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Action.

¹ There is one person who meets this definition of “Class” who entered into a settlement and release agreement with Defendant prior to the mediation of the Action. This individual is specifically excluded from the Class and shall not participate in the Settlement in any manner, including in the receipt of any notices related to the Settlement. Defendant shall identify this individual to the Claims Administrator upon preliminary approval of the Settlement.

- 1.8. "Class Data" means Class Member identifying information in Defendant's possession including each Class Member's name, last-known mailing address, Social Security number, and number of Class Period Workweeks.
- 1.9. "Class Member" or "Settlement Class Member" means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a NonParticipating Class Member who qualifies as an Aggrieved Employee).
- 1.10. "Class Member Address Search" means the Administrator's investigation and search for current Class Member mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Class Members.
- 1.11. "Class Notice" means the COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to Class Members in English, with a Spanish translation, in the form, without material variation, attached as Exhibit A and incorporated by reference into this Agreement.
- 1.12. "Class Period" means the period from June 22, 2019, through June 7, 2024.
- 1.13. "Class Representative" means the named Plaintiff in the Operative Complaint in the Action seeking Court approval to serve as a Class Representative.
- 1.14. "Class Representative Service Payment" means the payment to the Class Representative for initiating the Action and providing services in support of the Action.
- 1.15. "Court" means the Superior Court of California, County of Ventura.
- 1.16. "Defendant" means named Defendant The Boatyard, Inc., dba The Boatyard Pub Seafood Restaurant.
- 1.17. "Defense Counsel" means Anthony R. Strauss of Strauss Law Group.
- 1.18. "Effective Date" means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no Participating Class Member objects to the Settlement, the day the Court enters Judgment; (b) if one or more Participating Class Members objects to the Settlement, the day after the deadline for filing a notice of appeal from the Judgment; or if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur.

- 1.19. "Final Approval" means the Court's order granting final approval of the Settlement.
- 1.20. "Final Approval Hearing" means the Court's hearing on the Motion for Final Approval of the Settlement.
- 1.21. "Final Judgment" means the Judgment Entered by the Court upon Granting Final Approval of the Settlement.
- 1.22. "Gross Settlement Amount" means \$500,000, which is the total amount Defendant agrees to pay under the Settlement. The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Expenses, Class Representative Service Payment and the Administrator's Expenses.
- 1.23. "Individual Class Payment" means the Participating Class Member's pro rata share of the Net Settlement Amount calculated according to the number of Workweeks worked during the Class Period.
- 1.24. "Individual PAGA Payment" means the Aggrieved Employee's pro rata share of 25% of the PAGA Penalties calculated according to the number of Workweeks worked during the PAGA Period.
- 1.25. "Judgment" means the judgment entered by the Court based upon the Final Approval.
- 1.26. "LWDA" means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subdivision (i).
- 1.27. "LWDA PAGA Payment" means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subdivision (i).
- 1.28. "Net Settlement Amount" means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to Participating Class Members as Individual Class Payments.
- 1.29. "Non-Participating Class Member" means any Class Member who opts out of the Settlement by sending the Administrator a valid and timely Request for Exclusion.
- 1.30. "PAGA Pay Period" means any Pay Period during which an Aggrieved Employee worked for Defendant for at least one day during the PAGA Period.
- 1.31. "PAGA Period" means the period from June 25, 2022, through June 7, 2024

- 1.32. "PAGA" means the Private Attorneys General Act (Lab. Code, § 2698 et seq.).
- 1.33. "PAGA Notice" means Plaintiff's April 28, 2023 letter to Defendant and the LWDA providing notice pursuant to Labor Code section 2699.3, subdivision (a).
- 1.34. "PAGA Penalties" means the total amount of PAGA civil penalties (\$10,000) to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees (\$2,500) and the 75% to LWDA (\$7,500) in settlement of PAGA claims.
- 1.35. "Participating Class Member" means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement.
- 1.36. "Plaintiff" means Ziyah Blackstone, the named plaintiff in the Action.
- 1.37. "Preliminary Approval" means the Court's Order Granting Preliminary Approval of the Settlement.
- 1.38. "Preliminary Approval Order" means the proposed Order Granting Preliminary Approval and Approval of PAGA Settlement.
- 1.39. "Released Class Claims" means the claims being released as described in Paragraph _2 below.
- 1.40. "Released PAGA Claims" means the claims being released as described in Paragraph _3 below.
- 1.41. "Released Parties" means Defendant and its owners, subsidiaries, affiliates, parents and attorneys and each of their company-sponsored employee benefit plans, and their respective successors and predecessors in interest, all of their respective officers, directors, non-Participating Class Member employees, exempt managers, administrators, fiduciaries, trustees and agents, and each of their past, present and future officers, directors shareholders, non-Participating Class Member employees, exempt managers, agents, principals, heirs, representatives, accountants, auditors, consultants, attorneys, insurers and reinsurers.
- 1.42. "Request for Exclusion" means a Class Member's submission of a written request to be excluded from the Class Settlement signed by the Class Member.
- 1.43. "Response Deadline" means 60 days after the Administrator mails Notice to Class Members, 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 his or her Objection to the Settlement. Class Members to whom Notice Packets are resent after having been returned undeliverable to the Administrator shall have an additional 14 calendar days beyond the Response

Deadline has expired.

- 1.44. "Settlement" means the disposition of the Action effected by this Agreement and the Judgment.
- 1.45. "Workweek" means any week during which a Class Member worked for Defendant for at least one day, during the Class Period.

2. RECITALS.

- 2.1. On June 22, 2023, Plaintiff Ziyah Blackstone filed a Class Action Complaint against Defendant Boatyard in the Ventura County Superior Court (Case No. 2023CUOE010578) in the matter entitled *Ziyah Blackstone, individually and on behalf of all others similarly situated v. The Boatyard, Inc. dba The Boatyard Pub Seafood Restaurant, a California Corporation, and DOES 1 through 20*, alleging eight causes of action including: (1) Recovery of Unpaid Minimum Wages, (2) Recovery of Unpaid Overtime, (3) Failure to Provide Meal Periods, (4) Failure to Provide Rest Periods, (5) Failure to Provide Accurate Wage Statements, (6) Failure to Indemnify for Expenses and Losses, (7) Waiting Time Penalties and (8) Unfair Competition. On August 29, 2023, Plaintiff filed a First Amended Complaint alleging a ninth cause of action against Defendant for (9) recovery of penalties under the Private Attorneys General Act of 2004, California Labor Code section 2698 *et seq.* ("PAGA"). The First Amended Complaint is the operative complaint in the Action (the "Operative Complaint.") Defendant denies the allegations in the Operative Complaint, denies any failure to comply with the laws identified in in the Operative Complaint and denies any and all liability for the causes of action alleged.
- 2.2. Pursuant to Labor Code section 2699.3, subdivision (a), Plaintiff gave timely written notice to Defendant and the LWDA by sending the PAGA Notice.
- 2.3. On June 7, 2024, the Parties participated in an all-day mediation presided over by Henry Bongiovi, Esq., which led to this Agreement to settle the Action.
- 2.4. Prior to mediation, Plaintiff obtained, through discovery, payroll, personnel, and policy documents relating to the claims alleged in the Operative Complaint. Plaintiff's investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 ("*Dunk/Kullar*").
- 2.5. The Court has not yet granted class certification.
- 2.6. The Parties, Class Counsel and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

3. MONETARY TERMS.

- 3.1. Gross Settlement Amount. Defendant promises to pay \$500,000 and no more as the Gross Settlement Amount, and to separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments. Defendant has no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadlines stated in Paragraph 4.3 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendant.
- 3.2. Payments from the Gross Settlement Amount. The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval:
 - 3.2.1. To Plaintiff: Class Representative Service Payment to the Class Representative of not more than \$20,000 (in addition to any Individual Class Payment the Class Representative is entitled to receive as a Participating Class Member). Defendant will not oppose Plaintiff's request for a Class Representative Service Payment that does not exceed this amount. As part of the motion for Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiff will seek Court approval for any Class Representative Service Payments no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Representative Service Payment less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay the Class Representative Service Payment using IRS Form 1099. Plaintiff assumes full responsibility and liability for employee taxes owed on the Class Representative Service Payment.
 - 3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than 35%, which is currently estimated to be \$175,000 and a Class Counsel Litigation Expenses Payment of not more than \$18,000. Defendant will not oppose requests for these payments provided that do not exceed these amounts. Plaintiff and/or Class Counsel will file a motion for Class Counsel Fees Payment and Class Litigation Expenses Payment no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to Class Counsel or any other Plaintiff's Counsel arising from any claim to any portion any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees Payment

and Class Counsel Expenses Payment using one or more IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds Defendant harmless, and indemnifies Defendant, from any dispute or controversy regarding any division or sharing of any of these Payments.

3.2.3. To the Administrator: An Administrator Expenses Payment not to exceed \$11,000, except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than \$11,000, the Administrator will retain the remainder in the Net Settlement Amount.

3.2.4. To Each Participating Class Member: An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks.

3.2.4.1. Tax Allocation of Individual Class Payments. Ten percent (10%) of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. The remaining ninety percent (90%) of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for interest and penalties (the "Non- Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment.

3.2.4.2. Effect of Non-Participating Class Members on Calculation of Individual Class Payments. Non-Participating Class Members will not receive any Individual Class Payments. The Administrator will retain amounts equal to their Individual Class Payments in the Net Settlement Amount for distribution to Participating Class Members on a pro rata basis.

3.2.5. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$ 10,000 to be paid from the Gross Settlement Amount, with 75% (\$7,500) allocated to the LWDA PAGA Payment and 25% (\$2,500) allocated to the Individual PAGA Payments.

3.2.5.1. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of

PAGA Penalties (\$2,500) by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

3.2.5.2. If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

4. SETTLEMENT FUNDING AND PAYMENTS.

4.1. Class Workweeks and Aggrieved Employee Pay Periods. Based on a review of its records to date, Defendant estimates there are 119 Class Members who collectively worked a total of approximately 8721 Workweeks, and 64 Aggrieved Employees who worked a total of approximately 2056 PAGA Pay Periods.

4.2. Class Data. Not later than 15 days after the Court grants Preliminary Approval of the Settlement, Defendant will simultaneously deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement. Defendant has a continuing duty to immediately notify Class Counsel if it discovers that the Class Data omitted class member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. Without any extension of the deadline by which Defendant must send the Class Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.

4.3. Funding of Gross Settlement Amount.

4.3.1. Defendant shall pay the Gross Settlement Amount in two installments of \$250,000 each, plus any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments.

4.3.1.1. First Installment. The First Installment of \$250,000 shall be deposited with the Settlement Administrator by the earlier of the December 1, 2024 or within fifteen (15) calendar days of Preliminary Approval.

4.3.1.2. Second Installment. The Second Installment of \$250,000 and all employer payroll taxes owed on the Wage Portions of the

Individual Class Payments shall be deposited by the earlier of the February 1, 2025 or within fifteen (15) calendar days of Final Approval.

4.4. Payments from the Gross Settlement Amount. Within 14 days after Defendant fully funds the Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment. Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment and the Class Representative Service Payment shall not precede disbursement of Individual Class Payments and Individual PAGA Payments.

4.4.1. The Administrator will issue checks for the Individual Class Payments and/or Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. The Administrator will send checks for Individual Settlement Payments to all Participating Class Members (including those for whom Class Notice was returned undelivered). The Administrator will send checks for Individual PAGA Payments to all Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved Employees (including those for whom Class Notice was returned undelivered). The Administrator may send Participating Class Members a single check combining the Individual Class Payment and the Individual PAGA Payment. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database.

4.4.2. The Administrator must conduct a Class Member Address Search for all other Class Members whose checks are returned undelivered without USPS forwarding address. Within 7 days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Class Member Address Search. The Administrator need not take further steps to deliver checks to Class Members whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Class Member whose original check was lost or misplaced, requested by the Class Member prior to the void date.

4.4.3. For any Class Member whose Individual Class Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California

Controller's Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b).

4.4.4. The payment of Individual Class Payments shall not obligate Defendant to confer any additional benefits or make any additional payments to Class Members (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

5. **RELEASES OF CLAIMS.** Effective on the date when Defendant fully funds the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiff, Class Members, and Class Counsel will release claims against all Released Parties as follows:

5.1 Plaintiff's Release. Plaintiff and his, her, or their respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors and assigns generally, release and discharge Released Parties from all claims, transactions or occurrences, including, but not limited to: (a) all claims that were, or reasonably could have been, alleged, based on the facts contained, in the Operative Complaint, (b) all PAGA claims that were, or reasonably could have been, alleged based on facts contained in the Operative Complaint and Plaintiff's PAGA Notice, and (c) any and all claims arising out of or relative to her employment by Defendant including, but not limited to, claims for wrongful termination, negligent hiring, emotional distress, defamation, violation of the California Fair Employment and Housing Act, the California Family Rights Act, the Americans With Disabilities Act, Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, the Fair Labor Standards Act, the Equal Pay Act, the Family and Medical Leave Act, and all claims of any type arising out of or related to Plaintiff's employment with Defendant, the termination of Plaintiff's employment with Defendant, attorney's fees that might be available under any state or federal statute, and any other matter. ("Plaintiff's Release.") Plaintiff's 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 based on occurrences outside the Class Period. Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff's discovery of them.

5.1.1 Plaintiff's Waiver of Rights Under California Civil Code Section 1542. For purposes of Plaintiff's Release, 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.

5.2 Release by Participating Class Members. All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from (i) all claims that were alleged, or reasonably could have been alleged, based on the Class Period facts stated in the Operative Complaint including, e.g., (a) any and all claims involving any alleged failure to pay minimum wage; (b) any and all claims involving any alleged failure to pay overtime wages; (c) any and all claims involving any alleged failure to provide meal periods or to pay meal period premiums; (d) any and all claims involving any alleged failure to provide rest periods or to pay rest period premiums; (e) any and all claims involving the alleged failure to provide accurate wage statements; (f) any and all claims involving the alleged failure to indemnify for expenses and losses; (g) any and all claims for waiting-time penalties; (h) any and all claims involving alleged unfair competition; (i) any and all claims involving individual claims for civil penalties under the Private Attorneys General Act of 2004, Labor Code section 2698 *et seq.*; and, (j) any and all claims alleged that involve the statutes and/or regulations identified in the Operative Complaint, including California Labor Code sections 201, 202, 203, 226, 226.7, 510, 512, 1194, 1194.2, 1197.1, and 2802, Business and Professions Code sections 17200 and 17203, and all applicable IWC Wage Orders. 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.

5.3 Release by Non-Participating Class Members Who Are Aggrieved Employees: All Non-Participating Class Members who are Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint, and the PAGA Notice.

6. **MOTION FOR PRELIMINARY APPROVAL.** The Parties agree to jointly prepare and file a motion for preliminary approval ("Motion for Preliminary Approval") of the Agreement.

6.1 Defendant's Declaration in Support of Preliminary Approval. Within 7 days of the full execution of this Agreement, Defendant will prepare and deliver to Class Counsel a signed Declaration from Defendant and Defense Counsel disclosing all facts relevant to any actual or potential conflicts of interest with the Administrator. In their Declarations, Defense Counsel and Defendant shall

aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.

- 6.2 Plaintiff's Responsibilities. Plaintiff will prepare and deliver to Defense Counsel all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice, and memorandum in support, of the Motion for Preliminary Approval that includes an analysis of the Settlement under *Dunk/Kullar*; (ii) a draft proposed Order Granting Preliminary Approval; (iii) a draft proposed Class Notice; (iv) a signed declaration from the Administrator attaching its "not to exceed" bid for administering the Settlement and attesting to its willingness to serve; 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; and the nature and extent of any financial relationship with Plaintiff, Class Counsel or Defense Counsel; (v) a signed declaration from Plaintiff confirming willingness and competency to serve and disclosing all facts relevant to any actual or potential conflicts of interest with Class Members, the Administrator; (v) a signed declaration from each Class Counsel firm attesting to its competency to represent the Class Members; and all facts relevant to any actual or potential conflict of interest with Class Members, the Administrator; (vi) a redlined version of the parties' Agreement showing all modifications made to the Model Agreement ready for filing with the Court; In their Declarations, Plaintiff and Class Counsel Declaration shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.
- 6.3 Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the Motion for Preliminary Approval no later than 30 days after the full execution of this Agreement; obtaining a prompt hearing date for the Motion for Preliminary Approval; and for appearing in Court to advocate in favor of the Motion for Preliminary Approval. Class Counsel is responsible for delivering the Court's Preliminary Approval to the Administrator.
- 6.4 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.

7. SETTLEMENT ADMINISTRATION.

- 7.1 Selection of Administrator. The Parties have jointly selected CPT Group, Inc. to serve as the Administrator and verified that, as a condition of appointment, CPT Group, Inc. 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.
- 7.2 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.
- 7.3 Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation section 468B-1.
- 7.4 Notice to Class Members.
- 7.4.1 No later than three (3) business days after receipt of the Class Data, the Administrator shall notify Class Counsel that the list has been received and state the number of Class Members and Workweeks in the Class Data.
- 7.4.2 Using best efforts to perform as soon as possible, and in no event later than 14 days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service ("USPS") mail, the Class Notice, with a Spanish translation, substantially in the form attached to this Agreement as **Exhibit A**. The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member, and the number of Workweeks and PAGA Pay Periods (if applicable) used to calculate these amounts. Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database._
- 7.4.3 Not later than three (3) business days after the Administrator's receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. The Administrator has no obligation to make further attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a second time.

- 7.4.4 The deadlines for Class Members' written objections, Challenges to Workweeks and/or Pay Periods, and Requests for Exclusion will be extended an additional 14 days beyond the 60 days otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. The Administrator will inform the Class Member of the extended deadline with the re-mailed Class Notice.
- 7.4.5 If the Administrator, Defendant or Class Counsel is contacted by or otherwise discovers any persons who believe they should have been included in the Class Data and should have received Class Notice, the Parties will expeditiously meet and confer in person or by telephone, and in good faith, in an effort to agree on whether to include them as Class Members. If the Parties agree, such persons will be Class Members entitled to the same rights as other Class Members, and the Administrator will send, via email or overnight delivery, a Class Notice requiring them to exercise options under this Agreement not later than 14 days after receipt of Class Notice, or the deadline dates in the Class Notice, which ever are later.

7.5 Requests for Exclusion (Opt-Outs).

- 7.5.1 Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later than 60 days after the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Class Member or his/her representative that reasonably communicates the Class Member's election to be excluded from the Settlement and includes the Class Member's name, address and email address or telephone number. To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline.
- 7.5.2 The Administrator may not reject a Request for Exclusion as invalid because it fails to contain all the information specified in the Class Notice. The Administrator shall accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of the person as a Class Member and the Class Member's desire to be excluded. The Administrator's determination shall be final and not appealable or otherwise susceptible to challenge. If the Administrator has reason to question the authenticity of a Request for Exclusion, the Administrator may demand additional proof of the Class Member's identity. The Administrator's determination of authenticity shall be final and not appealable or otherwise susceptible to challenge.
- 7.5.3 Every Class Member who does not submit a timely and valid Request

for Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all benefits and bound by all terms and conditions of the Settlement, including the Participating Class Members' Releases under Paragraph 6.2 of this Agreement, regardless of whether the Participating Class Member actually receives the Class Notice or objects to the Settlement.

7.5.4 Every Class Member who submits a valid and timely Request for Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment or have the right to object to the class action components of the Settlement. Because future PAGA claims are subject to claim preclusion upon entry of the Judgment, Non-Participating Class Members who are Aggrieved Employees are deemed to release the claims identified in Paragraph 5.3 of this Agreement and are eligible for an Individual PAGA Payment.

7.6 Challenges to Calculation of Workweeks. Each Class Member shall have 60 days after the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class Notice is re-mailed) to challenge the number of Class Workweeks and PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice. The Class Member may challenge the allocation by communicating with the Administrator via fax, email or mail. The Administrator must encourage the challenging Class Member to submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the Workweeks contained in the Class Notice are correct so long as they are consistent with the Class Data. The Administrator's determination of each Class Member's allocation of Workweeks and/or Pay Periods shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall promptly provide copies of all challenges to calculation of Workweeks to Defense Counsel and Class Counsel and the Administrator's determination the challenges.

7.7 Objections to Settlement.

7.7.1 Only Participating Class Members may object to the class action components of the Settlement and/or this Agreement, including contesting the fairness of the Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Class Representative Service Payment.

7.7.2 Participating Class Members may send written objections to the Administrator, by fax, email, or mail. A Participating Class Member who elects to send a written objection to the Administrator must do so not later than 60 days after the Administrator's mailing of the Class Notice (plus an additional 14 days for Class Members whose Class Notice was re-mailed). The written objection must (1) identify the case name and

number of the Action; (2) include the Class Member's full name, address and telephone number, and email address (if the objector has one); (3) state the reason for the Class Member's objection; (4) state whether the Class Member or their attorney intend to appear at the final approval hearing and their attorney's name, if applicable; and (5) be signed by the Class Member. In the alternative to sending such written objections to the Administrator, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing.

7.7.3 Non-Participating Class Members have no right to object to any of the class action components of the Settlement.

7.8 Administrator Duties. The Administrator has a duty to perform or observe all tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

7.8.1 Website, Email Address and Toll-Free Number. The Administrator will establish and maintain and use an internet website to post information of interest to Class Members including the date, time and location for the Final Approval Hearing and copies of the Settlement Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Class Notice, the Motion for Final Approval, the Motion for Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and Class Representative Service Payment, the Final Approval and the Judgment. The Administrator will also maintain and monitor an email address and a toll-free telephone number to receive Class Member calls, faxes and emails.

7.8.2 Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not later than 5 days after the expiration of the deadline for submitting Requests for Exclusion, the Administrator shall email a list to Class Counsel and Defense Counsel containing (a) the names and other identifying information of Class Members who have timely submitted valid Requests for Exclusion ("Exclusion List"); (b) the names and other identifying information of Class Members who have submitted invalid Requests for Exclusion; (c) copies of all Requests for Exclusion from Settlement submitted (whether valid or invalid).

7.8.3 Weekly Reports. The Administrator must, on a weekly basis, provide written reports to Class Counsel and Defense Counsel that, among other things, tally the number of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for Exclusion (whether valid or invalid) received, objections received, challenges to Workweeks

received and/or resolved, and checks mailed for Individual Class Payments ("Weekly Report"). The Weekly Reports must include provide the Administrator's assessment of the validity of Requests for Exclusion and attach copies of all Requests for Exclusion and objections received.

- 7.8.4 Workweek and/or Pay Period Challenges. The Administrator has the authority to address and make final decisions consistent with the terms of this Agreement on all Class Member challenges over the calculation of Workweeks and/or Pay Periods. The Administrator's decision shall be final and not appealable or otherwise susceptible to challenge.
- 7.8.5 Administrator's Declaration. Not later than 14 days before the date by which Plaintiff is required to file the Motion for Final Approval of the Settlement, the Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable 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 Notices returned as undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the total number of Requests for Exclusion from Settlement it received (both valid or invalid), the number of written objections and attach the 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.
- 7.8.6 Final Report by Settlement Administrator. Within 10 days after the Administrator disburses all funds in the Gross Settlement Amount, the Administrator will provide Class Counsel and Defense Counsel with a final report detailing its disbursements by employee identification number only of all payments made under this Agreement. At least 15 days before any deadline set by the Court, the Administrator will prepare, and submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all payments required under this Agreement. Class Counsel is responsible for filing the Administrator's declaration in Court.

- 8. **CLASS WORKWEEK ESTIMATE AND ESCALATOR CLAUSE.** Based on its records, Defendant represented that as of June 7, 2024,
- 9. there were an estimated 8721 workweeks worked by Class Members during the Class Period (June 22, 2019 through June 7, 2024). In the event that the workweeks worked by Class Members during that June 22, 2019 through June 7, 2024 period increases by more than 5% or 436 workweeks, then the Gross Settlement Amount shall be increased proportionally by the workweeks worked in excess of 9157 (e.g. if the number of workweeks worked during the June 22, 2019 through June 7, 2024 period

increased by 6% the Maximum Settlement Amount will increase by 1%).

10. **DEFENDANT'S RIGHT TO WITHDRAW.** If the number of valid Requests for Exclusion identified in the Exclusion List exceeds ten percent (10%) of the total of all Class Members, Defendant may, but is not obligated, elect to withdraw from the Settlement. The Parties agree that, if Defendant withdraws, the Settlement shall be 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, Defendant will remain responsible for paying all Settlement Administration Expenses incurred to that point. Defendant must notify Class Counsel and the Court of its election to withdraw not later than seven days after the Administrator sends the final Exclusion List to Defense Counsel; late elections will have no effect.
11. **MOTION FOR FINAL APPROVAL.** Not later than 16 court days before the calendared Final Approval Hearing, Plaintiff will file in Court, a motion for final approval of the Settlement that includes a request for approval of the PAGA settlement under Labor Code section 2699, subdivision (l), Proposed Final Approval Order and a proposed Judgment (collectively "Motion for Final Approval"). Plaintiff shall provide drafts of these documents to Defense Counsel not later than [seven] days prior to filing the Motion for Final Approval. Class Counsel and Defense Counsel will expeditiously meet and confer in person or by telephone, and in good faith, to resolve any disagreements concerning the Motion for Final Approval.
 - 11.1 Response to Objections. Each Party retains the right to respond to any objection raised by a Participating Class Member, including the right to file responsive documents in Court no later than [five] court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.
 - 11.2 Duty to Cooperate. If the Court does not grant Final Approval or conditions Final Approval on any material change to the Settlement (including, but not limited to, the scope of release to be granted by 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 Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Administrator Expenses Payment shall not constitute a material modification to the Agreement within the meaning of this paragraph.
 - 11.3 Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.
 - 11.4 Waiver of Right to Appeal. Provided the Judgment is consistent with the terms

and conditions of this Agreement, specifically including the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment reflected set forth in this Settlement, 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.

11.5 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 appellate court's concerns and to obtain Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional Administration Expenses reasonably incurred after remittitur. An appellate decision to vacate, reverse, or modify the Court's award of the Class Representative Service Payment 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.

12. **AMENDED JUDGMENT.** If any amended judgment is required under Code of Civil Procedure section 384, the Parties will work together in good faith to jointly submit and a proposed amended judgment.

13. **ADDITIONAL PROVISIONS.**

13.1 No Admission of Liability, Class Certification or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by Defendant that any of the allegations in the Operative Complaint have merit or that Defendant has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that Defendant's defenses in the Action have merit. The Parties agree that class certification and representative treatment is for purposes of this Settlement only. If, for any reason the Court does not grant Preliminary Approval, Final Approval or enter Judgment, Defendant reserves the right to contest certification of any class for any reasons, and Defendant reserves all available defenses to the claims in the Action, and Plaintiff reserves the right to move for class certification on any grounds available and to contest Defendant's defenses. The Settlement, this Agreement and Parties' willingness

to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

- 13.2 Confidentiality Prior to Preliminary Approval. Plaintiff, Class Counsel, Defendant and Defense Counsel separately agree that, until the Motion for Preliminary Approval of Settlement is filed, they and each of them will not disclose, disseminate and/or publicize, or cause or permit another person to disclose, disseminate or publicize, any of the terms of the Agreement directly or indirectly, specifically or generally, to any person, corporation, association, government agency, or other entity except: (1) to the Parties' attorneys, accountants, or spouses, all of whom will be instructed to keep this Agreement confidential; (2) counsel in a related matter; (3) to the extent necessary to report income to appropriate taxing authorities; (4) in response to a court order or subpoena; or (5) in response to an inquiry or subpoena issued by a state or federal government agency. Each Party agrees to immediately notify each other Party of any judicial or agency order, inquiry, or subpoena seeking such information. Plaintiff, Class Counsel, Defendant and Defense Counsel separately agree not to, directly or indirectly, initiate any conversation or other communication, before the filing of the Motion for Preliminary Approval, any with third party regarding this Agreement or the matters giving rise to this Agreement except to respond only that "the matter was resolved," or words to that effect. This paragraph does not restrict Class Counsel's communications with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.
- 13.3 No Solicitation. The Parties separately agree that they and their respective counsel and employees will not solicit any Class Member to opt out of or object to the Settlement, or appeal from the Judgment. Nothing in this paragraph shall be construed to restrict Class Counsel's ability to communicate with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.
- 13.4 Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.
- 13.5 Attorney Authorization. Class Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiff and Defendant, respectively, 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 reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.

- 13.6 Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.
- 13.7 No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.
- 13.8 No Tax Advice. Neither Plaintiff, Class Counsel, Defendant nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 C.F.R. Part 10, as amended) or otherwise.
- 13.9 Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.
- 13.10 Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
- 13.11 Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.
- 13.12 Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
- 13.13 Confidentiality. To the extent permitted by law, all agreements made, and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.
- 13.14 Use and Return of Class Data. Information provided to Class Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the Class Data provided to Class Counsel by Defendant in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute,

or rule of court. Not later than 90 days after the date when the Court discharges the Administrator's obligation to provide a Declaration confirming the final pay out of all Settlement funds, Plaintiff shall destroy, all paper and electronic versions of Class Data received from Defendant unless, prior to the Court's discharge of the Administrator's obligation, Defendant makes a written request to Class Counsel for the return, rather than the destructions, of Class Data.

- 13.15 Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
- 13.16 Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.
- 13.17 Notice. All notices, demands or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:
- 13.17.1 To Defendant: Anthony R. Strauss, Strauss Law Group, 215 E. Oak St. Unit B, Ojai, CA. 93023; ars@strausslawgroup.com.
- 13.17.2 To Plaintiff: Ronald W. Makarem and Daniel J. Bass, Makarem & Associates, APLC, 11601 Wilshire Blvd., Suite 2440, Los Angeles, CA 90025; bass@law-rm.com; clerks@law-rm.com.
- 13.18 Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.
- 13.19 Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.

///

IT IS SO STIPULATED AND AGREED.

DATED: 08 / 27 / 2024

PLAINTIFF

By: 
Ziyah Blackstone, Plaintiff

DATED:

DEFENDANTS

By: _____
_____ for The Boatyard, Inc.

DATED: 8/27/2024

MAKAREM & ASSOCIATES, APLC

By: 
Ronald W. Makarem
Daniel J. Bass
Attorneys for Plaintiff Ziyah Blackstone and the
Settlement Class

DATED:

STRAUSS LAW GROUP

By: _____
Anthony R. Strauss
Attorneys for Defendant The Boatyard, Inc.

IT IS SO STIPULATED AND AGREED.

DATED:

PLAINTIFF

By: _____
Ziyah Blackstone, *Plaintiff*

DATED:

9/4/2024

DEFENDANTS

By:  _____
_____ *for The Boatyard, Inc.*

DATED:

MAKAREM & ASSOCIATES, APLC

By: _____
Ronald W. Makarem
Daniel J. Bass
*Attorneys for Plaintiff Ziyah Blackstone and the
Settlement Class*

DATED:

9/4/2024

STRAUSS LAW GROUP

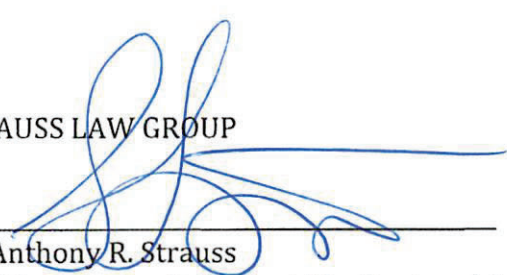
By:  _____
Anthony R. Strauss
Attorneys for Defendant The Boatyard, Inc.

EXHIBIT A

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

Ziyah Blackstone v. The Boatyard Inc., et al.
Ventura County Superior Court Case Number: 2023CUOE010578

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

You may be eligible to receive money from an employee class action lawsuit (“Action”) against THE BOATYARD, INC., dba The Boatyard Pub Seafood Restaurant (“Boatyard, Inc.”) for alleged wage and hour violations. The Action was filed by a former employee of Boatyard, Inc., Ziyah Blackstone (“Plaintiff”) and seeks payment of (1) back wages [and other relief] for a class of all persons employed by The Boatyard, Inc. and paid on an hourly basis at any location in California at any time (“Class Members”) during the “Class Period” (June 22, 20019 to June 7, 2024); and (2) penalties under the California Private Attorney General Act (“PAGA”) for all non-exempt employees who worked for Boatyard, Inc. during the PAGA Period (June 25, 2022, through June 7, 2024) (“Aggrieved Employees”).

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

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

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

The Court has already preliminarily approved the proposed Settlement and approved this Notice. The Court has not yet decided whether to grant final approval. Your legal rights are affected whether you act or not act. Read this Notice carefully. You will be deemed to have carefully read and understood it. At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement and how much of the Settlement will be paid to Plaintiff and Plaintiff’s attorneys (“Class Counsel”). The Court will also decide whether to enter a judgment that requires Boatyard, Inc. to make payments under the Settlement and requires Class Members and Aggrieved Employees to give up their rights to assert certain claims against Boatyard, Inc.

If you worked for Boatyard, Inc. during the Class Period and/or the PAGA Period, you have two basic options under the Settlement:

- (1) **Do Nothing.** You don't have to do anything to participate in the proposed Settlement and be eligible for an Individual Class Payment and/or an Individual PAGA Payment. As a Participating Class Member, though, you will give up your right to assert Class Period wage claims and PAGA Period penalty claims against Boatyard, Inc.
- (2) **Opt-Out of the Class Settlement.** You can exclude yourself from the Class Settlement (opt-out) by submitting the written Request for Exclusion or otherwise notifying the Administrator in writing. If you opt-out of the Settlement, you will not receive an Individual Class Payment. You will, however, preserve your right to personally pursue Class Period wage claims against Boatyard, Inc., and, if you are an Aggrieved Employee, remain eligible for an Individual PAGA Payment. You cannot opt-out of the PAGA portion of the proposed Settlement.

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

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

You Don't Have to Do Anything to Participate in the Settlement	If you do nothing, you will be a Participating Class Member, eligible for an Individual Class Payment and an Individual PAGA Payment (if any). In exchange, you will give up your right to assert the wage claims against Boatyard, Inc. that are covered by this Settlement (Released Claims).
You Can Opt-out of the Class Settlement but not the PAGA Settlement The Opt-out Deadline is _____	If you don't want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion. Once excluded, you will be a Non-Participating Class Member and no longer eligible for an Individual Class Payment. Non-Participating Class Members cannot object to any portion of the proposed Settlement. See Section 6 of this Notice. You cannot opt-out of the PAGA portion of the proposed Settlement. Boatyard, Inc. must pay Individual PAGA Payments to all Aggrieved Employees and the Aggrieved Employees must give up their rights to pursue Released Claims (defined below).

Participating Class Members Can Object to the Class Settlement but not the PAGA Settlement Written Objections Must be Submitted by _____	All Class Members who do not opt-out (“Participating Class Members”) can object to any aspect of the proposed Settlement. The Court’s decision whether to finally approve the Settlement will include a determination of how much will be paid to Class Counsel and Plaintiff who pursued the Action on behalf of the Class. You are not personally responsible for any payments to Class Counsel or Plaintiff, but every dollar paid to Class Counsel and Plaintiff reduces the overall amount paid to Participating Class Members. You can object to the amounts requested by Class Counsel or Plaintiff if you think they are unreasonable. See Section 7 of this Notice.
You Can Participate in the _____ Final Approval Hearing	The Court’s Final Approval Hearing is scheduled to take place on _____. You don’t have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court’s virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing. See Section 8 of this Notice.
You Can Challenge the Calculation of Your Workweeks/Pay Periods Written Challenges Must be Submitted by _____	The amount of your Individual Class Payment and PAGA Payment (if any) depend on how many workweeks you worked at least one day during the Class Period and how many Pay Periods you worked at least one day during the PAGA Period, respectively. The number Class Period Workweeks and number of PAGA Period Pay Periods you worked according to Boatyard, Inc.’s records is stated on the first page of this Notice. If you disagree with either of these numbers, you must challenge it by _____. See Section 4 of this Notice.

1. WHAT IS THE ACTION ABOUT?

Plaintiff is a former Boatyard, Inc. employee. The Action accuses Boatyard, Inc. of violating California labor laws by failing to pay overtime wages, minimum wages, wages due upon termination and reimbursable expenses and failing to provide meal periods, rest breaks and accurate itemized wage statements. Based on the same claims, Plaintiff has also asserted a claim for civil penalties under the California Private Attorneys General Act (Labor Code §§ 2698, et seq.) (“PAGA”). Plaintiff is represented by attorneys in the Action: Makarem & Associates, APLC (“Class Counsel.”)

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

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

So far, the Court has made no determination whether Boatyard, Inc. or Plaintiff is correct on the merits. In the meantime, Plaintiff and Boatyard, Inc. hired an experienced, neutral mediator in an effort to resolve the Action by negotiating an to end the case by agreement (settle the case) rather than continuing the expensive and time-consuming process of litigation. The negotiations

were successful. By signing a lengthy written settlement agreement (“Agreement”) and agreeing to jointly ask the Court to enter a judgment ending the Action and enforcing the Agreement, Plaintiff and Boatyard, Inc. have negotiated a proposed Settlement that is subject to the Court’s Final Approval. Both sides agree the proposed Settlement is a compromise of disputed claims. By agreeing to settle, Boatyard, Inc. does not admit any violations or concede the merit of any claims.

Plaintiff and Class Counsel strongly believe the Settlement is a good deal for you because they believe that: (1) Boatyard, Inc. has agreed to pay a fair, reasonable and adequate amount considering the strength of the claims and the risks and uncertainties of continued litigation; and (2) Settlement is in the best interests of the Class Members and Aggrieved Employees. The Court preliminarily approved the proposed Settlement as fair, reasonable and adequate, authorized this Notice, and scheduled a hearing to determine Final Approval.

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

1. Boatyard, Inc. Will Pay \$500,000 as the Gross Settlement Amount (Gross Settlement). Boatyard, Inc. has agreed to deposit the Gross Settlement into an account controlled by the Administrator of the Settlement. The Administrator will use the Gross Settlement to pay the Individual Class Payments, Individual PAGA Payments, Class Representative Service Payment, Class Counsel’s attorney’s fees and expenses, the Administrator’s expenses, and penalties to be paid to the California Labor and Workforce Development Agency (“LWDA”). Assuming the Court grants Final Approval, Boatyard, Inc. will fund the Gross Settlement not more than 15 days after the Judgment entered by the Court become final, or by February 1, 2025 whichever date is earlier. The Judgment will be final on the date the Court enters Judgment, or a later date if Participating Class Members object to the proposed Settlement or the Judgment is appealed.
2. Court Approved Deductions from Gross Settlement. At the Final Approval Hearing, Plaintiff and/or Class Counsel will ask the Court to approve the following deductions from the Gross Settlement, the amounts of which will be decided by the Court at the Final Approval Hearing:
 - A. Up to \$ 175,000 (35% of the Gross Settlement) to Class Counsel for attorneys’ fees and up to \$18,000 for their litigation expenses. To date, Class Counsel have worked and incurred expenses on the Action without payment.
 - B. Up to \$20,000 as a Class Representative Award for filing the Action, working with Class Counsel and representing the Class. A Class Representative Award will be the only monies Plaintiff will receive other than Plaintiff’s Individual Class Payment and any Individual PAGA Payment.
 - C. Up to \$11,000 to the Administrator for services administering the Settlement.
 - D. Up to \$10,000 for PAGA Penalties, allocated 75% to the LWDA PAGA Payment and 25% in Individual PAGA Payments to the Aggrieved Employees based on their PAGA Period Pay Periods.

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

3. Net Settlement Distributed to Class Members. After making the above deductions in amounts approved by the Court, the Administrator will distribute the rest of the Gross Settlement (the “Net Settlement”) by making Individual Class Payments to Participating Class Members based on their Class Period Workweeks.
4. Taxes Owed on Payments to Class Members. Plaintiff and Boatyard, Inc. are asking the Court to approve an allocation of 10% of each Individual Class Payment to taxable wages (“Wage Portion”) and 90% to penalties and interest (“Non-Wage Portion.”). The Wage Portion is subject to withholdings and will be reported on IRS W-2 Forms. (Boatyard, Inc. will separately pay employer payroll taxes it owes on the Wage Portion.) The Individual PAGA Payments are counted as penalties rather than wages for tax purposes. The Administrator will report the Individual PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms.

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

5. Need to Promptly Cash Payment Checks. The front of every check issued for Individual Class Payments and Individual PAGA Payments will show the date when the check expires (the void date). If you don’t cash it by the void date, your check will be automatically cancelled, and the monies will be deposited with the California Controller’s Unclaimed Property Fund in your name.

If the monies represented by your check is sent to the Controller’s Unclaimed Property, you should consult the rules of the Fund for instructions on how to retrieve your money.

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

You cannot opt-out of the PAGA portion of the Settlement. Class Members who exclude themselves from the Class Settlement (Non-Participating Class Members) remain eligible

for Individual PAGA Payments and are required to give up their right to assert PAGA claims against Boatyard, Inc. based on the PAGA Period facts alleged in the Action.

7. The Proposed Settlement Will be Void if the Court Denies Final Approval. It is possible the Court will decline to grant Final Approval of the Settlement or decline enter a Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiffs and Boatyard, Inc. have agreed that, in either case, the Settlement will be void: Boatyard, Inc. will not pay any money and Class Members will not release any claims against Boatyard, Inc.
8. Administrator. The Court has appointed a neutral company, CPT Group, Inc. (the “Administrator”) to send this Notice, calculate and make payments, and process Class Members’ Requests for Exclusion. The Administrator will also decide Class Member Challenges over Workweeks, mail and re- mail settlement checks and tax forms, and perform other tasks necessary to administer the Settlement. The Administrator’s contact information is contained in Section 9 of this Notice.
9. Participating Class Members’ Release. After the Judgment is final and Boatyard, Inc. has fully funded the Gross Settlement (and separately paid all employer payroll taxes), Participating Class Members will be legally barred from asserting any of the claims released under the Settlement. This means that unless you opted out by validly excluding yourself from the Class Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Boatyard, Inc. or related entities for wages based on the Class Period facts and PAGA penalties based on PAGA Period facts, as alleged in the Action and resolved by this Settlement.

The Participating Class Members will be bound by the following release:

All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from (i) all claims that were alleged, or reasonably could have been alleged, based on the Class Period facts stated in the Operative Complaint including, e.g., (a) any and all claims involving any alleged failure to pay minimum wage; (b) any and all claims involving any alleged failure to pay overtime wages; (c) any and all claims involving any alleged failure to provide meal periods or to pay meal period premiums; (d) any and all claims involving any alleged failure to provide rest periods or to pay rest period premiums; (e) any and all claims involving the alleged failure to provide accurate wage statements; (f) any and all claims involving the alleged failure to indemnify for expenses and losses; (g) any and all claims for waiting-time penalties; (h) any and all claims involving alleged unfair competition; (i) any and all claims involving individual claims for civil penalties under the Private Attorneys General Act of 2004, Labor Code section 2698 *et seq.*; and, (j) any and all claims alleged that involve the statutes and/or regulations identified in the Operative Complaint, including California Labor Code sections 201, 202, 203, 226, 226.7, 510, 512, 1194, 1194.2, 1197.1, and 2802, Business and

Professions Code sections 17200 and 17203, and all applicable IWC Wage Orders. 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.

10. Aggrieved Employees' PAGA Release. After the Court's judgment is final, and Boatyard, Inc. has paid the Gross Settlement (and separately paid the employer-side payroll taxes), all Aggrieved Employees will be barred from asserting PAGA claims against Boatyard, Inc., whether or not they exclude themselves from the Settlement. This means that all Aggrieved Employees, including those who are Participating Class Members and those who opt-out of the Class Settlement, cannot sue, continue to sue, or participate in any other PAGA claim against Boatyard, Inc. or its related entities based on the PAGA Period facts alleged in the Action and resolved by this Settlement.

The Aggrieved Employees' Releases for Participating and Non-Participating Class Members are as follows:

All Participating and Non-Participating Class Members who are Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint, and the PAGA Notice.

4. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?

1. Individual Class Payments. The Administrator will calculate Individual Class Payments by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members, and (b) multiplying the result by the number of Workweeks worked by each individual Participating Class Member.
2. Individual PAGA Payments. The Administrator will calculate Individual PAGA Payments by (a) dividing \$2,500 by the total number of PAGA Pay Periods worked by all Aggrieved Employees and (b) multiplying the result by the number of PAGA Period Pay Periods worked by each individual Aggrieved Employee.
3. Workweek/Pay Period Challenges. The number of Class Workweeks you worked during the Class Period and the number of PAGA Pay Periods you worked during the PAGA Period, as recorded in Boatyard, Inc.'s records, are stated in the first page of this Notice. You have until _____ to challenge the number of Workweeks and/or Pay Periods credited to you. You can submit your challenge by signing and sending a letter to the Administrator via mail, email or fax. Section 9 of this Notice has the Administrator's contact information.

You need to support your challenge by sending copies of pay stubs or other records. The Administrator will accept Boatyard, Inc.'s calculation of Workweeks and/or Pay Periods

based on Boatyard, Inc.'s records as accurate unless you send copies of records containing contrary information. You should send copies rather than originals because the documents will not be returned to you. The Administrator will resolve Workweek and/or Pay Period challenges based on your submission and on input from Class Counsel (who will advocate on behalf of Participating Class Members) and Boatyard, Inc.'s Counsel. The Administrator's decision is final. You can't appeal or otherwise challenge its final decision.

5. HOW WILL I GET PAID?

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

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

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

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

7. HOW DO I OBJECT TO THE SETTLEMENT?

Only Participating Class Members have the right to object to the Settlement. Before deciding whether to object, you may wish to see what Plaintiff and Boatyard, Inc. are asking the Court to approve. At least ____ days before the _____ Final Approval Hearing, Class Counsel and/or Plaintiff will file in Court (1) a Motion for Final Approval that includes, among other things, the reasons why the proposed Settlement is fair, and (2) a Motion for Fees, Litigation Expenses and Service Award stating (i) the amount Class Counsel is requesting for attorneys' fees and litigation expenses; and (ii) the amount Plaintiff is requesting as a Class Representative Service Award. Upon reasonable request, Class Counsel (whose contact information is in Section 9 of this Notice) will send you copies of these documents at no cost to you. You can also view them on the Administrator's Website _____ (url) or the Court's website _____ (url).

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

Alternatively, a Participating Class Member can object (or personally retain a lawyer to object at your own cost) by attending the Final Approval Hearing. You (or your attorney) should be ready to tell the Court what you object to, why you object, and any facts that support your objection. See Section 8 of this Notice (immediately below) for specifics regarding the Final Approval Hearing.

8. CAN I ATTEND THE FINAL APPROVAL HEARING?

You can, but don't have to, attend the Final Approval Hearing on _____ at (time) in Department ____ of the Ventura County Superior Court, located at _____. At the Hearing, the judge will decide whether to grant Final Approval of the Settlement and how much of the Gross Settlement will be paid to Class Counsel, Plaintiff, and the Administrator. The Court will invite comment from objectors, Class Counsel and Defense Counsel before making a decision.

It's possible the Court will reschedule the Final Approval Hearing. You should contact Class Counsel to verify the date and time of the Final Approval Hearing.

9. HOW CAN I GET MORE INFORMATION?

The Agreement sets forth everything Boatyard, Inc. and Plaintiff have promised to do under the proposed Settlement. The easiest way to read the Agreement, the Judgment or any other Settlement documents is to go to CPT Group, Inc.'s website at _____ (url) _____. You can also telephone or send an email to Class Counsel or the Administrator using the contact information listed below.

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

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Tel.: (310) 312-0299

Fax: (310) 312-0296

Settlement Administrator:

CPT Group, Inc.

Email Address:

Mailing Address:

Telephone:

Fax Number:

10. WHAT IF I LOSE MY SETTLEMENT CHECK?

If you lose or misplace your settlement check before cashing it, the Administrator will replace it as long as you request a replacement before the void date on the face of the original check. If your check is already void you should consult the Unclaimed Property Fund for instructions on how to retrieve the funds.

11. WHAT IF I CHANGE MY ADDRESS?

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