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Attorneys for Plaintiffs, on a representative basis and on behalf of all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

JUAN CARLOS BAUTISTA and JAIME
CERVANTES, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

SERVICEFIRST RESTORATION, INC.,
a California Corporation; and DOES 1
through 20, inclusive;

Defendants.

Case No.: CIVSB2302978

*[Assigned to Hon. Joseph Ortiz, Dept S17, for
all purposes]*

**DECLARATION OF BRIAN J. MANKIN,
ESQ., IN SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

Hearing

Date: August 5, 2024

Time: 8:30 a.m.

Dept.: S17

I, Brian J. Mankin, state and declare:

1. I am an attorney licensed to practice before all of the courts of the State of California. I manage the employment department within my firm where I am also a Partner. I represent Plaintiffs in this action, and I am thoroughly familiar with and have personal knowledge of all of the facts set forth herein. I submit this declaration in support of Plaintiffs' Motion for Preliminary Approval of this Class Action Settlement. If called as a witness, I could and would competently testify thereto.

1 **COUNSEL'S EXPERIENCE**

2 2. I have been a member, in good standing, of the State Bar of California since 2001.
3 I am admitted to practice in the United States District Courts for the Central and Southern
4 District of California and the Ninth Circuit Court of Appeal and have tried cases in various
5 courts in California.

6 3. I have handled well over 500 employee vs. employer litigation matters during my
7 23 years in practice. Over the last 17 years, my practice has almost entirely consisted of
8 representing employees, the majority of which has included class action and representative
9 action wage and hour matters. In total, I have handled well over 250 class action and
10 representative action wage/hour cases, and have been appointed by the court as class counsel and
11 have received final court approval and judgment in over half of those actions to date, and
12 anticipate receiving final approval in many more of those in the future.

13 4. As part of these settlements and judgments, I have recovered well in excess of
14 \$250 million in damages for my clients and the class members (who often work as nurses,
15 ambulance drivers, technicians, warehouse workers, truck drivers, sales, professional
16 occupations and countless other trades). My team and I once held the record for the largest
17 PAGA-only case in California's history - a \$12.5 million-dollar court approved settlement,
18 which followed extensive litigation, summary adjudication and writs to the CA Supreme Court
19 against a Fortune 50 company (*Garcia v. Macy's*, San Bernardino Superior Court).

20 5. I have tried two major class and PAGA cases against Fortune 100 companies over
21 the last few years. I was lead counsel in a PAGA case that my firm tried in the Orange County
22 Superior Court and received a \$425,000 judgment. I was co-counsel in a class action case
23 against Walmart that was tried to the jury in District Court, wherein the jury awarded Plaintiffs
24 over \$6 million. Both cases were appealed, and ultimately the jury trial verdict was affirmed and
25 the PAGA case was reversed and remanded.

26 6. I was named by the LA Times as one "Southern California Leading Lawyers" in
27 the May 2023 issue of Consumer Attorney's of Southern California (a recognition given to 17
28 employment/labor law attorneys in 2023). Additionally, over the last 5+ consecutive years, I

1 have been selected by my peers as a “Super Lawyer” in Employment Litigation, a distinction that
2 only 5% of lawyers receive.

3 **BRIEF SUMMARY OF THE SETTLEMENT**

4 7. Following a contested litigation process, Plaintiffs and Defendant (collectively,
5 the “Parties”) entered into a Class Action and PAGA Settlement Agreement and Release (the
6 “Settlement Agreement” or “S.A.”), which is attached hereto as **Exhibit 1**.

7 8. The Settlement Agreement seeks to release and discharge Defendant from the
8 claims brought against them in exchange for Defendant’s agreement to pay \$500,000 on a non-
9 reversionary, non-claims made basis (each Class Member will receive his/her share of the Net
10 Settlement Amount without having to submit a claim form or take any action, except for those
11 who opt-out).

12 9. Under the terms of the Settlement Agreement, Defendant will not oppose
13 Plaintiffs’ Counsel’s application for a reasonable award of attorneys’ fees not to exceed
14 \$166,666.67 (1/3 of the Settlement Amount), litigation expenses not to exceed \$20,000,
15 Settlement Administrator Costs of \$8,000, PAGA penalties of \$30,000 (with 75% to the
16 LWDA and 25% to the Aggrieved Employees on a pro rata basis), and a Service Payment of
17 \$10,000 to each Plaintiff (the “Class Representatives”). After all Court-approved deductions
18 from the Settlement Amount, it is estimated that \$255,333.33 will be available to pay the Class
19 Members, as follows:

<i>Settlement Amount</i>	\$ 500,000.00
Attorneys’ Fees (1/3)	\$ 166,666.67
Litigation Costs (not to exceed)	\$ 20,000.00
Administrator Costs	\$ 8,000.00
PAGA Penalties	\$ 30,000.00
Class Representatives Service Awards	\$ 20,000.00
<i>Net Settlement Amount</i>	\$ 255,333.33

25 10. The Settlement allocates payment to Class Members as follows: (1) 75% of the
26 Net Settlement Amount shall be allocated to the Independent Contractors, who will each receive
27 a \$5,000 payment plus a pro-rata share of the remaining amount based on Weeks Worked during
28 the Class Period, and (2) 25% of the Net Settlement Amount shall be allocated to the Hourly

1 Employees, distributed on a pro-rata basis according to Weeks Worked during the Class Period.
2 (S.A. ¶ 52(c)). This allocation was negotiated and agreed upon by the Parties because the
3 Independent Contractors were subjected to several unique claims with higher valuation (*i.e.*,
4 independent contractor misclassification, alleged substantial unreimbursed expenses, among
5 others). And, pursuant to this allocation, the average payment for the sixteen Independent
6 Contractors will be approximately \$11,968.75 and the average payment for approximately
7 ninety-four Hourly Employees will be an estimated \$679.08. In addition, approximately 50
8 Aggrieved Employees will receive a share of the \$7,500 PAGA Penalties (25% of the \$30,000
9 allocation), calculated pro-rata based on Weeks Worked during the PAGA Period.

10 11. Each Class Member will receive the Class Notice, explaining the nature of the
11 case, and the process for participating, objecting and opting-out, and advising of his/her
12 estimated settlement payment and the number of Weeks or Pay Periods he/she is credited with
13 working during the Class Period which is attached hereto as **Exhibit 2**.

14 **PROCEDURAL BACKGROUND**

15 12. My office has performed considerable work and diligently investigated and
16 prosecuted this case to a successful conclusion. Our work has resulted in the creation of a
17 significant settlement fund for the benefit of the Class. We efficiently communicated and
18 exchanged information informally with Defense counsel which enabled the parties to
19 successfully settle the case. Because of the risks involved in litigating the case and the contested
20 legal and factual issues, we believe this settlement to be fair, reasonable, and adequate.

21 13. My office, on behalf of Plaintiff Bautista, submitted a letter to the Labor and
22 Workforce Development Agency (“LWDA”) for civil penalties under the Private Attorneys
23 General Act of 2004 (“PAGA”), and simultaneously sent a letter to Defendant requesting the
24 production of personnel and timekeeping records to further evaluate his wage and hour claims.
25 On May 12, 2023, my office filed this action, alleging Defendant violated various sections of the
26 Labor Code. On June 27, 2023, Defendant filed its Answer to the complaint.

27 14. Thereafter, Plaintiff Cervantes retained my office and sought to be added to this
28 Action. In that regard, on June 1, 2023, my office submitted an Amended LWDA Notice to the

1 LWDA and by certified mail to Defendant, setting forth the specific provisions of the Labor
2 Code alleged to have been violated, including the facts and theories to support the violations. On
3 October 6, 2023, my office filed the operative First Amended Complaint which added Plaintiff
4 Cervantes as a plaintiff and class representative and added causes of action under PAGA.

5 15. Defendant retained counsel and immediately began to defend the case. However,
6 after early discussions among counsel, the Parties agreed to attend private mediation prior to
7 discovery and motion practice.

8 16. In preparation for mediation, the Parties informally exchanged documents and
9 information that allowed both sides to calculate the potential damages and evaluate potential risk,
10 including policies and procedures pertaining to the claims, statistics relating to the number of
11 current and former employees, number of shifts, pay periods worked and other things, and a
12 sampling of payroll and timekeeping records for Class Members. This information enabled both
13 parties to take a deep dive into the claims. Additionally, during this process, Plaintiffs and their
14 counsel analyzed, researched, and investigated the potential issues, including matters related to
15 the calculation of damages, trial, and appellate issues and risks.

16 17. On December 13, 2023, Plaintiffs and Defendant participated in mediation with
17 Glenn Lerman, Esq. a well-respected employment mediator. At the conclusion of mediation and
18 extensive arms-length negotiations, the Parties reached a global settlement, which is reflected in
19 the Settlement Agreement and for which the Parties now seek the Court's preliminary approval.

20 **SUMMARY OF THE CLAIMS AND DEFENSES**

21 18. Plaintiffs alleged numerous wage and hour violations on behalf of the Class
22 Members. However, Defendant vigorously contested and denied Plaintiffs' material allegations
23 on the merits and as to the propriety of a class action or PAGA representative action. Still,
24 Plaintiffs believed there were several strong claims.

25 19. For instance, Plaintiffs allege that they and the Class Members were, at all times,
26 denied compliant meal and rest breaks. However, Defendant argued that it provided and made all
27 mandated breaks available to the Class, and any employee who did not take a break did so of
28 their own volition. Thus, Defendant argued these claims were without merit because, for each

1 violation, a fact-finder would have to determine why a break was noncompliant, because if it was
2 by the employee's choice, no liability attaches to Defendant.

3 20. Plaintiffs also allege that Defendant required the Class Members – primarily the
4 Independent Contractors – to incur substantial costs and expenses to perform their tasks, without
5 any reimbursement. But Defendant denied that this occurred and claimed that it reimbursed the
6 Class Members for all reasonable and necessary expenses incurred.

7 21. Plaintiffs further alleged that Defendant failed to pay proper wages due to the
8 failure to accurately record and compensate for all hours worked. As a result, Plaintiffs argued
9 these violations resulted in unpaid minimum and overtime wages, as well as waiting time
10 penalties and other derivative penalties. However, Defendant opposed each of these unpaid
11 wage claims on the merits and as to the propriety of class certification.

12 22. Finally, Plaintiffs alleged a variety of other claims (all of which Defendant
13 disputed), such as the failure to timely pay wages each period (under Labor Code § 204), failure
14 to timely pay all wages upon separation of employment (Labor Code §§ 201 – 203), and failure
15 to provide accurate itemized wage statements (Labor Code § 226).

16 23. Despite the disputed nature of the claims, the Parties concluded that further
17 litigation of the Action would be protracted and expensive, and that it is desirable that the Action
18 be fully and finally settled to limit further risk, expense, and protracted litigation.

19 **EVALUATION OF THE SETTLEMENT**

20 24. In preparation for mediation, Peter Carlson, a senior associate with 10 years of
21 litigation experience within my office, and I formulated a damages model and risk analysis based
22 upon detailed data obtained through informal discovery and information exchanges. The
23 summary of the claims below is based on calculations by our expert and us, and the risks that we
24 potentially faced, giving significant credit to the defenses that Defendant raised or would likely
25 raise in further proceedings.

26 25. Following the informal exchange and other information provided by Defendant,
27 we estimated the following data points through the date of mediation: (1) 97 Class Members, (2)
28 70 *former* Class Members for purposes of Labor Code § 203, (3) 9,520 workweeks, (4) 42,840

1 shifts worked, and (4) approximately 2,200 wage statements during the PAGA Period.

2 26. Here, Plaintiffs alleged a variety of claims against Defendant, which boil down to
3 these categories: (1) meal and rest break violations, (2) unpaid wages, (3) waiting time penalties
4 under Labor Code §§ 201 – 203, (4) wage statement penalties under § 226(e), (5) unreimbursed
5 expenses, and (6) PAGA civil penalties for the same claims.

6 27. Plaintiffs alleged meal and rest break claims against Defendant. Based on the pre-
7 mediation analysis and investigation, Class Counsel estimated a 40% violation rate for meal
8 periods and a 40% violation rate for rest breaks. However, Defendant raised numerous
9 arguments in response to this claim, including that the claims fail on the merits because it
10 maintained fully compliant written policies and specifically authorized the Class Members to
11 take meal and rest breaks, meaning that no one had a reason or cause to miss a break or take a
12 short/late break. Therefore, Defendant asserted that a fact-finder would have to determine for
13 each Class Member whether a break was missed and why, and why a break was noncompliant or
14 nonexistent, because if it was the employee's choice, no liability attaches to Defendant. These
15 defenses are factored into Plaintiffs' analysis in two ways. First, these issues raise questions
16 regarding whether the meal and rest break claims could be certified. Second, these defenses also
17 go toward the merits given the evidentiary question of proving the number of meal and rest
18 violations. Additionally, Defendant of course argued that the meal and rest break claims fail as
19 to the Independent Contractors because Defendant argued that those individuals were properly
20 classified as independent contractors, not employees, and California's meal and rest break laws
21 do not apply. As such, Plaintiffs and Class Counsel considered these risks and defenses, along
22 with the relatively low violation rates and, for purposes of mediation and settlement, applied
23 appropriate risk reductions regarding the risks of defeat at class certification and on the merits.

24 28. Then, Plaintiffs' unpaid wage claims had several distinct theories of liability,
25 including: (1) alleged piece-rate pay violations as to the Independent Contractors, (2) failure to
26 pay all hours worked for all Class Members, and (3) alleged regular rate issues (*i.e.*, failure to
27 include "on call" and other pay in overtime and other calculations). However, Defendant
28 vehemently opposed these unpaid wage claims on the merits and as to the propriety of class

1 certification. On this point, Defendant raised several strong defenses. As a result, for mediation
2 and settlement purposes, Plaintiffs and Class Counsel applied appropriate risk reductions from
3 the maximum potential unpaid wages to account for risks of defeat at class certification and on
4 the merits.

5 29. Plaintiffs also alleged claims for waiting time penalties and wage statement
6 violations, including failure to accurately state all applicable hourly rates and total hours worked.
7 Some of these claims were derivative of the claims above, meaning that they only had merit if
8 the claims for unpaid wages or meal/rest breaks were successful. But Defendant raised a variety
9 of defenses to these derivative claims that impacted the valuation. Namely, as to the wage
10 statement violations, Defendant argued that the wage statements did not violate Labor Code §
11 226 and even if there was a “technical” violation, that Plaintiffs would be unable to prove the
12 required “knowing and intentional” and “injury” elements. Then, as to the waiting time penalty
13 claim, Plaintiffs’ valuation had to account for the fact that this claim was derivative of the unpaid
14 wage and meal/rest break claims (*e.g.*, the unpaid wage premiums) and, if those claims failed at
15 certification or on the merits, there would be no waiting time penalties owed, so the same risks
16 for those claims applied to this claim. Furthermore, even if the unpaid wage and/or meal/rest
17 claims succeeded at certification and on the merits, Plaintiffs would have to prove that the
18 violations (if any existed) were “willful” under the meaning of Labor Code § 203. And, here,
19 Defendant argued that there could not be a finding of a “willful” violation since they had
20 compliant written policies, and any deviations therefrom were inadvertent and unintentional.

21 30. Finally, Plaintiffs alleged that Defendant required the Class Members to incur
22 substantial unreimbursed expenses, such as acquiring and using a personal cell phone for
23 business purposes. Plaintiffs also alleges that the Independent Contractors were required to incur
24 other expenses, such as acquiring and maintaining tools, along with purchasing supplies and
25 equipment to perform their tasks for Defendant. However, Defendant opposed these claims on
26 the facts (arguing this did not occur) but also on the legal merits by arguing that the expenses
27 were neither “reasonable” nor “necessary” under California law.
28

1 31. In sum, Plaintiffs calculated the *maximum* potential Class damages to be
2 approximately \$3,500,000. However, that figure fails to consider the various risks at class
3 certification, on the merits, and the many evidentiary issues. When considering all relevant
4 factors, Class Counsel estimated the risk-adjusted value of the Class claims at \$1,400,000.

5 32. And while the PAGA penalties had a potential maximum value in the seven
6 figures, this also fails to incorporate the risks above and, further, fails to acknowledge that courts
7 have wide latitude to reduce the civil penalties “based on the facts and circumstances of a
8 particular case” and if “to do otherwise would result in an award that is unjust, arbitrary and
9 oppressive, or confiscatory.” Labor Code § 2699(e)(2). Moreover, Defendant argued against the
10 merits of the underlying claims and particularly that the “willfulness” standard and/or “good
11 faith” defenses mitigated the civil penalty claims and rendered any such penalties as uncertain.
12 Defendant also argued it is improper to stack civil penalty claims on top of underlying statutory
13 claims. For these reasons, the Parties submit that this settlement is fair and reasonable.

14 **THE SETTLEMENT IS FAIR, JUST, AND REASONABLE**

15 33. The settlement was the product of extensive arm’s length negotiations, facilitated
16 by an experienced mediator. Though cordial and professional, the settlement negotiations were
17 adversarial and non-collusive in nature. The settlement reached is the product of substantial
18 effort by the parties and their counsel. Although we believed that there was a possibility of
19 certifying the claims, we recognized the potential risk, expense, and complexity posed by
20 litigation, such as unfavorable decisions on class certification, summary judgment, at trial and/or
21 on the damages awarded, and/or on an appeal that can take several more years to litigate.

22 34. The settlement will result in a fair payment to each Class Member based on the
23 percentage of weeks worked during the Class Period and other factors as set forth in the
24 Settlement Agreement. As set forth hereinabove, Plaintiffs and their counsel have diligently
25 investigated the claims and defenses on behalf of the Class Members and worked to achieve a
26 resolution of the claims to maximize the recovery by avoiding further expenditure of attorneys’
27 fees and costs. After evaluating the significant risks attendant with further litigation described
28 above and weighing them against the benefits of a known compromise and settlement as set forth

1 in the Settlement Agreement, settlement on the terms agreed to is believed to be in the best
2 interest of Plaintiffs and the Class, and is a fair and reasonable resolution of the claims alleged.

3 35. My office brought to bear a great deal of experience in negotiating the settlement
4 of this case. As detailed herein, my office engaged in the necessary discovery and investigation,
5 making it possible to exercise informed judgment throughout the settlement process, including
6 significant document review (e.g. documents pertaining to Defendant's policies and procedures,
7 personnel documents, among others), and conducted an extensive analysis of the detailed class-
8 wide data provided by Defendant.

9 36. Based on my experience in other cases, including wage and hour matters, I
10 believe I am qualified to evaluate the class claims and viability of defenses in this class action.
11 In this case, the recovery for each class member is reasonable, fair, and adequate, and a
12 settlement at this time is in the best interests of the class. The settlement provides each class
13 member with compensation for the alleged violations when viewed in relation to the costs and
14 risks inherent in obtaining class certification and proceeding to trial.

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

17 38. Of course, the settlement amount represents a compromise figure, taking into
18 account the various risks surrounding class certification and the merits of Defendant's asserted
19 defense. Nevertheless, the settlement provides for fair and adequate payments to the class
20 members, with no reversion to Defendant.

21 **PLAINTIFFS' REQUESTED ENHANCEMENT PAYMENTS**

22 39. Plaintiffs each seek an enhancement payment of \$10,000 for their service to the
23 class, which I believe is fair and warranted. Plaintiffs came forward in an effort to effectuate a
24 policy and practice change that benefitted all other Class Members, and to recover unpaid wages.
25 They assumed significant risk in bringing this litigation—namely, had they lost, they would have
26 been ordered to pay Defendant's costs.

27 40. Plaintiffs provided invaluable assistance to my office and the Class in this case,
28 including providing factual background for the Class Complaint; reviewing the litigation

documents; providing information and documents about Defendant's policies and practices; participating in phone calls to discuss litigation and settlement strategy; and reviewing the settlement documents. Plaintiffs agreed to participate in this case with no guarantee of personal benefit. At final approval, Plaintiffs will each submit a comprehensive declaration setting forth all of the reasons why they believe that the service award should be approved.

ADEQUACY OF COUNSEL AND THE PROVISIONAL REASONABLENESS OF THE REQUESTED FEES AND COSTS

41. As set forth above, I have handled over 500 class and representative actions, have been appointed as class counsel and have successfully resolved over half of those cases, and many others remain pending and will successfully resolve in the future.

42. When this case was taken on a contingency fee basis, with my firm agreeing to assume responsibility for all litigation costs, the ultimate result was far from certain. In the course of this litigation, my firm paid all costs including filing fees, court costs, research fees, and mediation costs. There was never a guarantee that we would recoup those expenditures.

43. It is my experience that attorney fee awards of one-third of a common fund settlement is the standard in California. In this case, my firm agreed to seek one-third of the Settlement Amount for attorneys' fees. Defendant does not oppose this fee request. The fee is further warranted because it is within the range of reasonableness typically awarded in class actions. The costs are reasonably capped at \$20,000 and will be based on the actual amount of costs incurred at the time of final approval.

SETTLEMENT ADMINISTRATOR

44. The parties request that the Court appoint Phoenix Settlement Administrators to serve as the Settlement Administrator. Phoenix is experienced in administering class action settlements and has provided a proposal to administer this settlement for a total of \$8,000, which is attached hereto as **Exhibit 3**.

SUBMISSION TO THE LWDA

45. My office, on behalf of Plaintiffs, has concurrently submitted the settlement and motion documents to the LWDA in accordance with Labor Code § 2699(1)(2). The proof of

1 submission is attached hereto as **Exhibit 4**.

2 **EXHIBITS AND CONCLUSION**

3 46. A true and correct copy of the fully signed Settlement Agreement is attached as
4 **Exhibit 1**.

5 47. A true and correct copy of the proposed Class Notice is attached hereto as **Exhibit**
6 **2**.

7 48. A true and correct copy of the Phoenix's proposal to administer the Settlement is
8 attached as **Exhibit 3**.

9 49. A true and correct copy of the the LWDA's confirmation of receipt of this
10 Motion, Declarations and exhibits is attached hereto as **Exhibit 4**.

11 50. For the foregoing reasons, it is respectfully requested that the Court grant
12 preliminary approval of the settlement as being fair, reasonable, and in the best interests of the
13 class, as well as preliminarily approve the requested attorneys' fees, costs, and enhancement
14 payment to the Class Representatives.

15 I declare under penalty of perjury under the laws of the State of California that the
16 foregoing is true and correct. Executed on July 10, 2024, at Riverside, California.

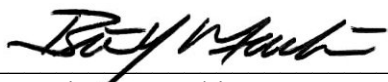
17
18 By: 
19 Brian J. Mankin, Esq.
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EXHIBIT “1”

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

JUAN CARLOS BAUTISTA and JAIME
CERVANTES, individually, on a
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Defendants.

Case No.: CIVSB2302978
*[Assigned to Hon. Joseph Ortiz, Dept S17, for
all purposes]*

**CLASS ACTION AND PAGA
SETTLEMENT AGREEMENT AND
RELEASE OF CLAIMS**

1 This Class Action and PAGA Settlement Agreement and Release of Claims is entered
2 into by and between Plaintiffs Juan Carlos Bautista and Jaime Cervantes, individually and on
3 behalf of all others similarly situated, and on behalf of the State of California, and Defendant
4 ServiceFirst Restoration, Inc., and is approved by their respective counsel of record, subject to
5 the terms and conditions hereof and the Court's approval.

6 **A. Definitions**

7 1. "Action" or "Lawsuit" means and refers to the case entitled *Bautista, et al. v.*
8 *ServiceFirst Restoration, Inc.*, San Bernardino County Superior Court, Case No.
9 CIVSB2302978.

10 2. "Aggrieved Employee(s)" means all Independent Contractors and Hourly
11 Employees during the PAGA Period.

12 3. "Agreement" or "Settlement Agreement" or "Settlement" shall mean this Class
13 Action and PAGA Settlement Agreement and Release of Claims.

14 4. "Class" is defined to include all Independent Contractors and Hourly Employees
15 during the Class Period.

16 5. "Class Member(s)" refers to individual members of the Class.

17 6. "Class Counsel" refers to Brian Mankin and Peter Carlson of Lauby, Mankin &
18 Lauby LLP.

19 7. "Class Data" means a complete list that Defendant will diligently and in good
20 faith compile from its records and provide to the Settlement Administrator on one spreadsheet
21 which shall include, for each Class Member: the individual's full name, last known address,
22 Social Security Number, a notation of whether the individual falls into the category of
23 Independent Contractor and/or Hourly Employee, and total Weeks Worked during the PAGA
24 Period and the Class Period.

25 8. "Class Period" is deemed to be any time during the period of May 12, 2019,
26 through January 31, 2024.

27 9. "Class Representatives" or "Plaintiffs" means and refers to Plaintiffs Juan Carlos
28 Bautista and Jaime Cervantes.

1 10. “Complaint” refers to the operative first amended complaint, which pleads class
2 action and PAGA representative claims.

3 11. “Court” (or “Judge”) means the California Superior Court, County of San
4 Bernardino.

5 12. “Defendant” means and refers to Defendant ServiceFirst Restoration, Inc.

6 13. “Defendant’s Counsel” or “Defense Counsel” means and refers to Navigato &
7 Battin, LLP.

8 14. “Effective Date” means the latest of the following dates: (i) if no Class Member
9 timely and properly intervenes or files a motion to vacate the Judgment under Code of Civil
10 Procedure § 663, then the date the Court enters an order granting Final Approval of the
11 Settlement; (ii) if a Class Member intervenes or files a motion to vacate the Judgment, then
12 sixty-one (61) calendar days following the date the Court enters an order granting Final
13 Approval, assuming no appeal is filed; or (iii) if a Class Member timely and properly intervenes
14 or files a motion to vacate the Judgment under Code of Civil Procedure § 663 or initiates another
15 collateral attack, and if a timely appeal is filed, then the date of final resolution of that appeal or
16 other collateral attack (including any requests for rehearing and/or petitions for certiorari),
17 resulting in final judicial approval of the Settlement.

18 15. “Final Approval” refers to the order of the Court granting final approval of this
19 Settlement Agreement and entering a judgment approving this Agreement on substantially the
20 terms provided herein or as may be modified by subsequent agreement of the Parties.

21 16. “Hourly Employees” means all nonexempt employees employed by Defendant in
22 California during the Class Period.

23 17. “Independent Contractors” means the sixteen (16) individuals that performed
24 contracting field/service work for Defendant in California and who Defendant classified as
25 independent contractors during the Class Period, who are identified on Exhibit A attached hereto,
26 which shall remain confidential for privacy purposes and only be provided to the Settlement
27 Administrator.

28 18. “Individual Class Payment” refers to each Participating Class Members’ share of

the Net Settlement Amount, as further discussed in Paragraph 52(c) below.

19. “Individual PAGA Payment” refers to each Aggrieved Employees’ share of the PAGA Penalties, as further discussed in Paragraph 52(h) below.

20. “Net Settlement Amount” shall have the meaning ascribed to it in Paragraph 52(b) below.

21. “Notice” means the notice of proposed class settlement that will be sent to the Class Members, and which will advise each Class Member of the settlement and his or her estimated “Individual Class Amount” and will further advise of the setting of a Final Approval Hearing.

22. “Objecting Class Member” means a Class Member, other than Plaintiffs, who submits a valid and timely objection to the terms of this Agreement, pursuant to Paragraph 72(c) below.

23. “PAGA Penalties” means the amount that the Parties have agreed to pay to the Labor and Workforce Development Agency (“LWDA”) in connection with the California Labor Code Private Attorneys General Act of 2004 (Cal. Lab. Code §§ 2698, *et seq.*, “PAGA”), as well as the Individual PAGA Payment allocated to each Aggrieved Employee.

24. “PAGA Period” is deemed to be any time during the period of May 12, 2022, through January 31, 2024.

25. “Participating Class Member” means any and all Class Members who are deemed to participate and receive an Individual Class Payment and do not opt-out by submitting timely valid Requests for Exclusion.

26. “Parties” mean Plaintiffs and Defendant, collectively.

27. “Preliminary Approval Date” means the date the Court approves the Settlement Agreement and enters the Preliminary Approval Order.

28. “Preliminary Approval Order” means the judicial Order to be entered by the Court, upon the application or motion of the Plaintiffs, preliminarily approving this Settlement and providing for the issuance of the Notice to the Class, an opportunity to opt out of the Settlement, an opportunity to submit timely objections to the Settlement, and setting a final

1 approval hearing on the fairness of the terms of Settlement, including approval of attorneys' fees
2 and costs. Provided that the motion is consistent with the terms herein, Defendant will not object
3 to Plaintiffs' motion for preliminary approval but will be provided with an opportunity to review
4 and comment upon the motion before it is filed.

5 29. "QSF" means the Qualified Settlement Fund set up by the Settlement
6 Administrator for the benefit of the Participating Class Members and Aggrieved Employees, and
7 from which the settlement payments shall be made.

8 30. "Released Class Claims" or "Class Claims" by the Participating Class Members
9 upon Final Approval of the Settlement will include all claims stated in the Complaint and those
10 that could reasonably have been alleged based upon the facts in the Complaint, including: (1)
11 failure to pay minimum wages, (2) failure to pay overtime wages, (3) failure to pay for rest
12 periods and nonproductive time, (4) failure to provide meal periods, (5) failure to provide rest
13 breaks, (6) failure to reimburse business expenses, (7) failure to timely pay final wages, (8)
14 failure to provide accurate itemized wage statements, and (9) unfair and unlawful competition.

15 31. "Released PAGA Claims" means any and all PAGA claims that Plaintiffs alleged
16 against the Released Parties, based on the facts stated in the Complaint and in the relevant
17 LWDA notice letters, including all PAGA claims seeking civil penalties premised upon: (1)
18 misclassification, (2) failure to pay minimum wages, (3) failure to pay overtime wages, (4)
19 failure to pay for rest and recovery periods and nonproductive time under Labor Code § 226.2,
20 (5) failure to provide meal periods, (6) failure to provide rest breaks, (7) failure to reimburse
21 business expenses, (8) failure to timely pay wages each period, (9) failure to timely pay wages
22 upon separation of employment, (10) failure to provide accurate itemized wage statements, and
23 (11) all other claims for civil penalties recoverable under the Private Attorneys General Act,
24 Labor Code §§ 2698 et seq. based on the facts or claims alleged in the LWDA notice letters and
25 Complaint. The time period governing the PAGA Released Claims shall be the PAGA Period.

26 32. "Released Parties" means Defendant, together with its shareholders, officers,
27 directors, employees, and agents.

28 33. "Release Period" shall be the time period governing the Released Class Claims,

1 which shall be the same as the Class Period.

2 34. “Release” shall mean the release and discharge of the Released Class Claims by
3 Plaintiffs and all Participating Class Members and their assignees.

4 35. “Response Deadline” is 30 calendar days from the date the Notice is mailed to the
5 Class Members.

6 36. “Request for Exclusion” shall have the meaning ascribed to it in Paragraph 72(a)
7 below.

8 37. “Settlement Amount” is \$500,000, exclusive of Defendant’s obligation to fund its
9 share of payroll taxes, as further discussed in Paragraph 52(d) below.

10 38. “Service Payments” or “Service Awards” means the amount approved by the
11 Court to be paid to Class Representatives in addition to their Individual Settlement Payments as
12 Participating Class Members and Individual PAGA Payments as Aggrieved Employees.

13 39. “Settlement Administrator” or “Administrator” means and refers to Phoenix
14 Settlement Administrators, the third-party class action settlement administrator agreed to by the
15 Parties, that will provide the Notice to the Class Members and distribute the settlement amounts
16 as described in this Agreement.

17 40. “Settlement Administration Costs” means the costs payable from the Settlement
18 Amount to the Settlement Administrator for administering this Settlement, including, but not
19 limited to, printing, distributing, and tracking documents for this Settlement, tax reporting, and
20 deposit of the employee and employer share of payroll taxes, unclaimed property due diligence,
21 reporting and remittance obligations, distributing the Settlement Amount, and providing
22 necessary reports and declarations, as requested by the Parties. The Settlement Administration
23 Costs shall be paid from the Settlement Amount, and shall not exceed the amount approved by
24 the Court, regardless of any additional costs that the Settlement Administrator may request or
25 feel is necessary to administer the Settlement.

26 41. “Work Weeks” or “Weeks Worked” in the context of a Class Members means any
27 and all work weeks during the Class Period during which the Class Member worked at least one
28 day for Defendant in California. Likewise, in the context of Aggrieved Employees, it means any

1 and all weeks worked during the PAGA Period during which the Aggrieved Employee worked at
2 least one day for Defendant in California.

3 **B. General Terms**

4 42. On May 12, 2023, Plaintiff Juan Carlos Bautista filed the instant class action,
5 alleging that Defendant violated various sections of the Labor Code. On the same day, Plaintiff
6 Bautista gave written notice by online filing to the Labor and Workforce Development Agency
7 (“LWDA”) and by certified mail to Defendant of the specific provisions of the Labor Code
8 alleged to have been violated, including the facts and theories to support the alleged violations.

9 43. Defendant filed its Answer to the initial complaint on June 27, 2023.

10 44. Plaintiff Jaime Cervantes later retained Class Counsel and sought to be added to
11 this Action. In that regard, on June 1, 2023, Plaintiffs submitted an Amended LWDA Notice to
12 the LWDA and by certified mail to Defendant, setting forth the specific provisions of the Labor
13 Code alleged to have been violated, including the facts and theories to support the violations.

14 45. On October 6, 2023, Plaintiffs filed the operative First Amended Complaint
15 which added Plaintiff Cervantes as a plaintiff and class representative and added causes of action
16 under PAGA.

17 46. Defendant denies Plaintiffs’ claims and allegations, and contends that the Action
18 is not suitable for class certification.

19 47. The Class Representatives believe they can proceed with the representative and
20 class claims, that the Action is meritorious, and that class certification is appropriate.

21 48. The Parties have conducted a thorough investigation into the facts of the Action.
22 This includes conducting an extensive exchange of informal discovery, including a sampling of
23 payroll and timekeeping records for Class Members. Class Counsel is both knowledgeable about
24 and has done extensive research with respect to the applicable law and potential defenses to the
25 claims of the Class. Class Counsel has diligently pursued an investigation of the Class
26 Members’ claims against Defendant. Based on the foregoing data and on their own independent
27 investigation and evaluation, Class Counsel is of the opinion that the settlement with Defendant
28 for the consideration and on the terms set forth in this Settlement Agreement is fair, reasonable,

1 and adequate and is in the best interest of the Class Members in light of all known facts and
2 circumstances, including the risk of significant delay and uncertainty associated with litigation,
3 various defenses asserted by Defendant, and numerous potential appellate issues.

4 49. On December 13, 2023, Plaintiffs and Defendant participated in a full-day
5 mediation with Glenn Lerman, a well-respected wage-and-hour mediator. At the conclusion of
6 mediation and extensive arms-length negotiations, the Parties reached a global settlement and
7 entered into a Memorandum of Understanding.

8 50. The Parties agree that neither the Parties' Settlement, this Agreement, nor the acts
9 to be performed or judgment to be entered pursuant to the terms of the Settlement and
10 Agreement, shall be construed as an admission by Defendant of any wrongdoing or violation of
11 any statute or law or liability on the claims or allegations in the Action.

12 51. Stipulation for Class Certification. For settlement purposes only, Defendant will
13 stipulate that the Participating Class Members may be conditionally certified as a Class. This
14 stipulation to certification is in no way an admission that class action certification is proper and
15 shall not be admissible in this action except for the sole purposes of enforcing this Agreement.
16 Should, for whatever reason, the Court fail to issue Final Approval, the Parties' stipulation to
17 class certification as part of the Settlement shall become null and void ab initio and shall have no
18 bearing on, and shall not be admissible in this Action in connection with, the issue of whether
19 certification would be appropriate in a non-settlement context. Defendant expressly reserves its
20 rights and declare that it would continue to oppose class certification and the substantive merits
21 of the case should the Court fail to issue Final Approval. Plaintiffs expressly reserve their rights
22 and declares that they will continue to pursue class certification and a trial should the Court fail
23 to issue Final Approval.

24 **C. Terms of Settlement**

25 52. The financial terms of the Settlement are as follows:

26 (a) Settlement Amount: The Parties agree to settle this Action for the
27 Settlement Amount, which is the maximum amount that will be paid by Defendant (except for
28 the employer's share of payroll taxes), which includes payments to the Participating Class

Members, PAGA Penalties (to the Aggrieved Employees and LWDA), Attorneys' Fees and Costs Award, the Service Payments to the Class Representatives, and Settlement Administration Costs. Defendant shall separately pay the employer's share of its payroll tax obligations, which shall be reported through the Settlement Administrator.

(b) Net Settlement Amount: The "Net Settlement Amount" is defined as the Settlement Amount less the Attorneys' Fees and Costs Award, the Service Payments to the Class Representatives as awarded by the Court, the Settlement Administration Costs, and PAGA Penalties. If the Court reduces the Attorneys' Fees and Costs Award, Service Awards, or Settlement Administrator Costs, or either increases or decreases the amount allocated to the PAGA Penalties, the difference shall be placed in the Net Settlement Amount and allocated to the Participating Class Members.

(c) The allocation of payment of claims among the Participating Class Members, without the need to submit a claim form, shall be as follows:

- i. 75% of the Net Settlement Amount shall be allocated to payments for the Independent Contractors, who will each receive a payment of \$5,000 plus a pro-rata share of the remaining amount according to the number of Weeks Worked during the Class Period.
- ii. 25% of the Net Settlement Amount shall be allocated to payments for the Hourly Employees, and this shall be paid on a pro-rata basis according to the number of Weeks Worked during the Class Period.

(d) Allocation of Individual Class Payments: The Individual Class Payments to Participating Class Members will be allocated as follows:

- i. Independent Contractors: Because the Independent Contractors performed contract services for Defendant as independent contractors, rather than as employees, and because Defendant fully disputes the allegations alleged herein, the Parties agree that the settlement funds paid to Independent Contractors will be allocated

and paid as contract compensation, interest, and penalties from which no state or federal taxes will be withheld or deducted.

ii. Hourly Employees: For the Hourly Employees, twenty percent (20%) will be allocated as wages subject to withholding of all applicable local, state and federal taxes; and eighty percent (80%) will be allocated for interest and statutory penalties (pursuant to, e.g., California Labor Code sections 203, 210, 226) from which no taxes will be withheld.

iii. The Settlement Administrator will issue to each Participating Class Member (as applicable) an Internal Revenue Service Form W-2 and comparable state forms with respect to the wage allocation and/or a Form 1099 with respect to the penalties and interest allocations.

(e) Service Payments to Class Representatives: The amount, if any, awarded to each Class Representative as a Service Payment will be set by the Court in its discretion, not to exceed \$10,000 each, in exchange for a full release and Civil Code § 1542 waiver as well as for the service that Plaintiffs performed on behalf of the Class. Defendant agrees not to oppose this request. The Service Payments to Class Representatives will be paid out of the Settlement Amount. The Class Representatives will be issued an IRS Form 1099 in connection with this payment. Class Representatives shall be solely and legally responsible to pay any and all applicable taxes on this payment. The Parties agree that any amount awarded as the Service Payments to Class Representatives less than the requested amount shall not be a basis for Class Counsel to void this Settlement Agreement. Should the Court approve a lesser amount for the Service Payments, the difference shall be added to the Net Settlement Amount to be distributed to Participating Class Members.

(f) Attorneys' Fees and Costs Award: Defendant agrees to not oppose a request by Class Counsel to the Court for an award of attorneys' fees of one-third of the Settlement Amount, plus reasonable litigation costs not to exceed \$20,000 ("Attorney's Fees and

Cost Award”). Defendant agrees not to oppose any contention by Class Counsel that attorneys’ fees should be based on the common fund theory. The Attorneys’ Fee and Cost Award shall be paid from the Settlement Amount, and, except for this award, Defendant shall have no further obligation to pay any attorneys’ fees, costs or expenses to Class Counsel. Should the Court approve a lesser amount than what is sought by Class Counsel, the difference shall be added to the Net Settlement Amount to be distributed to the Participating Class Members. Any Court order awarding less than the amount sought by Class Counsel shall not be grounds to rescind the Settlement Agreement or otherwise void the Settlement. The Settlement Administrator shall issue to Class Counsel an IRS Form 1099 reflecting the amount of attorneys’ fees and costs awarded by the Court.

(g) Settlement Administration Costs: The fees and other charges of the Settlement Administrator will be paid from the Settlement Amount, not to exceed \$8,000, unless otherwise approved by all Parties and the Court.

(h) PAGA Penalties: The Parties agree that \$30,000 is allocated to PAGA Penalties, and is to be paid from the Settlement Amount, subject to Court approval. Of this amount, \$22,500 (75%) shall be paid to the LWDA in satisfaction of civil penalties under the Private Attorney General Act of 2004 (“PAGA”) and \$7,500 (25%) will form the Individual PAGA Payments to the Aggrieved Employees, which shall be calculated and allocated pro-rata on a Work Week basis, which will be treated entirely as civil penalties and shall be reported as required on an IRS Form 1099. Class Counsel shall give proper notice to the LWDA of the Settlement.

(i) Tax Liability: Class Counsel and Defendant make no representations as to the tax treatment or legal effect of settlement amounts called for hereunder, and Plaintiffs and the Class Members are not relying on any statement or representation by Class Counsel or Defendant in this regard. Plaintiffs, Participating Class Members, and Aggrieved Employees understand and agree that they will be solely responsible for the payment of any taxes and penalties assessed on their respective Individual Class Payments and Individual PAGA Payments, described herein. Forms 1099 will be distributed in the manner required by the Internal Revenue Code of 1986 (the

1 “Code”) and consistent with this Agreement. If the Code, the regulations promulgated
2 thereunder, or other applicable tax law, is changed after the date of this Agreement, the processes
3 set forth in this Section may be modified in a manner to bring Defendant into compliance with
4 any such changes. Plaintiff, Participating Class Members, and Aggrieved Employees understand
5 and agree that they will be solely responsible for the payment of any taxes and penalties assessed
6 on their respective payments described herein.

7 (j) CIRCULAR 230 DISCLAIMER. EACH PARTY TO THIS
8 AGREEMENT (FOR PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY”
9 AND EACH PARTY TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING
10 PARTY, AN “OTHER PARTY”) ACKNOWLEDGES AND AGREES THAT (1) NO
11 PROVISION OF THIS AGREEMENT, AND NO WRITTEN COMMUNICATION OR
12 DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND
13 OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH
14 COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE
15 RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES
16 TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE
17 ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER OR ITS
18 OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX
19 ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO
20 THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY
21 OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT
22 ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY
23 ATTORNEY OR ADVISOR TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY
24 THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO
25 ATTORNEY OR ADVISOR TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION
26 THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY’S OR
27 ADVISER’S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS
28 LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF

1 THE TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING
2 ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT.

3 (k) “Non-Reversionary” Settlement. This is a “non-reversionary” settlement.
4 Under no circumstances will any portion of the Settlement Amount revert to Defendant.
5 Participating Class Members and Aggrieved Employees will not have to make a claim to receive
6 an Individual Class Payment or Individual PAGA Payment. Distributions, in the form of
7 Individual Class Payment or Individual PAGA Payments will be made directly to each
8 Participating Class Member and Aggrieved Employee. The Settlement Administrator shall be
9 responsible for accurately and timely reporting and remittance obligations with respect to
10 unclaimed funds as a result of a Participating Class Member and/or Aggrieved Employee not
11 cashing any checks delivered pursuant to the Settlement by the check cashing deadline, as set
12 forth herein.

13 (l) Class Counsel and Plaintiffs believe that the Settlement is fair and
14 reasonable and will so represent same to the Court.

15 **D. Release by the Participating Class Members**

16 53. Upon entry of the Final Approval Order and Defendant’s funding of the
17 Settlement Amount and all employer payroll taxes owed on the wage portion of the Individual
18 Class Payments, and except as to such rights or claims as may be created by this Agreement,
19 Plaintiffs and the Participating Class Members will forever completely release and discharge the
20 Released Parties from the Released Class Claims for the Release Period.

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

23 55. Class Representatives, on behalf of themselves and the Class, acknowledge and
24 agree that the claims for unpaid wages and untimely payment of wages in the Action are
25 disputed, and that the payments set forth herein constitute payment of all sums allegedly due to
26 them. Class Representatives, on behalf of themselves and the Class, acknowledges and agrees
27 that California Labor Code § 206.5 is not applicable to the Parties or Settlement. Labor Code §
28 206.5 provides in pertinent part as follows: “An employer shall not require the execution of any

1 release of any claim or right on account of wages due, or to become due, or made as an advance
2 on wages to be earned, unless payment of those wages has been made.”

3 **E. Release of PAGA Claims**

4 56. Upon entry of the Final Approval Order and Defendant’s funding of the
5 Settlement Amount and all employer payroll taxes owed on the wage portion of the Individual
6 Class Payments, Plaintiffs – in their individual capacities and on behalf of the State of California
7 and LWDA – shall completely release and discharge the Released Parties from the Released
8 PAGA Claims for the PAGA Period.

9 57. Regardless of submitting a valid Request for Exclusion, neither Plaintiffs nor any
10 Aggrieved Employee shall have the right to opt-out or otherwise exclude themselves from
11 releasing the Released PAGA Claims.

12 58. It is the intent of the Parties that the Final Approval Order shall have full
13 equitable and collateral estoppel and res judicata effect to the fullest extent permitted by law.

14 **F. Release by Plaintiffs and Class Representatives**

15 59. Upon entry of the Final Approval Order and Defendant’s funding of the
16 Settlement Amount, and all employer payroll taxes owed on the wage portion of the Individual
17 Class Payments, Class Representatives do hereby, for themselves and their spouses, heirs,
18 successors, beneficiaries, devisees, legatees, executors, administrators, trustees, conservators,
19 guardians, personal representatives, and assigns forever and completely release and discharge the
20 Released Parties from any and all charges, complaints, claims, liabilities, obligations, promises,
21 agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs,
22 losses, debts, and expenses (including back wages, statutory penalties, civil penalties, liquidated
23 damages, exemplary damages, interest, attorneys’ fees, and costs) of any nature whatsoever,
24 from the beginning of time through the execution of this Stipulation, whether known or
25 unknown, suspected or unsuspected, including but not limited to all claims arising out of, based
26 upon, or relating to Class Representatives’ employment with Defendant or the remuneration for
27 or termination of such employment (the “Class Representatives’ Claims”).

28 60. Without limiting the generality of the foregoing, this general release by Plaintiffs

1 includes all federal, state and local statutory claims, federal and state common law claims
2 (including but not limited to those for contract, tort and equity), including without limitation any
3 claims for breach of any implied or express contract or covenant; claims for promissory estoppel;
4 claims of entitlement to any pay; claims of wrongful denial of insurance and employee benefits
5 (except workers' compensation benefits); claims for failure to hire, public policy violations,
6 defamation, invasion of privacy, fraud, misrepresentation, emotional distress, assault/battery, or
7 other common law or tort matters; claims of harassment, retaliation or discrimination based on
8 age, race, color, religion, sex, national origin, ancestry, physical or mental disability, protected
9 activity, medical condition, marital status, sexual preference, union activity, or veteran status;
10 claims under the Americans with Disabilities Act, Age Discrimination in Employment Act, Title
11 VII of the Civil Rights Act of 1964 (as amended), the Civil Rights Act of 1991; 42 USC sec.
12 1981, 42 USC sec. 1983, the Older Workers Benefit Protection Act, the Family and Medical
13 Leave Act; claims for unfair competition; claims based on legal restrictions on Defendant's right
14 to terminate, not to hire or promote employees, or to change an employee's compensation; and
15 claims based on any federal, state or other governmental statute, regulation or ordinance, all
16 statutory, constitutional, contractual or common law claims for wages, damages, unpaid costs or
17 expenses, penalties, liquidated damages, punitive damages, interest, attorneys' fees, litigation
18 costs, restitution, or equitable relief, or any other claims arising under the Fair Labor Standards
19 Act, the Employment Retirement Security Income Act of 1974, the California Constitution, the
20 California Fair Employment and Housing Act, the California Unfair Competition Act (California
21 Business and Professions Code section 17200 et seq.), the California Labor Code, or Industrial
22 Welfare Commission Wage Orders, or arising out of or based upon the following categories of
23 allegations regardless of the forum in which they may be brought, to the fullest extent such
24 claims are releasable by law: (i) all claims for unpaid overtime; (ii) all claims for unpaid wages;
25 (iii) all claims for meal break violations; (iv) all claims for rest period violations; (v) all claims
26 for paid sick leave violations; (vi) all claims for the failure to timely pay wages upon
27 termination; (vii) all claims for the failure to timely pay wages during employment; (viii) all
28 claims for wage statement violations; (ix) all claims for reporting time pay; and (x) all other

1 penalties recoverable for such claims under PAGA.

2 61. Plaintiffs agree that there is a risk that any injury that they may have suffered by
3 reason of the Released Parties' relationship with them might not now be known, and there is a
4 further risk that said injuries, whether known or unknown at the date of this Settlement
5 Agreement, might possibly become progressively worse, and that as a result thereof further
6 damages may be sustained. Nevertheless, Plaintiffs agree to forever and fully release and
7 discharge the Released Parties and understand that by the execution of this Settlement
8 Agreement no further claims for any such injuries that existed at the time of the execution of this
9 Settlement Agreement may ever be asserted by Plaintiffs with respect to claims arising in the
10 time period from the beginning of time to the execution of this Settlement Agreement.

11 62. Plaintiffs expressly waive and relinquish all rights and benefits afforded by
12 Section 1542 of the Civil Code of the State of California and do so understanding and
13 acknowledging the significance of the waiver of Section 1542. Section 1542 of the Civil Code
14 of the State of California states:

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

22 Notwithstanding the provisions of Section 1542, and for the purpose of implementing a
23 full and complete release and discharge of all parties, Class Representatives expressly
24 acknowledges that this Settlement Agreement is intended to include in its effect, without
25 limitation, all claims that Class Representatives knew of, as well as all claims that they do not
26 know or suspect to exist in their favor against the Released Parties, or any of them, for the time
27 period from the beginning of time to the execution of this Settlement Agreement, and that this
28 Settlement Agreement contemplates the extinguishment of any such Class Representatives'
claims. Notwithstanding the above, the general release by Class Representatives shall not extend
to claims for workers' compensation benefits, claims for unemployment benefits, or other claims

that may not be released by law.

G. Interim Stay of Proceedings

63. Pending completion of all prerequisites necessary to effectuate this Settlement, the Parties agree, subject to Court approval, to a stay of all proceedings in the Action except such as are necessary to effectuate the Settlement.

H. Notice Process

64. Appointment of Settlement Administrator. The Parties have agreed to the appointment of the Settlement Administrator to perform the duties of a settlement administrator, including mailing the Notice Packet, using standard devices to obtain forwarding addresses, independently reviewing and verifying documentation associated with any claims or opt-out requests, resolving any disputes regarding the calculation or application of the formula for determining the Individual Settlement Amounts, drafting and mailing the settlement checks to Participating Class Members and Aggrieved Employees, issuing all necessary tax forms, and performing such other tasks as set forth herein or as the Parties mutually agree or that the Court orders.

65. Disputes Regarding Settlement Administration. Any and all disputes relating to administration of the Settlement by the Settlement Administrator (except for disputes regarding Class Data) shall be referred to the Court, if necessary, which will have continuing jurisdiction over the terms and conditions of this Agreement, until Plaintiffs and Defendant notify the Court that all payments and obligations contemplated by this Agreement have been fully carried out. Prior to presenting any issue to the Court, counsel for the Parties will confer in good faith to resolve the dispute without the necessity of Court intervention. The Settlement Administrator shall also be responsible for issuing to Plaintiffs, Participating Class Members, and Aggrieved Employees, and Class Counsel any Tax Forms as may be required by law for all amounts paid pursuant to this Agreement.

66. Class Data. Within fourteen (14) days after entry of the Preliminary Approval Order, Defendant shall provide the Class Data to the Settlement Administrator. The Settlement Administrator will run a check of the Class Members' addresses against those on file with the

1 U.S. Postal Service's National Change of Address List. The Class Data provided to the
2 Settlement Administrator will remain confidential and will not be used or disclosed to anyone,
3 except as required by applicable tax authorities, pursuant to Defendant's express written consent,
4 or by order of the Court. Although Class Counsel will not be provided with the list of Class Data,
5 nothing herein shall prevent Class Counsel from communicating with Class Members regarding
6 the Action and Settlement.

7 67. Notice. The Notice, as approved by the Court, shall be sent by the Settlement
8 Administrator to the Class Members, by first class mail, in English and Spanish, within ten (10)
9 calendar days following the Settlement Administrator's receipt of the Class Data. The
10 Settlement Administrator shall use standard devices, including a skip trace, to obtain forwarding
11 addresses of Class Members if any envelopes are returned.

12 68. Returned Notices. The Settlement Administrator will take steps to ensure that the
13 Notice is received by all Class Members, including utilization of the National Change of Address
14 Database maintained by the United States Postal Service to review the accuracy of and, if
15 possible, update a mailing address. Notices will be re-mailed to any Class Member for whom an
16 updated address is located within ten (10) calendar days following both the Settlement
17 Administrator learning of the failed mailing and its receipt of the updated address. The Notice
18 shall be identical to the original Notice, except that it shall notify the Class Member that the
19 exclusion (opt-out) request or objection must be returned by the later of the Response Deadline
20 or fifteen (15) days after the remailing of the Notice.

21 69. Presumption Regarding Receipt of Notice. It will be conclusively presumed that
22 if an envelope has not been returned to Settlement Administrator by the Response Deadline that
23 the Class Member received the Notice.

24 70. Disputes Regarding Class Data. Class Members are deemed to participate in the
25 Settlement unless they opt-out, and Aggrieved Employees may not opt out of the Released
26 PAGA Claims. The Notice will inform Class Members of their estimated Individual Class
27 Payment and Individual PAGA Payment, as well as the number of Weeks Worked during the
28 Class Period and the PAGA Period. Class Members may dispute their Weeks Worked by timely

submitting evidence to the Settlement Administrator. Defendant's records will be presumed determinative absent reliable evidence to rebut Defendant's records, but the Settlement Administrator will evaluate the evidence submitted by the Class Member and provide the evidence submitted to Class Counsel and Defense Counsel who agree to meet and confer in good faith about the evidence to determine the Class Member's actual number of Work Weeks, and estimated Individual Class and PAGA Payments. If Class Counsel and Defense Counsel are unable to agree, they agree to submit the dispute to the Court to render a final decision. Class Members and Aggrieved Employees will have until the Response Deadline to dispute Weeks Worked, object or opt out, unless extended by the Court.

71. Declaration of Due Diligence. The Settlement Administrator shall provide counsel for the Parties, at least five (5) days after the initial Response Deadline, a declaration of due diligence and proof of mailing with regard to the mailing of the Notice.

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

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

"I WISH TO BE EXCLUDED FROM THE CLASS IN THE SERVICEFIRST LAWSUIT. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT RECEIVE MY INDIVIDUAL CLASS PAYMENT FROM THIS LAWSUIT."

To be valid, any Request for Exclusion must include the full name, address, telephone number, last four digits of the social security number or date of birth, and signature of the Class Member requesting exclusion. The Request for Exclusion must be returned by mail to the

1 Administrator at the specified address set forth in the Notice. Any such Request must be made in
2 accordance with the terms set forth in the Notice. A Request for Exclusion will be timely only if
3 postmarked by the Response Deadline, unless the Parties otherwise agree in writing. Any Class
4 Member who timely requests exclusion in compliance with these requirements: (i) will not have
5 any rights under this Agreement, including the right to object, appeal or comment on the
6 Settlement; (ii) will not be entitled to receive the Individual Class Payment under this
7 Agreement; and (iii) will not be bound by this Agreement, or the Judgment. Any Class Member
8 who is an Aggrieved Employee who requests timely exclusion will still be subject to the
9 Released PAGA Claims to the fullest extent permitted by law and will receive an Individual
10 PAGA Payment. All Parties and their counsel, including Defendant and their agents, shall not
11 encourage or solicit opt-outs or objections, directly or indirectly, through any means.

12 (b) Binding Effect on Participating Class Members. All Participating Class
13 Members will: (i) be bound by the terms and conditions of this Agreement, the Judgment, and
14 the releases set forth herein; and (ii) except as otherwise provided herein, will be deemed to have
15 waived all objections and oppositions to the fairness, reasonableness, and adequacy of the
16 Settlement.

17 (c) Objections to Settlement. Any Class Member, other than Plaintiffs, who
18 does not submit a valid and timely Request for Exclusion may object to the terms of this
19 Agreement. To object, a Class Member shall inform the Administrator, in writing, of his or her
20 objection which must be postmarked by the Response Deadline at the address set forth in the
21 Notice. Such objection shall include the Objecting Class Member's full name, address,
22 telephone number, last four digits of the social security number or date of birth, signature, and
23 relevant dates of employment, in addition to the case name and number, the basis for the
24 objection, including any legal support and each specific reason in support of the objection, as
25 well as any documentation or evidence in support thereof, and, if the Objecting Class Member is
26 represented by counsel, the name and address of his or her counsel. The Administrator shall
27 provide objections, if any, to Class Counsel and Defense Counsel within three (3) calendar days
28 of receipt, and the Administrator shall attach the same to its declaration of due diligence and file

1 with the Court prior to the Final Approval Hearing. An Objecting Class Member remains
2 eligible to receive monetary compensation from the Settlement. Plaintiffs and Defendant shall
3 not be responsible for any fees, costs, or expenses incurred by an Objecting Class Member
4 and/or his or her counsel related to any objections to the Settlement. Submitting an objection
5 does not preserve the right to appeal a final judgment. Rather, the right to appeal is preserved by
6 becoming a party of record by timely and properly intervening or filing a motion to vacate the
7 judgment under Code of Civil Procedure § 663.

8 (d) Failure to Object. Any Class Member who does not timely and properly
9 become a party of record by intervening or filing a motion to vacate the judgment waives any
10 and all rights to appeal from the Judgment, including all rights to any post-judgment proceeding
11 and appellate proceeding, such as a motion to vacate judgment, motion for new trial, a motion
12 under California Code of Civil Procedure § 473, and extraordinary writs.

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

16 (f) Class Members will have until the Response Deadline to object or submit
17 a Request for Exclusion to the Settlement Administrator by U.S. Mail. The Settlement
18 Administrator shall disclose jointly to Class Counsel and Defense Counsel what objections or
19 Requests for Exclusion were timely submitted on a weekly basis, and upon the request of Class
20 Counsel or Defense Counsel.

21 73. Funding of the Settlement Amount. Defendant shall deposit the Settlement
22 Amount, plus Defendant's share of payroll taxes, with the Settlement Administrator by the later
23 of December 1, 2024, or fifteen (15) days after the Effective Date.

24 74. Distribution of Funds. No later than ten (10) calendar days after the deposit of the
25 Settlement Amount by Defendant, the Settlement Administrator shall mail the Individual Class
26 Payments to the Participating Class Members, the Individual PAGA Payments to the Aggrieved
27 Employees, the payment to Class Counsel for the Attorneys' Fees and Costs Award, any Service
28 Payments to the Class Representatives, the payment to the LWDA for PAGA Penalties, and will

1 pay itself the Settlement Administration Costs. To comply with California Rules of Court, rule
2 3.771, settlement checks shall include the following language on the check: "A Court has
3 approved settlement of the class action and PAGA representative actions and entered judgment
4 for claims asserted in *Bautista, et al. v. ServiceFirst Restoration, Inc.*, San Bernardino County
5 Superior Court, Case No. CIVSB2302978.

6 75. Deadline for Cashing Settlement Checks. Participating Class Members and
7 Aggrieved Employees shall have 180 calendar days after mailing by the Settlement
8 Administrator to cash their settlement checks. The release will be binding upon all Participating
9 Class Members who do not cash their checks within the 180-day period. In the event that any
10 settlement check is returned to the Settlement Administrator within 180 days of mailing, the
11 Settlement Administrator will, within five (5) business days of receipt of the returned settlement
12 check, perform a skip trace to locate the individual, and notify Defense Counsel and Class
13 Counsel of the results. If a new address is located by these means, the Administrator will have
14 ten (10) business days to re-issue the check. Neither Defendant, Defense Counsel, Class
15 Counsel, Plaintiffs, nor the Settlement Administrator will have any liability for lost or stolen
16 settlement checks, forged signatures on settlement checks, or unauthorized negotiation of
17 settlement checks. Without limiting the foregoing, in the event a Participating Class Member
18 and/or Aggrieved Employee notifies the Settlement Administrator that he or she believes that a
19 settlement check has been lost or stolen, the Settlement Administrator shall immediately stop
20 payment on such check. If the check in question has not been negotiated prior to the stop
21 payment order, the Settlement Administrator will issue a replacement check.

22 a. If any Participating Class Member's check is not cashed within the time
23 periods noted above, the check will be void and a stop-payment will be issued, and the
24 Settlement Administrator shall issue the unclaimed funds to the California State Controller's
25 Office in the name of the Class Member.

26 b. If any Aggrieved Employee's check is not cashed within the time periods
27 noted above, the check will be void and a stop-payment will be issued, and the Settlement
28 Administrator shall issue the unclaimed funds to the California State Controller's Office in the

name of the Aggrieved Employee.

I. Duties of the Parties Prior to the Court's Approval

76. Promptly after execution of this Agreement, Plaintiffs will move the Court for Preliminary Approval of this Settlement and entry of the Preliminary Approval Order accomplishing the following:

- (a) Approving as to form and content the proposed Notice;
- (b) Directing the mailing of the Notice by first class mail to the Class Members;
- (c) Preliminarily approving this Settlement;
- (d) Preliminarily certifying the class for purposes of this Settlement;
- (e) Advising the LWDA of the proposed Settlement; and
- (f) Scheduling the Final Approval Hearing on the issue of whether this Settlement should be finally approved as fair, reasonable and adequate as to the Class Members and a hearing on fees, costs and the Service Payments.

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

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

- (a) Approving the Settlement, adjudging the terms thereof to be fair, reasonable and adequate, and directing consummation of its terms and provisions;
- (b) Approving Class Counsel's application for an award of attorneys' fees and reimbursement of litigation costs and expenses, the Service Payment to the Class Representatives, and the payment to the Settlement Administrator for costs of administering the settlement; and
- (c) Entering judgment approving settlement.

K. Voiding the Agreement

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

option of either Party.

79. If the Settlement is voided or fails for any reason, Plaintiffs and Defendant will have no further obligations under the Settlement, including any obligation by Defendant to pay the Settlement Amount, or any amounts that otherwise would have been owed under this Settlement.

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

L. Other Terms

81. Waiver. The waiver by one Party of any breach of this Agreement by another Party shall not be deemed a waiver of any other prior or subsequent breach of this Agreement.

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

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

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

85. No Admission. Defendant denies any and all liability to Plaintiffs and/or any Class Member and/or Aggrieved Employee in this Action, as to any and all causes of action that

1 were asserted or that might have been asserted in this Action. Nonetheless, Defendant wishes to
2 settle and compromise the matters at issue in the Complaint to avoid further substantial expense
3 and the inconvenience and distraction of protracted and burdensome litigation. Defendant has
4 taken into account the uncertainty and risks inherent in litigation, and without conceding any
5 infirmity in the defenses that they have asserted or could assert against Plaintiffs, have
6 determined that it is desirable and beneficial that Plaintiffs' claims be settled in the manner and
7 upon the terms and conditions set forth in this Agreement.

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

20 87. No Publicity. The Parties will not publicize the Settlement or disclose it to third
21 parties prior to the Court granting Preliminary Approval, except as required or necessary to
22 effectuate its terms and comply with law. After the Final Approval Date, Class Counsel and
23 Class Representatives agree that they will not discuss the Settlement with the media, any
24 settlement and verdict reporting service, any social media postings or other Internet postings.
25 Nothing herein shall be construed to prevent Class Counsel from the public filing of motions or
26 other case materials in the Action related to seeking and obtaining Court approval of this
27 Settlement and the related awards of attorneys' fees and costs, or to communications with Class
28 Members or their representatives about this Settlement, including through the posting of Court-

1 filed documents on Class Counsel's websites for access solely by the Class Members, or to
2 prevent the Parties or their representatives from communicating with financial or legal advisors
3 regarding the Settlement. In response to any media inquiry, Class Counsel may state only that
4 the Action has been settled on terms mutually agreeable to the Parties.

5 88. Notices. Unless otherwise specifically provided herein, all notices, demands or
6 other communications given hereunder shall be in writing and shall be deemed to have been duly
7 given as of the third business day after mailing by United States registered or certified mail,
8 return receipt requested, addressed:

9 *To the Class:*

10 Brian J. Mankin
11 *brian@lmlfirm.com*
12 Lauby, Mankin & Lauby LLP
13 5198 Arlington Ave, PMB 513
14 Riverside, CA 92504
15 Tel: (951) 320-1444 | Fax: (951) 320-1445

16 *To Defendant:*

17 Michael W. Battin, Esq.
18 *mike@navbat.com*
19 Navigato & Battin, LLP
20 755 West A Street, Suite 150
21 San Diego, CA 92101
22 Tel: (619) 233-5365 | Fax: (619) 233-3268

23 89. Construction. The Parties hereto agree that the terms and conditions of this
24 Agreement are the result of lengthy, intensive arms' length negotiations between the Parties and
25 that this Agreement shall not be construed in favor of or against any Party by reason of the extent
26 to which any Party or his or its counsel participated in the drafting of this Agreement. Plaintiffs
27 and Defendant expressly waive the common-law and statutory rule of construction that
28 ambiguities should be construed against the drafter of an agreement and further agree, covenant,
and represent that the language in all parts of this Agreement shall be in all cases construed as a
whole, according to its fair meaning.

90. Captions and Interpretations. Paragraph titles or captions contained herein are
inserted as a matter of convenience and for reference, and in no way define, limit, extend, or

1 describe the scope of this Agreement or any provision hereof. Each term of this Agreement is
2 contractual and not merely a recital.

3 91. Modification. This Agreement may not be changed, altered, or modified, except
4 in writing and signed by the Parties hereto, and approved by the Court. This Settlement
5 Agreement may not be discharged except by performance in accordance with its terms or by a
6 writing signed by all of the Parties hereto.

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

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

17 94. Integration Clause. This Settlement Agreement contains the entire agreement
18 between the Parties relating to the settlement and transaction contemplated hereby, and all prior
19 or contemporaneous agreements, understandings, representations, and statements, whether oral
20 or written and whether by a Party or such Party's legal counsel, are merged herein. No rights
21 hereunder may be waived except in writing.

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

25 96. Signatures of All Class Members Unnecessary to be Binding. It is agreed that,
26 because the members of the Class are numerous, it is impossible or impractical to have each
27 Class Member execute this Agreement. The Notice Packet will advise all Class Members of the
28

1 binding nature of the release provided herein and such shall have the same force and effect as if
2 this Agreement were executed by each Class Member.

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

8 Dated: 03/19/2024
9 _____

PLAINTIFF AND CLASS REPRESENTATIVE


Juan Carlos Bautista (Mar 19, 2024 21:58 PDT)

Juan Carlos Bautista

11 Dated: _____
12

PLAINTIFF AND CLASS REPRESENTATIVE

Jaime Cervantes

14 Dated: _____
15

DEFENDANT SERVICEFIRST RESTORATION, INC.

By: _____
Title: _____

18 **APPROVED AS TO FORM:**

19 Dated: _____
20

CLASS COUNSEL
LAUBY, MANKIN & LAUBY LLP

Brian J. Mankin
Attorneys for Plaintiff

23 Dated: _____
24

DEFENSE COUNSEL
NAVIGATO & BATTIN, LLP

Michael W. Battin, Esq.
Attorneys for Defendant

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6 signed Agreement, which shall be binding upon and effective as to all Parties. Electronic
7 signatures shall have the same force and effect as an original.

8 Dated: _____
9

PLAINTIFF AND CLASS REPRESENTATIVE

10 _____
Juan Carlos Bautista

11 Dated: 03/27/2024
12

PLAINTIFF AND CLASS REPRESENTATIVE

13 

Jaime Cervantes (Mar 27, 2024 12:25 PDT)
Jaime Cervantes

14 Dated: _____
15

DEFENDANT SERVICEFIRST RESTORATION, INC.

16 _____
By: _____
17 Title: _____

18 **APPROVED AS TO FORM:**

19 Dated: March 27, 2024
20

CLASS COUNSEL
LAUBY, MANKIN & LAUBY LLP

21 

22 Brian J. Mankin
23 Attorneys for Plaintiff

24 Dated: _____
25

DEFENSE COUNSEL
NAVIGATO & BATTIN, LLP

26 _____
27 Michael W. Battin, Esq.
28 Attorneys for Defendant

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5 original, and, when taken together with other signed counterparts, shall constitute one fully
6 signed Agreement, which shall be binding upon and effective as to all Parties. Electronic
7 signatures shall have the same force and effect as an original.

8
9 Dated: _____ **PLAINTIFF AND CLASS REPRESENTATIVE**

10 _____
11 Juan Carlos Bautista

12 Dated: _____ **PLAINTIFF AND CLASS REPRESENTATIVE**

13 _____
14 Jaime Cervantes

15 Dated: 3-10-24 **DEFENDANT SERVICEFIRST RESTORATION, INC.**

16 
17 By: Christian Rovsek
18 Title: CEO

19 **APPROVED AS TO FORM:**

20 Dated: _____ **CLASS COUNSEL**
21 **LAUBY, MANKIN & LAUBY LLP**

22 _____
23 Brian J. Mankin
24 Attorneys for Plaintiff

25 Dated: March 12, 2024 **DEFENSE COUNSEL**
26 **NAVIGATO & BATTIN, LLP**

27 Michael W. Battin
28 Michael W. Battin, Esq.
Attorneys for Defendant

Exhibit A

Bautista, et al. v. ServiceFirst Restoration, Inc.

San Bernardino County Superior Court, Case No. CIVSB2302978

The sixteen (16) individuals that performed contracting field/service work for Defendant in California and who Defendant classified as independent contractors during the Class Period (and who therefore are the “Independent Contractors” defined in the Agreement) are as follows:

- (1) Abraham Aragon Diaz
- (2) Enrique Cardenas,
- (3) Cesar Imery,
- (4) Erik Silva-Hernandez,
- (5) Gerado Flores,
- (6) Gesar Luna Orozco,
- (7) Filiman Octavian,
- (8) Plaintiff Jaime Cervantes,
- (9) Jorge L. Reyes,
- (10) Plaintiff Juan Carlos Bautista,
- (11) Juan Rivera,
- (12) Julio Cabrera,
- (13) Eric Allison,
- (14) Ronald Argueta,
- (15) Jose Garcia, and
- (16) Joseph Moreno.

-- End of Document --

EXHIBIT “2”

COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT

Bautista and Cervantes v. ServiceFirst Restoration, Inc., et al.
(San Bernardino County Superior Court, Case No. CIVSB2302978)

***The San Bernardino County Superior Court 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 a class action lawsuit (“Action”) filed by Plaintiffs Juan Carlos Bautista and Jaime Cervantes (“Plaintiffs” or “Class Representatives”) against Defendant ServiceFirst Restoration, Inc. (“ServiceFirst” or “Defendant”) for alleged violations of the California Labor Code. (Plaintiffs and Defendant shall be collectively referred to as the “Parties”).

In the Action, Plaintiffs pursue claims against ServiceFirst on behalf of the “Class Members” who worked for Defendant in California during the “Class Period” (which is May 12, 2019, through January 31, 2024). The Class Members are defined to include:

- “Hourly Employees”: “all nonexempt employees employed by Defendant in California during the Class Period”
- “Independent Contractors”: the “sixteen (16) individuals that performed contracting field/service work for Defendant in California and who Defendant classified as independent contractors during the Class Period.”

The Action seeks payment of (1) unpaid wages, statutory damages and penalties, interest and attorneys’ fees on behalf of the Class Members, and (2) penalties under the California Private Attorneys General Act (“PAGA”) for all Hourly Employees and Independent Contractors during the PAGA Period (May 12, 2022, through January 31, 2024) (the “Aggrieved Employees”).

The proposed Settlement has two main parts: (1) a Class Settlement requiring Defendant to fund Individual Class Payments to Class Members, and (2) a PAGA Settlement requiring Defendant to fund Individual PAGA Payments to Aggrieved Employees and pay penalties to the California Labor and Workforce Development Agency (“LWDA”). Based on Defendant’s records, and the Parties’ current assumptions, your Individual Class and PAGA Payments are shown in the charts below, along with the applicable data points from which these estimates are derived.

[**CLASS MEMBER NAME**] [**ID/CONTROL NUMBER**]

<i>Calculations and Data Points for Estimated Individual Class Payment</i>	
Weeks Worked during Class Period	<i>Estimated Individual Class Payment</i>
INSERT	\$INSERT

<i>Calculations and Data Points for Estimated Individual PAGA Payment</i>	
Total Work Weeks during PAGA Period	<i>Estimated Individual PAGA Payment</i>
INSERT	\$INSERT

Please note that the actual amount you receive may be different from the above and will depend on several factors. (If no amount is stated for your Individual PAGA Payment then, according to Defendant’s records, you are not eligible for an Individual PAGA Payment under the Settlement because you didn’t work during the PAGA Period.) If you believe that you worked more time during the periods discussed above, you can submit a challenge by **DATE, 2024** (“**Response Deadline**”). 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 do not act. Read this Notice

carefully. You will be deemed to have carefully read and understood it. At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement and how much of the Settlement will be paid to Plaintiffs and Plaintiffs' attorneys ("Class Counsel"). The Court will also decide whether to enter a judgment that requires Defendant to make payments under the Settlement and requires Class Members and Aggrieved Employees to give up their rights to assert certain claims against Defendant.

If you worked for Defendant during the Class Period and/or the PAGA Period, you have a few options as shown in the Chart below:

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING AND RECEIVE A SETTLEMENT PAYMENT	If you want to receive your full settlement payment, then no further action is required on your part. You will automatically receive a settlement payment if the Settlement receives final approval by the Court. You will be bound by the terms of the Settlement Agreement and will give up your right to sue on the Released Class Claims described in Section 3 .
EXCLUDE YOURSELF	If you do not wish to participate in the settlement of the Class Claims, you may "opt-out" of the settlement of the Class Claims. If you choose to opt-out, you must submit a Request for Exclusion by [REDACTED], 2024 (see Section 6 for more details on how to opt-out). If you opt-out, you will no longer be a Class Member, and you will (1) <u>not</u> receive an Individual Class Payment, but you will preserve your right to pursue the Released Class Claims described below subject to applicable statutes of limitations, and (2) be barred from filing an objection to the settlement. You cannot opt-out of the PAGA portion of the proposed Settlement. Defendant must pay Individual PAGA Payments to all Aggrieved Employees and the Aggrieved Employees must give up their rights to pursue Released PAGA Claims. See Section 6 of this Notice.
OBJECT	If you decide to object to the settlement with respect to the Class Claims because you find it unfair or unreasonable, you must submit an Objection stating why you object to the settlement by [REDACTED], 2024 (see Section 7 for more details on how to object).
DISPUTE THE NUMBER OF WEEKS WORKED	If you believe the number of workweeks that you were credited with working in the chart above is incorrect, you may submit a written dispute to the Administrator (see Section 4 for more details on how to submit a Dispute Form). Defendant's records will be presumed correct, but you may provide evidence to the Administrator showing how many Work Weeks you believe you should be credited.

YOU MAY ATTEND THE FINAL APPROVAL HEARING, BUT IT'S NOT REQUIRED	
DATE: DATE, 2024 TIME: 8:30 A.M.	At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement. 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. See Section 8 of this Notice.

1. WHAT IS THE ACTION ABOUT?

In the Action, Plaintiffs allege that Defendant violated California labor laws by failing to pay minimum and overtime wages, failing to provide meal and rest breaks, failing to reimburse business expenses, failure to timely pay wages each period and upon separation of employment, failure to provide accurate itemized wage statements, and by misclassifying the Independent Contractors as independent contractors rather than as employees. Based on the same claims, Plaintiffs have also asserted claims for civil penalties under PAGA.

Defendant 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 Defendant or Plaintiffs are correct on the merits. In the meantime, Plaintiffs and Defendant hired an experienced, neutral mediator in an effort to resolve the Action by negotiating a settlement rather than continuing the expensive and time-consuming process of litigation. The negotiations were successful. By signing a lengthy written settlement agreement (“Agreement”), Plaintiffs and Defendant 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, Defendant does not admit any violations or concede the merit of any claims.

Plaintiffs and Class Counsel strongly believe the Settlement is a good deal for you because they believe that: (1) Defendant 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. Defendant Will Pay \$500,000 as the “Settlement Amount.” Defendant has agreed to pay a total Settlement Amount of \$500,000, and will deposit the Settlement Amount into an account controlled by the Administrator. The Administrator will use the Settlement Amount to pay the Individual Class Payments, Individual PAGA Payments, Class Representative Service Payments, Class Counsel’s attorney’s fees and expenses, the Administrator’s Costs, and PAGA Penalties to be paid to the California Labor and Workforce Development Agency (“LWDA”). Assuming the Court grants Final Approval, Defendant will fund the Settlement Amount by the later of December 1, 2024, or approximately 15 days after the Judgment entered by the Court becomes final. The Judgment will be final on the date the Court enters Judgment, or a later date if the Judgment is appealed.

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

A. Up to one-third of the Settlement Amount (\$166,666.67) to Class Counsel for attorneys' fees and up to \$20,000 for litigation expenses. Class Counsel have worked and incurred expenses on the Action without payment.

B. Up to \$10,000 to each Class Representative as Service Payments for litigating the Action, working with Class Counsel and representing the Class. The Class Representatives' Service Payments will be the only monies Plaintiffs will receive other than Plaintiffs' Individual Class Payments and any Individual PAGA Payments.

C. \$8,000 to the Settlement Administrator for services administering the Settlement.

D. Up to \$30,000 for PAGA Penalties, allocated 75% to the LWDA PAGA Payment and 25% in Individual PAGA Payments to the Aggrieved Employees based on their share of Weeks Worked during the PAGA Period.

E. 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 remainder (the “Net Settlement Amount”) by making Individual Class Payments to Participating Class Members based on the following allocation:

A. 75% of the Net Settlement Amount shall be paid to the Independent Contractors, who will each receive a payment of \$5,000 plus a pro-rata share of the remaining amount based on Weeks Worked during the Class Period.

B. 25% of the Net Settlement Amount shall be allocated and paid to the Hourly Employees, and these amounts shall be paid on a pro-rata basis according to Weeks Worked during the Class Period.

4. Taxes Owed on Payments to Class Members. Plaintiffs and Defendant are asking the Court to approve the following tax treatment as to the Individual Class Payments:

A. As to Independent Contractors: Because the Independent Contractors performed contract services for Defendant as independent contractors, rather than as employees, and because Defendant fully disputes the allegations alleged herein, the Parties agree that the settlement funds paid to Independent Contractors will be allocated and paid as contract compensation, interest, and penalties from which no state or federal taxes will be withheld or deducted.

B. As to Hourly Employees: twenty percent (20%) of the Individual Class Payments will be allocated as wages subject to withholding of all applicable local, state and federal taxes and the remaining eighty percent (80%) will be allocated for interest and penalties (pursuant to, *e.g.*, California Labor Code §§ 203, 210, 226, 2699 etc.) from which no taxes will be withheld.

Although Plaintiffs and Defendant 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 Fund, 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 Settlement, unless you opt-out of the Settlement, not later than the Response Deadline. See Section 6 of this Notice for details on how to Opt-Out.

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 to enter a Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiffs and Defendant have agreed that, in either case, the Settlement will be void: Defendant will not pay any money and Class Members will not release any claims against Defendant.

8. Settlement Administrator. The Court has appointed a neutral company, Phoenix Settlement Administrators (the “Administrator”) to send this Notice, calculate and make payments, and process Class Members’ Requests for Exclusion. The Settlement Administrator will also decide any Disputes over weeks worked, mail and re-mail settlement checks and tax forms, and perform other tasks necessary to administer the Settlement. The Settlement Administrator’s contact information is contained in Section 9 of this Notice.

9. Participating Class Members' Release. After the Judgment is final and Defendant has fully funded the Settlement Amount 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 Defendant or related entities for wages based on the facts alleged in the Action for the duration of the Class Period and PAGA Period, which are 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 representatives, agents, heirs, and assigns, release the “Released Parties” (defined as Defendant together with its shareholders, officers, directors, employees, and agents) from all claims stated in the Complaint and those that could reasonably have been alleged based upon the facts in the Complaint, including: (1) failure to pay minimum wages, (2) failure to pay overtime wages, (3) failure to pay for rest periods and nonproductive time, (4) failure to provide meal periods, (5) failure to provide rest breaks, (6) failure to reimburse business

expenses, (7) failure to timely pay final wages, (8) failure to provide accurate itemized wage statements, and (9) unfair and unlawful competition (the “Released Class Claims”). The operative release period for the Released Class Claims is the Class Period. Participating Class Members do not release 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. Release of Released PAGA Claims. After the Court's judgment is final, and Defendant has paid the Settlement Amount (and separately paid the employer-side payroll taxes), Plaintiffs – in their individual capacities and on behalf of the State of California – shall completely release and discharge the Released Parties from all PAGA claims seeking civil penalties premised upon: (1) misclassification, (2) failure to pay minimum wages, (3) failure to pay overtime wages, (4) failure to pay for rest and recovery periods and nonproductive time under Labor Code § 226.2, (5) failure to provide meal periods, (6) failure to provide rest breaks, (7) failure to reimburse business expenses, (8) failure to timely pay wages each period, (9) failure to timely pay wages upon separation of employment, (10) failure to provide accurate itemized wage statements, and (11) all other claims for civil penalties recoverable under the Private Attorneys General Act, Labor Code §§ 2698 et seq. based on the facts or claims alleged in the LWDA notice letters and Complaint. The time period governing the Released PAGA Claims shall be any time during the PAGA Period.

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

1. **Individual Class Payments.** The Administrator will calculate Individual Class Payments by allocating the Net Settlement Amount to each Participating Class Member in the method described in Section 3, above.

2. Individual PAGA Payments. The Settlement Administrator will calculate Individual PAGA Payments by (a) dividing 7,500 by the total Work Weeks worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by the number of Weeks Worked by each individual Aggrieved Employee during the PAGA Period.

3. Disputing Weeks Worked. The number of weeks you worked during the Class and PAGA Periods, as recorded in Defendant’s records, are stated in the tables on page 2 of this Notice. You have until **DATE** (“Response Deadline”) to dispute the number of Workweeks credited to you by submitting evidence to the Administrator. Section 9 of this Notice has the Administrator’s contact information.

You need to support your dispute by sending copies of pay stubs or other records. The Administrator will accept Defendant's calculation of weeks worked based on Defendant'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 challenges based on your submission and on input from Class Counsel and Defendant'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 and Aggrieved Employees. The Administrator will send, by U.S. mail, a single check to every Participating Class Member (which includes every Class Member who doesn't opt-out) and Aggrieved Employee. The single check will combine the Individual Class Payment and the Individual PAGA Payment.

2. Aggrieved Employees Only. If you opted out of the Class settlement, but qualify as an Aggrieved Employee, then the Administrator will send, by U.S. mail, a single Individual PAGA Payment check to every Aggrieved Employee, including those who opt out of the Class Settlement.

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

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

You will be treated as a Participating Class Member, participating fully in the Settlement, unless you opt-out of the Settlement, not later than the Response Deadline.

If you **do not** wish to take part in the release of the Class Claims in the Settlement, you may exclude yourself by sending to the Administrator a “Request for Exclusion” letter/card postmarked no later than [REDACTED], 2024 with your full name, address, telephone number, last four digits of your social security number or your date of birth, and signature. The Request for Exclusion should state:

“I WISH TO BE EXCLUDED FROM THE CLASS IN THE SERVICEFIRST LAWSUIT.
I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT
CLASS, I WILL NOT RECEIVE MY INDIVIDUAL CLASS PAYMENT FROM THIS
LAWSUIT.”

Any person who submits a timely Request for Exclusion from the Class Claims (1) will not have any rights under this Settlement, including the right to object, appeal or comment on the Settlement; (2) will not be entitled to receive an Individual Class Payment; (3) will preserve the right to pursue the Released Class Claims, and (4) will not be bound by this Settlement, or the Judgment.

You cannot opt-out of the PAGA portion of the Settlement. Class Members who exclude themselves from the Class Claims remain eligible to receive an Individual PAGA Payment.

If you do not want to participate in the Settlement, the Administrator will exclude you based on timely receipt of a writing communicating your request to be excluded. Be sure to personally sign your request, identify the Action as *Bautista v. ServiceFirst Restoration, Inc.* and include your identifying information (full name, address, telephone number, approximate dates that you worked for Defendant, and last four digits of social security number or your date of birth for verification purposes). You must make the request yourself. If someone else makes the request for you, it will not be valid. **Send your request to be excluded to the Administrator by [REDACTED], 2024 (the “Response Deadline”), 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. A Participating Class Member who disagrees with any aspect of the Settlement may wish to object. **The deadline for sending written objections to the Administrator is [REDACTED], 2024 (the “Response Deadline”).**

If you wish to object to the proposed Settlement, you or your own attorney must submit a written objection, and the objection must include your full name, address, telephone number, last four digits of the social security number or date of birth, signature, and dates of employment with Defendant, in addition to the case name and number (*Bautista v. ServiceFirst Restoration, Inc.*, Case No. CIVSB2302978), the basis for the objection, including any legal support and each specific reason in support of the objection, as well as any documentation or evidence in support thereof. Additionally, if you are represented by an attorney, the objection must include the name and address of your attorney. This objection and all supporting information must be sent to the Administrator at the address listed in Section 9, **postmarked** on or before [REDACTED], 2024.

If you do not comply with these procedures and the deadline for objections, the Court may not consider your objection at the Final Approval Hearing, and you may lose the right to contest the approval of the Settlement. You are still eligible to receive a settlement payment should the settlement become Final even if you object to the settlement. Submitting an objection does not preserve the right to appeal a final judgment. Rather, the right to appeal is preserved by becoming a party of record by timely and properly intervening or filing a motion to vacate the judgment before entry of judgment.

Alternatively, a Participating Class Member can object (or personally retain a lawyer to object at your own cost) by attending the Final Approval Hearing. At the hearing, you or your attorney should state your objection, why you object, and facts that support your objection. Section 8 of this Notice contains specifics regarding the Final Approval Hearing.

8. WHEN IS THE FINAL APPROVAL HEARING?

On [REDACTED], 2024, the Court will hold a public hearing in Department S17 of the Superior Court for the State of California, County of San Bernardino, 247 West 3rd Street, San Bernardino, CA 92415, for the purposes of determining whether the proposed Settlement is fair, adequate and reasonable and should be approved, whether to approve Class Counsel's applications for attorneys' fees and costs, whether to approve the payments to the LWDA, and whether to approve Plaintiffs' requests for the service awards. This hearing may be continued or rescheduled by the Court. Objectors to the proposed settlement will be provided notice in the event that the Final Approval Hearing is continued to a later date. Class Members who support the proposed Settlement do not need to appear at the hearing and do not need to take any other action to indicate their approval. Class Members who object to the proposed Settlement are not required to attend the Final Approval Hearing.

9. HOW CAN I GET MORE INFORMATION?

If you have questions about this Notice, the process to Opt-Out or Object, or the Settlement, or if you did not receive this Notice in the mail and you believe that you are or may be a member of the Class, you may contact the Administrator for more information or to request that a copy of this Notice be sent to you in the mail. And you may also contact Class Counsel. Contact information for both the Administrator and Class Counsel is provided here:

Settlement Administrator	Class Counsel
Name Mailing Address Telephone Number	Brian Mankin, Esq. <i>brian@LMLfirm.com</i> Peter Carlson, Esq. <i>peter@LMLfirm.com</i> Lauby Mankin Lauby LLP 5198 Arlington Ave, PMB 513 Riverside, CA 92504 Tel: (951) 320-1444

You may also seek advice and guidance from your own private attorney at your own expense, if you so desire.

This Notice is only a summary. For more detailed information, you may review the Settlement Agreement, containing the complete terms of the proposed Settlement, which is on file with the Court and attached to the Declaration of Brian J. Mankin in Support of Motion for Preliminary Approval of Class Action Settlement filed on DATE, 2024 and available to be inspected at any time during regular business hours at the Office of the Clerk, San Bernardino County Superior Court, located at 247 West Third Street, San Bernardino, CA 92415.

DO NOT TELEPHONE THE COURT TO OBTAIN INFORMATION ABOUT THE SETTLEMENT

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.

EXHIBIT “3”



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

December 14, 2023

CASE ASSUMPTIONS

Class Members	325
Opt Out Rate	1%
Opt Outs Received	3
Total Class Claimants	322
Subtotal Admin Only	\$8,679.18

Flat Fee Total \$8,000.00

For 325 Class Members

Pricing Good for Scope of Estimate Only

All Aspects of Escheating to the State of CA Included

Language Translation, Printing & Mailing Included

Case: Bautista v. Service First, Opt-Out Administration

Phoenix Contact: Michael E. Moore

Contact Number: 949.331.0131

Email: mike@phoenixclassaction.com

Requesting Attorney: Brian J. Mankin

Firm: Lauby, Mankin & Lauby

Contact Number: (951) 320-1444

Email: brian@lmfirm.com

Assumptions and Estimate are based on information provided by counsel. If class size changes, PHX will need to adjust this Estimate accordingly.

Estimate is based on **325** Class Members. Class data **Must** be sent in Microsoft Excel or uploaded in the same format. Class Data Must be sent in one spreadsheet, with no additional programming needed. A rate of \$150 per hour will be charged for any additional analysis or programming. Pricing good for 90 day

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

Administrative Tasks:	Rate	Hours/Units	Line Item	Estimate
Programming Manager	\$100.00	2		\$200.00
Programming Database & Setup	\$100.00	2		\$200.00
Toll Free Setup*	\$100.00	1		\$100.00
Call Center & Long Distance	\$2.00	42		\$84.00
NCOA (USPS)	\$60.00	1		\$60.00
Total				\$644.00

* Up to 120 days after disbursement

Data Merger & Scrub / Notice Packet, Opt-Out Form & Postage / Language Translation / Website

Project Action	Rate	Hours/Units	Line Item	Estimate
Notice Packet Formatting	\$100.00	2		\$200.00
Language Translation	\$1,000.00	1		\$1,000.00
Data Merge & Duplication Scrub	\$0.10	325		\$32.50
Notice Packet & Opt-Out Form	\$1.35	325		\$438.75
Estimated Postage (up to 2 oz.)*	\$0.87	325		\$282.75
Static Website	\$200.00	1		\$200.00
Total				\$2,154.00

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



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

Skip Tracing & Remailing Notice Packets / Tracking & Programming Undeliverables

Project Action:	Rate	Hours/Units	Line Item	Estimate
Case Associate	\$55.00	2		\$110.00
Skip Tracing Undeliverables	\$1.00	49		\$48.75
Remail Notice Packets	\$1.00	46		\$45.75
Estimated Postage	\$0.87	46		\$39.80
Programming Undeliverables	\$50.00	2		\$100.00
			Total	\$344.30

Database Programming / Processing Opt-Outs, Deficiencies or Disputes

Project Action:	Rate	Hours/Units	Line Item	Estimate
Programming Database	\$150.00	1		\$150.00
Non Opt-Out Processing	\$200.00	1		\$200.00
Case Associate	\$55.00	4		\$220.00
Deficiency & Dispute Letters	\$10.00	4		\$40.00
Case Manager	\$85.00	2		\$170.00
			Total	\$780.00

Calculation & Disbursement Programming/ Create & Manage QSF/ Mail Checks

Project Action:	Rate	Hours/Units	Line Item	Estimate
Programming Calculations	\$135.00	1		\$135.00
Disbursement Review	\$135.00	1		\$135.00
Programming Manager	\$95.00	2		\$190.00
QSF Bank Account & EIN	\$135.00	1		\$135.00
Check Run Setup & Printing	\$135.00	5		\$675.00
Mail Class Checks *	\$0.90	322		\$289.80
Estimated Postage	\$0.64	322		\$206.08
			Total	\$1,765.88

* Checks are printed on 8.5 x 11 in. sheets with W2/1099 Tax Filing & Instructions for downloading tax forms from PHX secure portal



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

Tax Reporting & Reconciliation / Re-Issuance of Checks / Conclusion Reports and Declarations				
Project Action:	Rate	Hours/Units	Line Item	Estimate
Case Supervisor	\$115.00	2		\$230.00
Remail Checks (Postage Included)	\$2.00	63		\$126.00
Case Associate	\$55.00	3		\$165.00
Reconcile Uncashed Checks	\$85.00	4		\$340.00
Conclusion Reports	\$115.00	2		\$230.00
Case Manager Conclusion	\$85.00	3		\$255.00
Final Reporting & Declarations	\$115.00	3		\$345.00
IRS & QSF Annual Tax Reporting * (1 State Tax Reporting & Escheating to the State of CA Included)	\$1,300.00	1		\$1,300.00
Check to Cy-Pres	\$150.00	1		Included
Total				\$2,991.00

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

Estimate Total: \$8,679.18



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

TERMS AND CONDITIONS

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

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

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

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

Tax Reporting Requirements

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

1. Defendant's California State ID and Federal EIN.
2. Defendant's current State Unemployment Insurance (UI) rate and Employment Training Tax (ETT) rate. This information can be found in the current year DE 2088, Notice of Contribution Rates, issued by the EDD.
3. Termination dates of the class members, or identification of current employee class members, so we can account for the periods that the wages relate to for each class member.
4. An executed Power of Attorney (Form DE 48) from Defendant. This form is needed so that we may report the UI, SDI, and ETT taxes under Defendant's EIN on their behalf. If this form is not provided we will work with the EDD auditors to transfer the tax payments to Defendant's EIN.
5. Defendant is responsible for reporting the SDI portion of the settlement payments on the class member's W-2. PSA will file these forms on Defendant's behalf for an additional fee and will issue an additional W-2 for each class member under Defendant's EIN, as SDI is reported under Defendant's EIN rather than the EIN of the QSF. The Power of Attorney (Form DE 48) will be needed in order for PSA to report SDI payments.

EXHIBIT “4”