JUSTICE FOR WORKERS, P.C.
William C. Sung SB# 280792
E-Mail: william@justiceforworkers.com
Tiffany L. Luu SB# 335127
E-Mail: tluu@justiceforworkers.com
Joseph C. Ramli SB# 339491
E-Mail: jramli@justiceforworkers.com
9575 Bolsa Ave
Westminster, CA 92683
Tel: 323-922-2000
Fax: 323-922-2000

Attorneys for Plaintiff ROBERTO TOSCANO HERRERA

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

ROBERTO TOSCANO HERRERA, an individual and on behalf of all others similarly situated;

Plaintiff,

vs.

180 SNACKS, INC., a California corporation; MICHAEL KIM, an individual; and DOES 1 through 50,

Defendants.

Case No.: 30-2023-01346806-CU-OE-CXC

[Assigned for All Purposes to:
Hon. David A. Hoffer, Dept. CX103]

PLAINTIFF'S SUPPLEMENTAL BRIEF IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT

(Filed concurrently with Supplemental Declaration of William C. Sung and [Amended Proposed] Order)

DATE: December 7, 2026
TIME: 1:30 p.m.
DEPT: CX103
Reservation ID: Per August 10, 2026 Ruling

Action Filed: September 5, 2023
Trial Date: Not Set

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

Plaintiff Roberto Toscano Herrera ("Plaintiff") hereby submits the Supplemental Brief in Support of Plaintiff's Motion for Preliminary Approval of Class Action and PAGA Settlement ("Preliminary Approval Motion"), which addresses each of the Court's questions and comments in its ruling issued for the August 10, 2026 hearing (the "Ruling") on the Preliminary Approval Motion.

In the Ruling, the Court ordered minor modifications to Class Action and PAGA Settlement Agreement (the "Agreement"), the Class Notice, and the Proposed Order, and asked the Parties to address the Escalator Clause, provide high/low estimated Individual Class and PAGA Payments, and provide declarations regarding whether there are any class, representative or other collective action in any court that asserts claims similar to those asserted in this Action.

On September 17, 2026, Class Counsel provided draft redlined Amendment to Class Action and PAGA Settlement Agreement and Class Notice (the "Amendment") to Defendant's counsel and requested that Defendant provide high/low Class workweeks and PAGA pay period counts and a declaration from Defendant's counsel regarding their knowledge of any other actions that asserts similar claims. Supplemental Declaration of William C. Sung ("Supp. Sung Decl."), ¶ 2, Exh. 1 - Email Chain with Defendant's Counsel re: Supplemental Briefing. However, after 11 follow-up emails to 4 different attorneys at Defendant's counsel's firm, Defendant has failed to provide an Amendment signed by Defendant or an ETA on when Defendant will sign the Amendment, failed to provide the high/low Class workweek and PAGA pay period counts, and failed to provide a declaration regarding other similar actions. Supp. Sung Decl., ¶ 3; *see* Exh. 1 generally.

In the following sections, Plaintiff has addressed the issues raised in the Ruling and submit, for the reasons stated below, that a signed Amendment, although requested by the Court, is not necessary to preliminary approval. As this Action has been pending since September 2023, in the best interest of Class Members, who are estimated to earn on average $2,226.31 from this Settlement, Plaintiff respectfully requests that the Court grant preliminary approval of the Settlement. *See* Declaration of William C. Sung (ROA 74), ¶ 24 (average Individual Class Payment).

As to the Settlement:

The Amendment signed by Plaintiff is attached to the Supplemental Declaration of William C. Sung ("Supp. Sung Decl.") as **Exhibit 2**, and a redlined version of the Amendment showing all of the edits to the original terms of the Settlement is attached to the Supp. Sung Decl. as **Exhibit 3**.

1. *The settlement provides it must be determined, prior to preliminary approval, whether the escalator provision has been triggered and, if so, defendants' election of option. ¶ 8.*

Defendant's counsel has confirmed that the total number of Workweeks is 14,465, which represents a 3.23% increase over 14,052 Workweeks and Defendants elected to increase the Gross Settlement Amount proportionally to $367,756.88. *See* Supp. Sung Decl., ¶ 6, Exh. 1 at pp. 6-7, 13-15. Plaintiff intended, in the Amendment, to increase the Gross Settlement Amount to $367,756.88 (from $356,250) and deleted the Escalator Clause in Section 8. *Ibid; see* Amendment §§ 1.22, 3.1, 8. However, Plaintiff submits that it is not necessary that the Agreement be amended to in order to give effect to Defendant's election.

The Escalator Clause provides:

> **8. CLASS SIZE ESTIMATES and ESCALATOR CLAUSE**. Based on a review of its records to date, Defendants estimate that there are 84 Class Members who collectively worked a total of 12,775 Workweeks, and 70 Aggrieved Employees who worked a total of 2,297 PAGA Pay Periods. If the total number of Workweeks is 10% higher (14,052 Workweeks), then Defendants shall have the option to either: (1) de-escalate the settlement so that the Class Period ends on the date that the Workweek count totals no more than 14,052 Workweeks and the PAGA Period will end on the same date as the Class Period; or (2) permit the Gross Settlement Amount to be increased proportionally by the Workweeks in excess of 10% (14,052 Workweeks) (the "Escalator Clause"). Within 14 calendar days after the execution of this Agreement, Defendants shall verify the total number of Workweeks during the Class Period by either submitting a declaration to Class Counsel stating the total number of Workweeks during the Class Period or providing the number of Workweeks or dates of employment of Class Members to the Administrator who will calculate Workweeks. If the Escalator Clause is triggered, prior to the hearing on preliminary approval, Defendants shall choose to either change the end date of the Class Period or increase the Gross Settlement Amount in accordance with the Escalator Clause such that there is a date certain on the Class Period for preliminary approval.

Agreement, § 8, attached as Exhibit 1 to Declaration of William C. Sung (ROA 74).

Here, Defendant has verified the number of Workweeks, and made the election to increase of the Gross Settlement Amount, and approved the adjusted Gross Settlement Amount of $367,756.88. Supp. Sung Decl., ¶ 6, Exh. 1 at pp. 6-7, 13-15. Plaintiff has made the revision to the

Gross Settlement Amount in the amended Class Notice in Section 3.1. Accordingly, Plaintiff requests that the Court grant preliminary approval and move forward with the Settlement under the adjusted Gross Settlement Amount.

2. *Provide the highest and lowest estimated individual class and PAGA awards*

Based on dates of employment in the class list produced by Defendant prior to mediation and extrapolating current employees' dates of employment through the end of the Class Period, Plaintiff estimates the highest Individual Class Payment is $4,434.94 (based on 310 Class Workweeks), the lowest Individual Class Payment is $28.61 (based on 2 Class Workweeks), the highest Individual PAGA Payment is $153.79 (based on 80 PAGA Pay Periods), and lowest Individual PAGA Payment is $1.92 (based on 1 PAGA Pay Period). Supp. Sung Decl., ¶ 7.

3. *As provided in the settlement (¶¶ 6.1-6.2) the parties (including defendants) should advise, in declarations filed with the court, whether, after making reasonable inquiry, they have become aware since executing the settlement agreement of any class, representative or other collective action in any court that asserts claims similar to those asserted in this action. If any such actions are known to exist, the declarations must also state the name and case number of any such case and the procedural status of that case, and must describe the impact of the settlement on that case.*

After making reasonable inquiry, neither Plaintiff nor Plaintiff's counsel has become aware since executing the Agreement of any class, representative or other collective action in any court that asserts claims similar to those asserted in this Action. Sung Decl., ¶ 8. Specifically, on October 29, 2026, Class Counsel conducted a search of Defendant 180 Snacks, Inc. on Westlaw Dockets and the LWDA's PAGA Case Search on cadir.my.salesforce-sites.com/PagaSearch and this Action is the only class, representative, or collective action he could find. *Ibid.*

4. *While the court will not determine the amount of attorneys' fees to be awarded until final approval, the court is unlikely to approve attorneys' fees in excess of 30% of the gross settlement amount absent unique circumstances. Plaintiff's counsel should address at final approval whether any such unique circumstances exist here.*

Plaintiff's counsel has updated attorney's fees in the Class Notice to $110,327.06, which is

30% of the adjusted Gross Settlement Amount. *See* Class Notice, § 3.2.A.

As to the notice:

5. *The notice should be revised consistent with the above.*

A redlined version of the revised Class Notice is attached to the Supp. Sung Decl. at **Exhibit 4.** A clean version of the revised Class Notice is attached to the Amended Proposed Order as **Exhibit 2**. Plaintiff has revised the Class Notice consistent with the above.

6. *Replace "a good deal for you" with "fair." § 2 ¶ 2.*

Plaintiff has revised the Class Notice accordingly. *See* Class Notice, § 2 ¶ 2.

7. *Remove "up to" with regard to amount of PAGA Penalties. § 3 ¶ 2(D).*

Plaintiff has revised the Class Notice accordingly. *See* Class Notice, § 3.2(D).

8. *Add "initially" between "also" and "decide." § 3 ¶ 8.*

Plaintiff has revised the Class Notice accordingly. *See* Class Notice, § 3.8.

9. *Inform class members and aggrieved employees that settlement documents will be available on the administrator's website for at least 180 days following entry of judgment, which occurs after the court grants final approval. § 9.*

Plaintiff has revised the Class Notice accordingly. *See* Class Notice, § 9.

As to the proposed order:

10. *The proposed order should be revised consistent with the above.*

Plaintiff has revised the Amended Proposed Order consistent with the above. A redlined version of the Amended Proposed Order is attached to the Supp. Sung Decl. as **Exhibit 5**. A clean version of the Amended Proposed Order with exhibits is filed concurrently herewith.

11. *The English and Spanish versions of the notice (including all forms) must be identified and exhibited to the order. ¶ 4.*

Plaintiff has attached the English and Spanish version of the Class Notice to the Amended Proposed Order. *See* Amended Proposed Order, ¶ 4, Exh. 2.

12. *Other than the first two sentences, paragraph 16 should be deleted. Additionally, remove the apostrophe before the second sentence in that paragraph.*

Plaintiff has revised the Amended Proposed Order accordingly. *See* Amended Proposed

Order, ¶ 16.

13. *Remove paragraph 17.*

Plaintiff has revised the Amended Proposed Order accordingly. *See* Amended Proposed Order, ¶ 17.

Plaintiff is ordered to give notice of this ruling to the LWDA and defendants and to file a proof of service

On November 10, 2026, Class Counsel served the LWDA via filing through its online portal at https://dir.govfa.net/432 (Proposed Settlement of PAGA Case) with the Ruling, the Supplemental Declaration of William C. Sung, and the Amended Proposed Order. Supp. Sung Decl., ¶ 11, **Exh 6** – LWDA Filing Confirmation.

DATED: November 10, 2026

Respectfully submitted,

JUSTICE FOR WORKERS, P.C.

By: _____

William C. Sung
Tiffany L. Luu
Joseph C. Ramli
Attorneys for Plaintiff
ROBERTO TOSCANO HERRERA