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(counsel continued next page)

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

JEREMY BURKETT, SHANNON ELLIOTT, individually and on behalf of all similarly situated individuals, Plaintiffs, v. WEHO HOSPITALITY SUNSET, LLC; and DOES 1 to 100, Defendants.	Case No.: 23STCV01072 [related to case nos. 23STCV21589; 23STCV27018] Honorable William F. Highberger Department SS10 **NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** Date: May 30, 2025 Time: 10:30 a.m. Dept.: SSC10 Complaint Filed: January 17, 2023 FAC Filed: May 15, 2023 Trial Date: Not Set

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Attorneys for Plaintiff JOSE PADILLA

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT on **May 30, 2025 at 10:30 a.m.** in **Department** 10 of the above-captioned Court located at 312 North Spring Street, Los Angeles, California 90012, pursuant to California Code of Civil Procedure section 382 and Rule 3.769 of the California Rules of Court, Plaintiffs Jeremy Burkett ("Plaintiff Burkett"), Shannon Elliott ("Plaintiff Elliott"), and Jose Padilla ("Plaintiff Padilla") (together, "Plaintiffs") will move the Court for an Order granting preliminary approval of the proposed class action and PAGA settlement between Plaintiffs and Defendants TGH Employes, LLC and WEHO Hospitality Sunset, LLC ("Defendants").

Plaintiffs request that the Court enter an Order:

1. Preliminarily approving the Class Action and PAGA Settlement Agreement and Class Notice ("Settlement" or "Settlement Agreement") attached as Exhibit 3 to the Declaration of Annabel Blanchard in Support of Plaintiff's Motion for Preliminary Approval of Class Action and PAGA Settlement ("Blanchard Decl.");

2. Certifying the Class for Settlement purposes;

3. Appointing Plaintiffs Jose Padilla, Jeremy Burkett, and Shannon Elliot as the Class Representative for Settlement purposes;

4. Appointing Frontier Law Center and of Blackstone Law, APC as Class Counsel for Settlement purposes;

5. Approving the proposed Notice of Class Action and PAGA Settlement Agreement ("Class Notice"), attached as Exhibit A to the Settlement Agreement, to be mailed to the Class;

6. Approving the opt-out and objection procedures provided in the Settlement Agreement and set forth in the Class Notice;

7. For each Class Member, directing Defendants to furnish the Class Member's name, last-known mailing address, Social Security number, and number of Class Period Workweeks and PAGA Pay Periods ("Class Data"), and such other information as is necessary for the Administrator to calculate Workweeks and PAGA Pay Periods (if applicable) to the Administrator not later than fifteen (15) calendar days after the Court grants entry Preliminary Approval of the Settlement;

8. Approving the proposed deadlines for the settlement administration process; and

9. Setting a Final Approval Hearing.

Pursuant to California Labor Code section 2699(s)(2) and concurrently with the filing of this Motion, a copy of the Settlement was submitted to the Labor and Workforce Development Agency via online submission through the LWDA's website. (Blanchard Decl., ¶ 46).

This Motion is based upon this Notice, the attached Memorandum of Points and Authorities, the Declarations of attorneys Annabel Blanchard and Adam Rose, the Declarations of Plaintiffs Jose Padilla, Shannon Elliott, and Jeremy Burkett, the pleadings and other records on file with the Court in this matter, and any other further evidence or argument that the Court may properly receive at or before the hearing.

Respectfully submitted,

Date: May 6, 2025

FRONTIER LAW CENTER

By: /s/ Adam Rose
Adam Rose
Attorneys for Plaintiffs Shannon Elliott and Jeremy Burkett

Date: May 6, 2025

BLACKSTONE LAW, APC

By: ______________________
Barbara DuVan-Clarke
Attorneys for Plaintiff Jose Padilla

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs Jose Padilla, Shannon Elliottt, and Jeremy Burkett ("Plaintiffs") seek preliminary approval of the Class Action and PAGA Settlement Agreement ("Settlement" or "Settlement Agreement") entered into between Plaintiffs and Defendants TGH Employee, LLC and WEHO Hospitality Sunset, LLC ("Defendants") (together, with Plaintiffs, the "Parties"). The Settlement terms are outlined as follows:

- Class Size: Approximately 416 individuals (March 21, 2025).
- Gross Settlement Amount: Five Hundred Ninety-Nine Thousand Dollars ($599,000).
- Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment: Attorneys' fees of Thirty-Five Percent (35%) of the Gross Settlement Amount (i.e., $209,650) plus actual litigation costs and expenses not to exceed Fifty Thousand Dollars ($50,000), to be paid from the Gross Settlement Amount.
- Class Representative Service Payments: Seven Thousand Five Hundred Dollars ($7,500) to *each* of the Plaintiffs, for a total of Twenty Two Thousand Five Hundred Dollars ($22,500), to be paid from the Gross Settlement Amount.
- Administration Expenses Payment: Not to exceed Eight Thousand Dollars ($8,000) to be paid from the Gross Settlement Amount.
- PAGA Allocation: Fifty Thousand Dollars ($50,000) from the Gross Settlement Amount, 75% of which will be paid to the Labor and Workforce Development Agency ("LWDA") and the remaining 25% to be paid to the Aggrieved Employees.
- Estimated Net Settlement Amount: Two Hundred Fifty-Eight Thousand Eight Hundred Fifty Dollars ($258,850) to be distributed to Participating Class Members.

The Settlement is the product of informal discovery and arms-length negotiations, and provides a fair, adequate, and reasonable recovery for the Class. Plaintiffs therefore respectfully request that the Court grant preliminarily approval of the Settlement, conditionally certify the Class, approve the proposed Notice of Class Action and PAGA Settlement ("Class Notice"), and set a hearing date for final settlement approval.

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II. FACTUAL AND PROCEDURAL BACKGROUND

Defendants operate LAVO Ristorante, a high-end Italian restaurant, and The Fleur Room, a cocktail lounge, both of which are located in Los Angeles on Sunset Boulevard. Plaintiff Jose Padilla was employed by Defendants as an hourly, non-exempt sous chef from approximately February 2022 to approximately August 2022. (Declaration of Plaintiff Jose Padilla in Support of Motion for Preliminary Approval of Class Action and PAGA Settlement ["Padilla Decl."], ¶ 2). Plaintiff Shannon Elliott was employed by Defendants as server and cocktail server from approximately January 2022 through September 2022. Plaintiff Jeremy Burkett was employed by Defendants as a server from approximately January 2022 through August 2022.

On December 28, 2022, Plaintiff Burkett and Plaintiff Elliott provided written notice to the LWDA by online submission and to Defendants by U.S. Certified Mail, pursuant to California Labor Code Section 2699.3, of the specified provisions of the California Labor Code alleged to have been violated by Defendants.

On January 17, 2023, Plaintiffs Burkett and Elliott filed a class action complaint in the action entitled *Burkett, et al. v. WEHO Hospitality Sunset, LLC*, Los Angeles County Case No. 23STCV01072 ("Burkett Complaint"), thereby commencing a class action against Defendants. On May 15, 2023, Plaintiffs Burkett and Elliott filed a first amended class action and PAGA complaint.

On July 14, 2023, Plaintiff Padilla provided written notice to the LWDA by online submission and to Defendants by U.S. Certified Mail, pursuant to Labor Code Section 2699.3, of the specified provisions of the Labor Code alleged to have been violated by Defendants. (Blanchard Decl., ¶ 9 & Exh. 2).

On Spetember 7, 2023, Plaintiff Padilla filed a Class Action Complaint for Damages in the action entitled *Padilla v. Tao Group, LLC et al.,* Los Angeles Superior Court Case No. 23STCV21589. (Blanchard Decl., ¶ 10).

On November 3, 2023, Plaintiff Padilla filed a Complaint for Enforcement Action Under the Private Attorneys General Act, Cal. Labor Code §§ 2698 et seq. in the action entitled Jose Padilla v. Tao Group LLC, et al., Los Angeles County Case No. 23STCV27018 against Tao Group LLC and WEHO Hospitality LLC (together, the Padilla Class Action and Padilla PAGA Action shall be referred to herein as the "Padilla Actions."). (*Id.*, ¶ 11).

On January 11, 2024, the Court ordered the Padilla Actions related to the Burkett Action, and designated the Burkett Action as the lead case. (*Id.*, ¶ 12).

The complaints in the Actions collectively allege violations of the Labor Code for failure to pay overtime wages, failure to provide compliant meal periods and premium payments in lieu thereof, failure to provide compliant rest periods and premiums payments in lieu thereof, failure to pay minimum wages, failure to timely pay wages upon termination, failure to timely pay wages during employment, failure to provide accurate wage statements, failure to reimburse necessary business expenses, for violations of California Business & Professions Code Section 17200, *et seq*. based on the aforementioned California Labor Code violations, and for civil penalties under the Private Attorneys General Act of 2004 pursuant to California Labor Code Section 2698 *et seq*. ("PAGA") based on the aforementioned California Labor Code violations.

On January 11, 2024, the Parties participated in mediation conducted by Glenn Lerman, a neutral and respected mediator with extensive experience in complex wage and hour matters. The matter did not resolve at mediation. However, with the assistance of the Mediator's evaluations, and with ongoing direct negotiations, the Parties were able to reach an agreement to resolve this dispute on a class and PAGA basis. (*Id.*, ¶ 13). The Parties then worked diligently to negotiate and memorialize the terms in a long form settlement agreement. (Ibid).

On April 23, 2025, the Parties executed the Settlement Agreement. (*Id.*, ¶ 14 & Exh. 3).

III. THE SETTLEMENT TERMS

A. Class Definition

For purposes of settlement, the Parties have agreed that the Class shall be defined as "all nonexempt employees, including but not limited to individuals employed as sous chefs and allegedly misclassified as exempt, employed by Defendants in California during the Class Period" ("Class"). (Blanchard Decl., ¶ 15; Settlement Agreement, ¶ 1.5). The Class Period is from January 17, 2019, to June 10, 2024. (Blanchard Decl., ¶ 15; Settlement Agreement, ¶ 1.12). Based on information provided by Defendants, as of March 21, 2025, it is estimated that there are a total of Four-Hundred Sixteen (416) Class Members. (Blanchard Decl., ¶ 15).

B. Amount of Settlement

The Parties have agreed to settle the class and PAGA claims at issue in the Operative Complaint for a non-reversionary Gross Settlement Amount of Five Hundred Ninety-Nine Thousand Dollars ($599,000), exclusive of employer-side payroll taxes. (Blanchard Decl., ¶ 16; Settlement Agreement, ¶ 1.22).

C. Allocation and Funding of the Gross Settlement Amount

The Gross Settlement Amount is a common fund and therefore includes all requested costs, fees, and other allocations. (Blanchard Decl., ¶ 16; Settlement Agreement, ¶ 1.22). The Gross Settlement Amount includes: (1) Class Counsel Fees Payment in the amount of Thirty-Five Percent (35%) of the Gross Settlement Amount (i.e., $209,650 if the Gross Settlement Amount is $599,000); (2) Class Counsel Litigation Expenses Payment, not to exceed Fifty Thousand Dollars ($50,000); (3) Administrator Expenses Payment, not to exceed Eight Thousand Dollars ($8,000); (4) Class Representative Service Payments in the amount of Seven Thousand Five Hundred Dollars, *each* for a total of Twenty Two Thousand Five Hundred Dollars ($22,500); and (5) PAGA Penalties in the amount of Fifty Thousand Dollars ($50,000). (Blanchard Decl., ¶ 16; Settlement Agreement, ¶¶ 3, 3.1.1, 3.1.2, 3.2.1, and 3.2.5). After the above-estimated amounts are deducted from the Gross Settlement Amount, the Net Settlement Amount that will be available for Class Members is currently estimated to be Two Hundred Fifty-Eight Thousand Eight Hundred Fifty Dollars ($258,850). (Blanchard Decl., ¶ 16). Additionally, 25% of the PAGA Penalties ("Individual PAGA Payments"), which is $12,500 out of $50,000 will be fully distributed to "all nonexempt employees, including but not limited to individuals employed as sous chefs and allegedly misclassified as exempt, employed by Defendants who worked for Defendants during the PAGA Period ("Aggrieved Employees"). (Blanchard Decl., ¶ 16; Settlement Agreement, ¶¶ 3.2.5, 3.2.5.1 and 3.2.5.2). The "PAGA Period" is defined as the period from December 28, 2021, to June 10, 2024. (Blanchard Decl., ¶ 16; Settlement Agreement, ¶ 1.32).

Defendants estimate that there are 416 Class Members and 18,069 total Workweeks during the Class Period, and that there are 416 Aggrieved Employees and 11,894 Pay Periods during the PAGA Period. Should the actual number of weeks during which a Class Member worked for Defendants for at least one day during the Class Period ("Workweeks") increase by more than ten percent (10%) (i.e., by more than 1,807 Workweeks), then Defendants shall have the option to either: (a) increase the Gross Settlement Amount proportionally by that percentage exceeding the ten percent (10%) buffer, or (b) shorten the Class Period to the date as of which the total Workweeks worked by Class Members do not exceed 19,876 Workweeks. For example, if the Workweeks exceeded 18,069 by 11% for the period from January 17, 2019 to June 10, 2024, the Gross Settlement Amount would increase proportionally by 1% (should Defendants elect to increase the Gross Settlement Amount rather than shorten the Class Period). (Blanchard Decl., ¶ 17; Settlement Agreement, ¶ 8).

Twenty-five percent (25%) of the PAGA Penalties will be distributed and paid to all Aggrieved Employees on a pro rata basis based on the number of pay periods during which an Aggrieved Employee worked for Defendants for at least one day during the PAGA Period ("Pay Periods"). Blanchard Decl., ¶ 19; Settlement Agreement, ¶¶ 1.31 and 3.2.5.1). The Aggrieved Employee's pro rata share of 25% of the PAGA Penalties will be calculated according to the number of Pay Periods worked during the PAGA Period ("Individual PAGA Payment") and will be calculated by the Administrator, in accordance with the Settlement Agreement. (Blanchard Decl., ¶ 19; Settlement Agreement, ¶¶ 1.24 and 3.2.5.1).

10% of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. 90% of each Participating Class Member's Individual Class Payment will be allocated to interest and penalties (the "Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. (Blanchard Decl., ¶ 20; Settlement Agreement, ¶ 3.p.4). The Administrator will withhold the employee's share of taxes and withholdings with respect to the Wage Portion of the Individual Class Payments, and issue checks to Participating Class Members for their net payment of their Individual Class Payment. The employers' share of taxes and contributions in connection with the Wage Portion of Individual Class Payments will be paid by Defendants separately and in addition to the Gross Settlement Amount. Each Individual PAGA Payment will be allocated as one hundred percent (100%) penalties and will be reported on an IRS Form 1099 (if applicable) by the Administrator. (Blanchard Decl., ¶ 20). The Settlement Agreement is a non-reversionary and non-claims made settlement. (Blanchard Decl., ¶ 21; Settlement Agreement, ¶ 3). The Net Settlement Amount will be fully distributed to Participating Class Members and the PAGA

Penalties will be fully distributed to the LWDA and Aggrieved Employees, in accordance with the Settlement Agreement. (Blanchard Decl., ¶ 21; Settlement Agreement, ¶ 3). No money will revert to Defendants. (Blanchard Decl., ¶ 21; Settlement Agreement, ¶ 3).

20. Each Individual Class Payment and Individual PAGA Payment check will be valid and negotiable for one hundred and eighty (180) calendar days from the date the checks are issued, and thereafter, shall be canceled. Any funds associated with such canceled checks will be distributed by the Administrator to the State of California's Unclaimed Property Division in the name of the Participating Class Member and/or Aggrieved Employee. (Blanchard Decl., ¶ 22; Settlement Agreement, ¶ 4.4.1).

D. Released Claims

Effective on the date when Defendants fully fund the entire Gross Settlement Amount and fund all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiffs, Class Members, and Class Counsel will release claims against all Released Parties as follows:

<u>Plaintiffs' Release</u>: Plaintiffs and their respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors and assigns generally, release and discharge Released Parties from all claims, transactions or occurrences that occurred during the Class Period, including, but not limited to: (a) all claims that were, or reasonably could have been, alleged, based on the facts contained, in the Action or Operative Complaint, (b) all PAGA claims that were, or reasonably could have been, alleged based on facts contained in the Action or Operative Complaint, and (c) any alleged violation of the following, as amended: Title VII of the Civil Rights Act of 1964; the Age Discrimination in Employment Act; the Older Workers Benefit Protection Act; Sections 1981 through 1988 of Title 42 of the United States Code; Employee Retirement Income Security Act of 1974 ("ERISA"); Internal Revenue Code of 1986; Immigration Reform and Control Act; Americans with Disabilities Act of 1990; Worker Adjustment and Retraining Notification Act; Fair Credit Reporting Act; Family and Medical Leave Act; Equal Pay Act; Genetic Information Nondiscrimination Act of 2008; Uniformed Services Employment and Reemployment Rights Act of 1994 ("USERRA"); Families First Coronavirus Response Act; Pregnant Worker's Fairness Act ("PWFA"); California Family Rights Act – Cal. Gov't Code § 12945.2; California Fair Employment and Housing Act – Cal. Gov't Code § 12900 et seq.; California Unruh Civil Rights Act – Cal. Civ. Code § 51 et seq.; Statutory Provisions Regarding the Confidentiality

of AIDS Information – Cal. Health & Safety Code § 120775 et seq.; California Confidentiality of Medical Information Act – Cal. Civ. Code § 56 et seq.; California Parental Leave Law – Cal. Lab. Code § 230.7 et seq.; California Military Personnel Bias Law – Cal. Mil. & Vet. Code § 394; California Occupational Safety and Health Act, as amended, and any applicable regulations thereunder; California Consumer Credit Reporting Agencies Act – Cal. Civ. Code § 1785 et seq.; California Investigative Consumer Reporting Agencies Act – Cal. Civ. Code § 1786 et seq.; those provisions of the California Labor Code that lawfully may be released; any other federal, state or local law, rule, regulation, or ordinance; any public policy, contract, tort, or common law; or any basis for recovering costs, fees, or other expenses including attorneys' fees incurred in these matters. (Settlement Agreement, ¶ 5.1).

Release by Participating Class Members Who Are Aggrieved Employees: Upon the Effective Date and full funding of the Gross Settlement Amount, all Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors and assigns, release Released Parties from (i) all claims that were alleged, or reasonably could have been alleged, based on the Class Period facts stated in the Action or Operative Complaint, and (ii) damages, minimum and overtime wages, wages at the regular rate, wages due at or after the date of separation, accrued and unpaid benefits, meal and rest premiums, penalties, attorneys' fees, costs, and any other form of relief whether under federal law or the law of any state, which Participating Class Member may have against Defendants or the Released Parties for any acts occurring during the Class Period that were pled or could have been pled in the Action based on the facts alleged in the Action. Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, Social Security, workers' compensation or claims based on facts occurring outside the Class Period.. (*Id*., ¶ 5.2).

Release by Non-Participating Class Members Who Are Aggrieved Employees: Upon the Effective Date and full funding of the Gross Settlement Amount, all Non-Participating Class Members who are Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Action or Operative Complaint. (*Id.*, ¶ 5.3).

"Released Parties" means Defendants TGH Employees LLC, WEHO Hospitality, LLC and WEHO Hospitality Sunset, LLC and their present and former officers, directors, members, managers, employees who are not Class Members, shareholders, agents, parents, subsidiaries, affiliates, insurers, operators, partners, joint ventures, franchisees, franchisors, consultants, attorneys, successors or assignees. (*Id.*, ¶ 1.42).

IV. STANDARD OF REVIEW FOR PRELIMINARY APPROVAL

The settlement of a class action requires court approval. (*See Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794 (1996)). "In general, questions whether a settlement was fair and reasonable, whether notice to the class was adequate, whether certification of the class was proper, and whether the attorney fee award was proper are matters addressed to the trial court's broad discretion." (*Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 234-35 (2001) (disapproved on other grounds)).

The review and approval of a proposed class action settlement involves a two-step process. (*See* Cal. Rules of Court, Rule 3.769(c)). First, counsel submits the proposed terms of the settlement and the Court makes a preliminary assessment of whether the settlement is within the range of reasonableness to justify providing notice of the proposed settlement to class members. After notice is provided to the class, the Court conducts a second inquiry into whether the proposed settlement is fair, reasonable, and adequate. (*Ibid.*)

The initial evaluation of the settlement at the preliminary approval step "is not a fairness hearing." (*Armstrong v. Board of School Directors of City of Milwaukee*, 616 F.2d 305, 314 (7th Cir. 1980)). Rather, the limited purpose of this initial inquiry is to determine, at a threshold level, only whether the proposed settlement is within the range of possible approval and, as a result, "whether there is any reason to notify the class members of the proposed settlement and to proceed with a fairness hearing." A presumption of fairness exists where: (1) the settlement is reached through arm's length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small. (*See In re Microsoft I-V Cases* (2006) 135 Cal. App. 4th 706, 723 (2006).)

Preliminary approval does not require a court to make a final determination that the settlement is fair, reasonable, and adequate. Rather, that decision is made only at the final approval stage, after notice of the settlement has been given to the class members and they have had an opportunity to object or exclude themselves from the settlement. (*See* Cal. Rules of Court, Rule 3.769(g)). In considering a potential class settlement, the court need not reach any ultimate conclusions on the issues of fact and law which underlie the merits of the dispute and need not engage in a trial on the merits. (*See Officers for Justice v. Civil Service Commission*, 688 F.2d 615, 625 (9th Cir. 1982)).

V. THE SETTLEMENT IS PRESUMED FAIR

A. The Settlement Was Reached as a Result of Arm's-Length Bargaining

"[A] presumption of fairness exists where . . . the settlement is reached through arm's-length bargaining." (*Wershba*, 91 Cal.App.4th at 245; *see also Clark v. Am. Residential Servs. LLC*, 175 Cal.App.4th 785, 799 (2009)). Here, the Parties' settlement negotiations were at all times made at arm's-length and were adversarial. (Blanchard Decl., ¶ 23.). The Settlement was reached following a full day of mediation with a highly respected mediator with substantial experience mediating wage and hour cases. (Ibid). At all times, Plaintiffs were willing and prepared to litigate this matter through class certification and trial if the Parties had been unable to reach a favorable resolution.

B. Sufficient Investigation and Discovery by Experienced Class Counsel

Courts assess the status of discovery in determining whether a class action settlement agreement is fair, reasonable, and adequate. (*Dunk*, 48 Cal.App.4th at 1801). Prior to mediation, Defendants produced a random sampling of class members' time and pay records as well as Defendants' wage and hour policies, and information regarding the total number of class members, the number of current versus former employees, the total workweeks worked by the putative class members, and the average rate of pay for the putative class members. (Blanchard Decl., ¶ 24.)

This allowed Class Counsel to conduct an informed assessment and analysis of the strengths and weaknesses of the claims and the potential class-wide damages. Blanchard Decl., ¶ 25.) Based on information exchanged, the Parties briefed issues regarding class certification and liability and provided their analyses to the Mediator who helped the Parties debate the strengths and weakness of their respective positions. Additionally, settlement negotiations were conducted by highly capable and experienced counsel. (Blanchard Decl., ¶¶ 1-8; Rose Decl. ¶¶ 24-28). Accordingly, Class Counsel had sufficient information and experience to act intelligently in negotiating the Settlement.

C. The Settlement is Fair and Reasonable in Light of the Parties' Respective Legal Positions and Recovery Risks

A settlement is not judged against what might have been recovered had a plaintiff prevailed at trial, nor does the settlement have to obtain 100% of the damages sought to be fair and reasonable. (*Wershba*, 91 Cal.App.4th at 246, 250). In evaluating the reasonableness of a settlement, a trial court must consider "the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement." (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128.)

Here, the reasonableness of the Settlement is underscored by the fact that Defendants has legal and factual grounds for defending the Action. Based upon Class Counsel's experience litigating similar complex matters, Plaintiffs reasonably expected a vigorous and lengthy defense to both class certification and the merits of the Action absent a settlement.

1. Class Counsel's Analysis of the Maximum Available Liability and Damages

The below discusses the maximum/adjusted valuations of the causes of action. It should be noted that the expert's data analysis was only for PAGA liability since the Burkett case was going to proceed as a PAGA only case given Defendant's production of Plaintiffs' signed arbitration agreements/class action waivers. However, Defendants agreed to settle on a class and PAGA basis since the Padilla class action was still proceeding. The maximum liability below is still roughly equal to the class damages exposure since PAGA provides a relatively heightened exposure, and the proposed PAGA settlement allocation is 8.3% of the gross amount.

a. Strength of the Case

Meal and Rest Breaks

Defendant's company handbook did not have a meal or rest break policy other than a statement: "Do not start work early, finish late, work during a meal break or perform any other extra or overtime work unless you are authorized to do so." Rest breaks are not mentioned in the handbook at all. This lack of a written meal or rest break policy contributed to an environment where there was an implicit pressure to work during meal breaks, and where both second meal breaks and rest breaks were arguably non-existent.

Plaintiffs' analysis of the sampling of time records revealed a pattern of meal break noncompliance, with 61% of meal break eligible shifts showing facially non-compliant first meal breaks. There was also a 99% rate of noncompliance for second meal breaks on shifts of over 10 hours. These datapoints track Plaintiffs' experiences of working through their first meal break, and not receiving a second meal break.

Attributing liability to facially non-compliant meal breaks, and using initial violation rates under Labor Code section 558 ($50 per pay period), the maximum liability for the meal break violations is $401,850. As for rest breaks, for the reasons set forth above the maximum liability with a 100% violation rate is $1,334,710.

However, these maximum exposure amounts have the risks. First, even though Defendant did not have robust written break policies, under CACI Nos. 2766A (meal breaks) and 2761 (rest breaks), Plaintiffs must still show the breaks were either interrupted or not allowed. Second, rest breaks are not recorded, so a wide sampling of class members' experiences would be required. Assuming that roughly half of the employees would not state that Defendant did not impeded their meal and rest breaks, the adjusted maximum liability (reducing both numbers by 50%) is $200,925 for meal breaks, and $667,355 for rest breaks.

Work Expense Violation

Employees were required to use their personal cell phones for work-related purposes. This included downloading and using the Signal app for work-related communications, and the 1Huddle app for training, test-taking, and score tracking. Consequently, the maximum liability is $1,334,700.

The risk with the cell phone reimbursement is that the use of personal cell phones might be de minimis at most. An employer must pay some reasonable percentage of the employee's cell phone bill. *Herrera v. Zumiez, Inc*. (9th Cir. 2020) 953 F.3d 1063. However, here the percentage is possibly quite small since the communications were inconsistent, such as 15% of the time. Thus, the adjusted maximum liability is $200,205.

Off the Clock Work

The presence of only one time machine for clocking in and out created a bottleneck, requiring employees to wait in line for several minutes prior to being able to clock in at the start of their shifts or when they returned from meal breaks. The time employees spent waiting to clock in should have been compensated for. (*Frlekin v. Apple Inc*., 8 Cal. 5th 1038, 1056, (2020), reh'g denied (May 13, 2020))

Furthermore, employees were required to log into the 1Huddle app to complete training and achieve certain scores, during their own personal time outside of work. Additionally, employees were contacted via Signal for work related purposes outside of work hours, but this time was never recorded or compensated for. Applying initial violation rates, the maximum liability is $667,350.

However, waiting in line to clock in and out was not necessarily a daily occurrence, and if it did occur it did not last long. Also, use of the 1Huddle and Signal apps was similarly sporadic. A more realistic exposure is 30% of the maximum, so the adjusted liability amount is $200,205.

Improper Tip Reductions

Defendant used a system called SkyTab for customers' payments from March 2022 to June 2022. It was discontinued after employees complained about missing tip payments. In fact, Defendant used to pass on the 2.25% SkyTab service charge to employees. The maximum exposure for the improper tip deductions during this indicated period is $40,600.

The risk with the tip deductions is that is it possible not all employees' tips had improper deductions. Also SkyTab was used for only three months during the class period (January 17, 2019, to June 10, 2024), which is 6% of the time. Consequently, a reduction to 10% of the maximum is warranted, meaning the adjusted liability amount is $4,060.

Wage Statement Penalties

Derivative wage statement penalties would apply for the off the clock work and the unpaid premium pay. The maximum exposure for the wage statement penalties is $1,334,700.

The risk for the derivative penalties is that intent not to pay is required under *Naranjo v. Spectrum Security Services, Inc*. (2024) 15 Cal.4th 1056 (Naranjo II), and there is no evidence showing an affirmative intent not to pay. Thus, depositions would be required to discern intent, and there is no guarantee intent would be found. Thus, a more realistic adjusted liability is 50% of the maximum amount, or $667,350.

Waiting Time Penalties

Derivative waiting time penalties would also apply for the same reasons listed above. The maximum exposure for waiting time penalties is $12,700. The same logic with the wage statement penalties applies to the waiting time penalties regarding risks. It follows that with a 50% reduction, the adjusted maximum liability is $6,350.

The Settlement is Within the Range of Reasonableness

The attached is a chart comparing the maximum liability to the adjusted liability:

Cause of Action	Maximum Liability	Adjusted Liability
Meal Breaks	$401,850	$200,925
Rest Breaks	$1,334,710	$667,355
Work Reimbursements	$1,334,700	$200,205
Off the Clock	$667,350	$200,205
Improper Tip Deductions	$40,600	$4,060
Wage Statement Penalties	$1,334,700	$667,350
Waiting Time Penalties	$12,700	$6,350
Total	$5,126,610	$1,946,450
Percentage of Settlement	11.6%	30.7%

Both the maximum liability and adjusted liability figures are within the range of reasonableness. Further justification that the settlement is fair, adequate, and reasonable are explained below.

2. Class Counsel's Risk-Based Analysis and Risk-Based Adjustments

Other points to consider are that for Plaintiffs' meal period claims, which were based on Defendants' alleged failure to provide lawful meal periods, have been increasingly difficult to certify in recent years. (*See Brinker*, 53 Cal. 4th at 1034-35). Plaintiff's theory of liability for meal period violations was based on allegations that Defendants had failed to implement its policies and that its practices failed to allow Class Members to take meal breaks in the manner required under California law. (*See Bradley v. Networkers Int'l, LLC,* 211 Cal.App.4th 1129, 1150 (2012) (holding that "the lack of a meal/rest break policy and uniform failure to authorize such breaks are matters of common proof.")). Class Counsel also had to consider the risk that the Court would find validity in an individualized proof defense to certification of Plaintiff's meal period claim.

Additionally, a large portion of Defendants' overall liability lies in Plaintiffs' rest period allegations. This claim was uncertain given the difficulties associated with proving the alleged rest period violations, as Defendants was not required to record these breaks. Therefor, there were legitimate concerns Plaintiffs would not be able to certify these claims or prove substantial damages with requisite certainty, which made the estimated value of this claim subject to much challenge.

Plaintiffs also faced challenges certifying and proving liability for their minimum wage and overtime claims. These claims were largely based on unrecorded, off-the-clock work. However, the individualized nature of why this work was performed and the individualized nature of damages presented substantial concerns and the risk the Court could find these issues prevented certification.

There are also substantial risks associated with Plaintiffs' waiting time penalties and wage statement claims. First, these claims were derivative of Plaintiffs' claims for unpaid meal period premiums, unpaid rest period premiums, unpaid minimum wages, and unpaid overtime wages, and if certification was denied on those underlying claims, these derivative claims for penalties would also likely fail. Further, even if Plaintiffs prevailed on his underlying claims, they would still be required to demonstrate that Defendants' violations of California Labor Code section 203 were *willful* violations. (*See, e.g*., *Choate v. Celite Corp*., 215 Cal App. 4th 1460, 1468 (2013) (holding that "an employer's reasonable, good faith belief that wages are not owed may negate a finding of willfulness")). Wage statement claims have also seen varying treatment at the appellate level because such claims have an element of discretion attached to them rather than a pure calculation of damages after liability is proven. (*Jaimez v. DAIOHS USA, Inc*., 181 Cal.App.4th 1286 (2010) *with Price v. Starbucks Corp*., 192 Cal.App.4th 1136 (2011)). Accordingly, these derivative claims, which comprised a substantial portion of Defendants' estimated liability, were therefore uncertain.

Class Counsel also recognized that, even if Plaintiffs prevailed at class certification, proving the amount of wages due to Class Members would be an expensive, time-consuming, and uncertain proposition. In order to prove liability and damages, Class Counsel will need to request and analyze thousands of pages of documents, obtain the Class Members' contact information, contact them, and obtain their declarations at great expense. Obtaining the cooperation of current employees would also be difficult, given the likely reluctance to aid prosecution of a lawsuit against a current employer. On the other hand, Defendants would likely be able to obtain the cooperation of their employees. Moreover, even if Plaintiffs prevailed at class certification and trial, possible appeals would substantially delay any recovery by the Class.

Class Counsel also contemplated the risks of proceeding with the PAGA action and potential liability Defendants could face from this claim as part of the global resolution. Existing case law makes PAGA claims subject to the same defenses and risks as Plaintiffs' underlying wage claims. (see, *Elliot v. Spherion Pac. Work, LLC*, 572 F.Supp.2d 1169, 1181-82 (C.D. Cal. 2008) ("Plaintiff's claim under [PAGA] is wholly dependent upon her other claims. Because all of Plaintiff's other claims fail as a matter of law, so does her PAGA claim")). Class Counsel also anticipated that even if successful on the merits at trial, the imposition of cumulative civil penalties based on the alleged wage and hour violations could be considered unjust, arbitrary and oppressive, or confiscatory, and that Defendants would argue that it made a good faith attempt to comply with its legal obligations warranting a reduction in penalties. [1] Class Counsel also anticipated Defendants would argue that it made a good faith attempt to comply with its legal obligations and that the violations per pay period were low, warranting an additional reduction in civil penalties. Finally, Class Counsel was also mindful of the fact that PAGA is fundamentally not intended to be compensatory in nature but is instead intended to facilitate enforcement of California's labor laws by financing state activities and educating and deterring non-compliance.

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[1] See, e.g., *Thurman v. Bayshore Transit Management, Inc.*, 203 Cal.App.4th 1112, 1131 (2012) (imposition of both statutory and civil penalties for same conduct is impermissible double recovery) (disapproved on other grounds); *Aguirre v. Genesis Logistics*, 2013 WL 10936035, at *3 (C.D. Cal. 2013) ("duplicative effect" of penalties is a factor in favor of "reducing ...the PAGA penalty"); *Smith v. Lux Retail North America, Inc.*, 2013 WL 2932243, at *3 (N.D. Cal. June 13, 2013) (declining to stack penalties based on the same conduct); *Castillo v. ADT, LLC*, 2017 WL 363108, at *4 (E.D. Cal. Jan. 25, 2017); *Sanchez v. McDonalds Restaurants of California, Inc.*, 2017 WL 4620746 (LA Super. Ct. July 6, 2017) (declining to stack penalties arising out of the same conduct); *Fleming v. Covidien, Inc.*, 2011 WL 756304718, at *4 (C.D. Cal. Aug. 12, 2011) (reducing PAGA penalties by 80%); *Cotter v. Lyft, Inc.*, 193 F.Supp.3d 1030 (N.D. Cal. 2016) (indicating that a substantial reduction is warranted where good faith dispute exists in legal obligations); *Carrington v. Starbucks Corp*., 30 Cal.App.5th 504, 529 (2018) (approving reduction in penalties from $50 per pay period to $5 per pay period based on good faith attempts to comply with obligations and minimal violations).

Therefore, after considering this multitude of factors, Plaintiff and Class Counsel concluded that it was in the best interest of the State of California and the PAGA Employees to enter into the Settlement, and to allocate Fifty Thousand Dollars and Zero Cents ($50,000) of the Gross Settlement Amount towards the PAGA claim, which represents approximately 8.34% of the Gross Settlement Amount. This percentage of the settlement is well within the range of wage and hour settlements regularly approved in both state and federal court for cases that include both a class and PAGA action. Typically, such hybrid cases allocate only 1% of the gross settlement value to resolve PAGA claims, and, indeed, settlements allocations as little as 0.22% of the gross settlement amount have been approved as reasonable by courts. Moreover, the overall relief obtained by the Settlement is significant, not only from a monetary perspective, but also because it fulfills the public policy objectives of PAGA—to promote enforcement of California's labor laws, provide funds to the state, and deter future non-compliance by the employer.

The Settlement is in the best interest of the Class Members, the PAGA Employees, and the State of California and is within the accepted range of recoveries for this type of litigation given the inherent risk of litigation, the risk of obtaining and maintaining class certification, and the costs of further litigation.

VI. CERTIFICATION FOR SETTLEMENT PURPOSES IS WARRANTED

Class certification requires: (1) there must be an ascertainable class; (2) there must be a well-defined community of interest in the question of law or fact affecting the parties to be represented; and (3) certification will provide substantial benefits for proceeding as a class action that is superior to other methods. (*See Dunk*, 48 Cal.App.4th at 1806).

A. An Ascertainable Class Exists Which is So Numerous That Joinder of All Members is Impracticable

Whether an ascertainable class exists turns on three factors: (1) the class definition, (2) the size of the class, and (3) the means of identifying the class members. (*See Miller v. Woods*, 148 Cal.App.3d 862, 873 (1983)). In this case, all three considerations strongly favor class certification since the class is ascertainable. Here, the Class is defined as "all nonexempt employees, including but not limited to individuals employed as sous chefs and allegedly misclassified as exempt, employed by Defendants in California during the Class Period." (Blanchard Decl., ¶ 15; Settlement Agreement, ¶ 1.5). This provides a clear and definite scope for ascertainability.

Next, the Class is sufficiently numerous. There is no magic number that satisfies the numerosity requirement. Courts have certified classes with as few as ten or twenty-eight class members. (*Rose v. City of Hayward*, 126 Cal.App.3d 926, 934 (1981); *Bowles v. Superior Court*, 44 Cal. 2d 574 (1995); *Hebbard v. Colgrove*, 28 Cal.App.3d 1017, 1030 (1972)). Here, the Class size of 416 meets the numerosity requirement.

Finally, the question of whether class members are easily identifiable turns on whether a plaintiff can establish "the existence of an ascertainable class." (*Daar v. Yellow Cab Co.*, 67 Cal.2d 695 at 706 (1967)). The existence of an ascertainable class in this case can be established through Defendants' payroll records, and the Class definition is sufficiently specific to enable the Parties, Class Members, and the Court to determine the parameters of the Class. (*See Clothesrigger, Inc. v. GTE Corp.*, 191 Cal.App.3d 605, 617 (1987)).

B. The Class Shares a Well-Defined Community of Interest

The community of interest requirement embodies three factors: (1) predominant questions of law and fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class. (*Dunk*, 48 Cal.App.4th at 1806). Here, all three requirements are easily satisfied.

The commonality criterion requires the existence of common question of law or fact and is generally established with the issues of predominance and typicality. (*See Daar*, 67 Cal.2d 695, 706). What is required is that a common question of fact or law exists which predominates over issues unique to individual plaintiffs. The existence of individual issues or facts—generally present in any case arising from employment—is not a bar to class certification as long as they do not render class litigation unmanageable or predominate over the common issues. (*See B.W.I. Custom Kitchen v. Owens-Illinois, Inc.*, 191 Cal.App.3d 1341, 1354 (1987)).

Here, Plaintiffs' claims present common issues of law and fact that predominate and warrant class certification. Plaintiffs allege that Defendants denied compliant meal and rest periods to employees, required employees to perform work off-the-clock, and failed to fully compensate employees for all time actually worked. These policies and practices meant that Defendants allegedly failed to pay minimum and overtime wages, and other related claims. Plaintiffs allege that Defendants' policies and practices were uniform as to all Class Members. Thus, class treatment is appropriate.

To satisfy the typicality requirement, the test of is whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiff, and whether other class members have been injured by the same course of conduct. (*See Seastrom v. Neways, Inc.*, 149 Cal.App.4th 1496, 1502 (2007)). The typicality requirement for a class representative refers to the nature of the claim or defense of the representative, and not to the specific facts from which it arose or the relief sought. (*See* Ibid).

Here, Plaintiffs allege that their claims are similar to that of the other Class Members and that Plaintiffs' claims arise out of the same alleged course of conduct giving rise to the claims of the other Class Members. Because Plaintiffs' claims are based upon the same alleged conduct and business practices as those of the Class Members, the typicality requirement has been satisfied.

Finally, the question of adequacy of representation "depends on whether the plaintiff's attorney qualifies to conduct the proposed litigation in the plaintiff's interest or not antagonistic to the interests of the class." (*McGee v. Bank of America*, 60 Cal.App.3d 442, 450 (1976)). Here, these considerations are satisfied. Class Counsel is well-regarded and is qualified and experienced in employment-related, class-action litigation. (Blanchard Decl., ¶¶ 1-8; Rose Decl. ¶¶ 24-28) Plaintiffs will vigorously, adequately, and fairly represent the interests of the Class. Because Plaintiffs' claims are typical of other Class Members and are not based on unique circumstances, there are no antagonistic interests.

C. A Class Action is Superior to a Multiplicity of Litigation

Under the circumstances, proceeding as a class action is the superior means of resolving this dispute, as the Class Members and the Court will derive substantial benefits. Class certification would serve as the only means to deter and redress the alleged violations. (*See Linder v. Thrifty Oil Co.*, 23 Cal.4th 429, 434 (2000) (relevant considerations include the probability that each class member will come forward to prove his or her separate claim and whether the class approach would actually serve to deter and redress the alleged wrongdoing)). Further, individual actions arising out of the same operative facts would unduly burden the courts and could result in inconsistent results. Therefore, class action proceedings are superior to individual litigation.

VII. THE REQUESTED CLASS REPRESENTATIVE SERVICE PAYMENTS ARE REASONABLE

Plaintiffs in class action lawsuits are eligible for reasonable incentive payments as compensation "for the expense or risk they have incurred in conferring a benefit on other members of the class." (*Munoz v. BCI Coca-Cola Bottling Co.*, 186 Cal.App.4th 399, 412 (2010)). Courts routinely grant approval of class action settlement agreements containing enhancements for the class representative, which are necessary to provide incentive to represent the class and are appropriate given the benefit the class representatives help to bring about for the class. (*See In re Online DVD Rental*, 779 F.3d 934, 947-948 (9th Cir. 2014) (approving incentive award 417 times larger than individual payments where incentive award made up a mere .17% of the settlement); *Gaudin v. Saxon Mortgage Servs., Inc.*, 2015 WL 7454183, at *10 (N.D. Cal. Nov. 23, 2015) (finding service award of $15,000 to be "fair and reasonable")).

Plaintiffs initiated this litigation on behalf of their former co-workers who will now be entitled to receive payment from the Settlement. Further, the requested amounts for Plaintiffs are also reasonable given the average award and the benefit gained by other Class Members. For these reasons, Plaintiffs requests that Class Representative Service Payments of Seven Thousand Five Hundred Dollars ($7,500) each to the three named Plaintiffs (for a total of $22,500) be preliminarily approved by the Court.

VIII. THE REQUESTED CLASS COUNSEL FEES PAYMENT AND CLASS COUNSEL LITIGATION EXPENSES PAYMENT ARE REASONABLE

Trial courts have "wide latitude" in assessing the value of attorneys' fees and their decisions will "not be disturbed on appeal absent a manifest abuse of discretion." (*Lealao v. Beneficial Cal, Inc.* (2000)82 Cal.App.4th 19, 41.). California law provides that attorney fee awards should be equivalent to fees paid in the legal marketplace to compensate for the result achieved and risk incurred. (*Id*. at 47). In cases where class members present claims against a common fund and the defendant agrees to a percentage of the fund as part of the settlement, use of the percentage method is appropriate. (*Id.* at 32).

Here, the requested attorneys' fees of up to thirty-five percent (35%) of the Gross Settlement Amount (i.e., $209,650) is disclosed to Class Members in the proposed Class Notice. (Settlement Agreement, Exh. A). The requested fee was freely negotiated, is common in the legal marketplace, and is not opposed by Defendants. The Motion for Final Approval will elaborate on the nature of the legal services provided and will also support Class Counsel's request for the reimbursement of litigation costs and expenses not to exceed fifty thousand dollars ($50,000). (Blanchard Decl., ¶ 29). The Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment that are not ultimately approved by the Court shall instead be included in the Net Settlement Amount to be distributed to Particpating Class Members. (Settlement Agreement, ¶ 3.1.3).

IX. THE CLASS NOTICE AND THE OPT-OUT AND OBJECTION PROCESS MEETS DUE PROCESS REQUIREMENTS

The Parties have jointly drafted the Class Notice, which will be mailed to the Class Members. (*Id*., Exh. A). The Class Notice will include information regarding the nature of the Action, a summary of the terms of the Settlement, the Class definition, information on how to object to and/or opt-out of the Class Settlement and to dispute Workweeks and/or Pay Periods, and the date of the Final Approval Hearing. (Ibid). The Class Notice will list each Class Member's total Workweeks and their estimated Individual Class Payment and each Aggrieved Employee's total Pay Periods and their estimated Individual PAGA Payment. (Ibid).

Within fifteen (15) calendar days after the Court grants preliminary approval of the Settlement, Defendants will deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement. Defendants have a continuing duty to immediately notify Class Counsel if they discover that the Class Data omitted Class Member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. Without any extension of the deadline by which Defendants must send the Class Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data. (Settlement Agreement, ¶¶ 1.8 & 4.2). No later than 3 business days after receipt of the Class Data, the Administrator shall notify Class Counsel that the list has been received and state the number of Class Members, Aggrieved Employees, Workweeks and PAGA Pay Periods in the Class Data. (*Id*., ¶

7.4.1). The Parties have agreed to use Apex Class Action as the Administrator. (Blanchard Decl., ¶ 32; Settlement Agreement, ¶ 7.1).

In determining whether to approve a settlement of a class action, a trial court has virtually complete discretion as to the manner of giving notice to class members, and review on appeal is governed by the abuse of discretion standard. (*See In re Cellphone Fee Termination Cases*, 186 Cal.App.4th 1380 (2010)). Here, Class Counsel is not aware of an alternative method of providing notice to the Class which would result in a higher likelihood of actual notice. (Blanchard Decl., ¶ 33). The original source of the mailing addresses is from Class Members, who provided the information to Defendants. (Ibid).

Class Members will have forty-five (45) calendar days after the Administrator mails the Class Notice to Class Members and shall be the last date on which Class Members may: (a) fax, email or mail Requests for Exclusion from the Settlement, or (b) fax, email or mail his, her, or their Objection to the Settlement. Class Members to whom Class Notices are resent after having been returned undeliverable to the Administrator shall have an additional 14 calendar days after the Response Deadline has elapsed to fax, email, or mail their Request for Exclusion or Objection to the Settlement ("Response Deadline"). (Settlement Agreement, ¶ 1.44).

The Administrator must conduct a Class Member Address Search for all other Class Members whose checks are retuned undelivered without United States Postal Service ("USPS") forwarding address. Within 7 days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Class Member Address Search. The Administrator need not take further steps to deliver checks to Class Members whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Class Member whose original check was lost or misplaced, requested by the Class Member prior to the void date, after voiding the original check and confirming that the original check was not cashed or deposited. (*Id.*, ¶ 4.4.2).

Each Class Member shall have 45 days after the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class Notice is re-mailed) to challenge the number of Workweeks and/or Pay Periods allocated to the Class Member and/or Aggrieved Employee in the Class Notice. The Class Member may challenge the allocation by communicating with the Administrator via fax, email or mail. The Administrator must encourage the challenging Class Member to submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the Workweeks contained in the Class Notice are correct so long as they are consistent with the Class Data. The Administrator's determination of each Class Member's allocation of Workweeks and/or Pay Periods shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall promptly provide copies of all challenges to calculation of Workweeks and/or Pay Periods to Defense Counsel and Class Counsel and the Administrator's determination regarding the challenges. (*Id.*, ¶ 7.6).

Class Members who wish to exclude themselves (opt-out of) from the Settlement must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later than 45 days after the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Class Member or his/her/their representative that reasonably communicates the Class Member's election to be excluded from the Class components of the Settlement and includes the Class Member's name, address and email address or telephone number. To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline. (*Id.*, ¶ 7.5.1).

Only Participating Class Members may object to the class action components of the Settlement and/or this Agreement, including contesting the fairness of the Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Class Representative Service Payments. (*Id.*, ¶ 7.7.1). Participating Class Members may send written objections to the Administrator, by fax, email or mail. In the alternative, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present oral objections at the Final Approval Hearing. A Participating Class Member who elects to send a written objection to the Administrator must do so not later than 45 days after the Administrator's mailing of the Class Notice (plus an additional 14 days for Class Members whose Class Notice was re-mailed). (*Id.*, ¶ 7.7.2).

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X. CONCLUSION

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

Respectfully submitted,

Dated: May 6, 2025

BLACKSTONE LAW, APC

By: ______________________

Barbara DuVan-Clarke
Attorneys for Plaintiff, Jose Padilla

Dated: May 6, 2025

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