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Attorney for Plaintiff Daniel Mitchell
and the Proposed Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

DANIEL MITCHELL, individually and on behalf of all current and former similarly situated employees in the State of California,	) CASE NO.: 30-2024-01377755-CU-OE-CXC
	) ASSIGNED FOR ALL PURPOSES TO:
Plaintiffs,	) Hon. Layne H. Melzer
	)
	) Dept.: CX-103
	)
v.	) Reservation Number: 74560426
	)
	) Date: August 14, 2025
THOVAN HOSPITALITY, LLC; AGNES RESTAURANT & CHEESRY; THOMAS	) Time: 2:00 p.m.
KALB, an individual; VANESSA TILAKA, an	) Dept.: CX-103
individual; ALLAN LIAO, an individual; and	)
DOES 1 to 50, inclusive,	) DECLARATION OF NATALIE
	) MIRZAYAN, ESQ. IN SUPPORT OF
	) MOTION FOR PRELIMINARY
Defendants.	) APPROVAL OF CLASS ACTION AND
	) PAGA SETTLEMENT AND FOR
	) PROVISIONAL CLASS
	) CERTIFICATION FOR SETTLEMENT
	) PURPOSES ONLY
	)
	) [Filed Concurrently with a Motion for
	) Preliminary Approval of Class Action and
	) PAGA Settlement; Proposed Order]

1 I, Natalie Mirzayan, declare as follows:

2 1. I am an attorney at law, duly authorized to practice law before all of the courts of the State of
3 California and I am a shareholder at Mirzayan Law, A Professional Law Corporation. I am the
4 attorney for Plaintiff DANIEL MITCHELL (“Plaintiff” or “Class Representative”) in this case. I
5 make this Declaration on behalf of the Plaintiff in support of Plaintiff’s Motion for Preliminary
6 Approval of Class Action Settlement and for Provisional Class Certification for Settlement
7 Purposes Only. I am familiar with the files, pleadings, and facts in this case and could and would
8 competently testify to the following facts on the basis of my personal knowledge.
9

10 2. I obtained my B.A. in Economics with honors (*Cum Laude*) from the University of California
11 Los Angeles (“UCLA”), and my Juris Doctorate from California Western School of law in San
12 Diego, California. Thereafter, I obtained my LLM. in Taxation from Chapman University School of
13 Law in Orange, California. I have been admitted to the State Bars of California, New York, and New
14 Jersey since 2010. Geographically, I practice in all areas in the State of California including, but not
15 limited to, Los Angeles County, Orange County, San Diego County, and Ventura County. I
16 specialize in civil litigation primarily focusing on labor and employment, as well as business torts,
17 and taxation. Specifically, my firm represents employees in class and representative actions
18 involving disputes arising under the California Labor Code.
19

20 3. A true and correct copy The Class Action and PAGA Settlement Agreement (“Agreement”),
21 is attached hereto as **Exhibit “1”**.
22

23 4. On February 6, 2024, Plaintiff sent notice to Defendants and the State of California LWDA
24 of his intent to pursue a PAGA claim, premised on the following theories (1) Failure to Pay Minimum
25 and Overtime Wages; (2) Unlawful Taking of Employee Tips and/or Gratuities; (3) Failure to Provide
26 Meal Periods; (4) Failure to Provide Rest Breaks; (5) Failure to Provide Paid Sick Leave; (6) Failure
27 to Provide Requisite Wage Notice Pursuant to Labor Code section 2810.5; (7) Failure to Provide
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1 Wage Statements; (8) Failure to Pay All Wages Upon Termination; (9) Failure to Pay All Wages
2 During Employment, and (10) Failure to Keep Accurate Payroll Records.

3 5. On February 7, 2024, Plaintiff filed a Class Action Complaint (the “class action”) in Orange
4 County Superior Court purporting to assert claims on behalf of himself and all of Agnes’ current and
5 former non-exempt California employees during the relevant statute of limitations periods for (1)
6 Failure to Pay Minimum; (2) Failure to Overtime Wages; (2) Failure to Pay Split Shift Premiums;
7 (3) Failure to Provide Meal Periods; (4) Failure to Provide Rest Breaks; (5) Failure to Provide Wage
8 Statements; (6) Failure to Pay All Wages Upon Termination; (7) Conversion; (8) Injunctive Relief;
9 and (9) Violation of California Business & Professions Code section 17200 (Unfair Competition).

11 6. On April 17, 2024, Plaintiff amended his Complaint to add an additional cause of action under
12 PAGA for Penalties, Pursuant to Labor Code § 2698 *et seq.* The FAC is the operative complaint in
13 the Action (the “Operative Complaint.”)]

14 7. Class Counsel for Plaintiff obtained substantial payroll and other data related to Class
15 Members for mediation purposes, through informal discovery. Class Counsel obtained Defendant’s
16 employee handbook, policies and procedures, total number of class members during the class period,
17 and their hourly rates. Plaintiff also employed an expert to prepare calculations of the amount of
18 damages to the Class Members.
19

20 8. Counsel for the respective Parties engaged in extensive discussions about the strengths and
21 weaknesses of the claims and defenses. Plaintiff and Defendant undertook extensive mediation
22 efforts, including attending all day mediation on January 27, 2025, the Parties participated in an all-
23 day mediation presided over by mediator Tagore Subramaniam, which led to this Agreement to settle
24 the Action.
25

26 9. The Court has not granted class certification. The Parties, Class Counsel, and Defense
27 Counsel represent that they are not aware of any other pending matter or action asserting claims that
28

1 will be extinguished or affected by the Settlement.

2 10. The Parties concluded there was significant benefit associated with settling the Action.
3 Specifically, the Parties concluded, after taking into account the sharply disputed factual and legal
4 issues involved in this Action, the substantial cost and risks of further prosecuting this matter, and
5 the substantial benefits to be received pursuant to the compromise and settlement of the Action as
6 set forth in the Agreement, that settlement on the terms set forth herein is in the best interest of
7 Plaintiff, the proposed Class, and Defendants, and is fair and reasonable.

8 11. In this case, the settlement was reached after factual and legal research, discovery, preparation
9 of damage analysis, and mediation with experienced class action mediator. The settlement that has
10 been reached, subject to this Court's approval, is the product of tremendous effort, and expense by
11 the parties and their counsel. The settlement amount is, of course, a compromise figure. However,
12 counsel for Plaintiffs and Defendant are satisfied that this figure is reasonable in light of the risks
13 and expense of continued litigation.

14 12. Prior to the Settlement, Plaintiffs' counsel investigated the claims alleged by Plaintiff,
15 conducted legal research, and engaged in extensive informal discovery. Defendants produced written
16 policies and a sample of data consisting of payroll records. Plaintiffs' statistical expert Sean
17 Chasworth at Phillips Fractor and Company, analyzed this information enabling Class Counsel to
18 evaluate the potential liability and damages for the Class Members. Based upon this information,
19 Class Counsel was able to act intelligently and effectively in negotiating the proposed Settlement.
20 Additionally, Defendants produced the business tax records reflecting its inability to pay any
21 settlement in one lump sum. As a result, a payment plan was negotiated.

22 13. Claims Related To Unpaid Wages (Off the Clock Time): Plaintiff's claims for failure to pay
23 wages for all hours worked as alleged in the Operative Complaint, were as a result of Defendant's
24 alleged failure to pay Plaintiff and the Class for wages for off-the-clock work because Defendants

1 required employees to arrive ample of time before their shifts to get dressed, settled, and ready for
2 their shifts and did not allow them to clock-in without prior authorization from the manager.
3 Defendants' policies thereby resulted in an aggregate loss of wages to employees. Based on available
4 records provided by Defendants, Plaintiff's economic expert estimates the value for the unpaid wages
5 to be \$148,999.65 (based on 12 minutes of unpaid time per workday).

6 14. Claims Related to Meal Break Violations: Plaintiffs allege that they would have been entitled
7 to recover meal period premiums for Defendant's failure to provide Class Members with compliant
8 meal breaks. Plaintiffs' statistical experts calculated the meal break damages to be approximately
9 \$178,025.02.

10 15. Rest Break Violations: Plaintiffs also allege that they would have been entitled to recover rest
11 break premiums for Defendant's failure to provide Class Members with compliant rest breaks.
12 Plaintiffs statistical experts calculated the rest break damages to be approximately \$161,068.55.

13 16. Wage Statement Penalties: Plaintiff alleges that employees would have been entitled to
14 recover penalties for Defendants' failure to issue compliant wage statements under California Labor
15 Code §226(e). As a result of Defendants' alleged failure to provide compliant wage statements each
16 pay period, each aggrieved employee could recover up to a maximum of a \$4,000.00 aggregate
17 penalty pursuant to Labor Code §226(e), depending on the number of pay periods she or he was
18 issued a non-compliant wage statement. Prior to mediation, Plaintiff's statistical expert calculated
19 wage statement penalties to be approximately \$234,100.00.

20 17. Waiting Time Penalties: Plaintiff also alleges that he would have been entitled to recover
21 "waiting time penalties" for Defendants' failure to issue all earned wages immediately upon
22 termination or within 72 hours of resignation under California Labor Code §§ 201, 202 and 203.
23 These penalties are derivative of the wage and hour claims. As a result of Defendants' failure to
24 pay all earned wages immediately upon termination or within 72 hours of resignation, Plaintiff

1 alleges that each former aggrieved employee could recover up to a maximum of a 30-day penalty.
2 Prior to mediation, Plaintiff's statistical expert calculated waiting time penalties to be approximately
3 \$822,066.66.

4 18. PAGA Penalties: If Plaintiffs proceed to trial and ***assuming*** that he can prove Defendants'
5 violation of each of the Labor Codes as alleged in the Operative Complaint, then Plaintiff's statistical
6 expert estimates PAGA penalties prior to mediation to be approximately \$3,156,800.00.

7
8 19. Plaintiff seeks \$10,000.00 in the light of his commitment as a Class Representative. Class
9 Representatives are routinely entitled to an enhancement award for their services as a class
10 representative. The Defendants do not oppose the requested service award to the Plaintiff.

11 20. Class Counsel seeks an attorneys' fees award of \$96,000.00, (40%) which will be paid from
12 the Common Settlement Fund. Class Counsel also seeks Litigation Expenses as supported by the
13 invoices submitted.

14 21. ***Class Counsel Fees Based On 40% of the Common Settlement Fund Is Reasonable.*** The
15 requested fee falls well within the historical range of attorney's fee awards under the common fund
16 theory, which is generally from 20% to 50%. The requested fee is fair compensation for undertaking
17 complex, risky, expensive, and time-consuming litigation on a contingent fee basis. This case was
18 litigated, investigated, and extensive research, and negotiation was conducted purely on contingency
19 basis.
20

21 22. Class Counsel have borne, and continue to bear, the entire risk and cost of litigation
22 associated with this class action on a pure contingency basis.
23

24 23. Attached to the Agreement as Exhibit "A" is the proposed Court Approved Notice Of Class
25 Action Settlement And Hearing Date For Final Court Approval ("Class Notice") to be distributed to
26 the class members.

27 24. Here, the Class Notice contains all the required components. Specifically, it includes: (1) the
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1 definition of the Class, (2) a description of the substantive issues and proceedings to date; (3) a
2 neutral description of the Settlement; (4) the amounts of Class Counsel Fees and Litigation Expenses;
3 (5) information regarding the right to opt out of the Settlement, the procedure for doing so and the
4 date by which such action must be taken; (6) information regarding the right to challenge one's
5 number of work weeks, the procedure for doing so and the date by which such action must be taken;
6 (7) information regarding the right to exclude oneself from the Settlement, the procedure for doing
7 so and the date by which such action must be taken; (8) information regarding the right to file an
8 objection regarding the Settlement, the procedure for doing so and the date by which such action
9 must be taken; (9) the consequences of remaining a member of the Settlement Class, including the
10 fact that one will be bound by the judgment; (10) the date, time and place of the final approval
11 hearing; (11) the identity of the Class Representatives; and (12) the identity and contact information
12 of Class Counsel and the Administrator.
13

14 25. Further, the method of notice, is more than adequate, in that the Class Notice will be mailed
15 to Class Members at their last known address and there are procedures in place to make reasonable
16 efforts to locate Class Members who no longer live at their last known address.
17

18 26. The parties have agreed to use Apex, an experienced settlement administrator, to administer
19 the settlement. The Administration Expenses will be paid out of the Gross Settlement Amount. A
20 true and correct copy of the Administration Expenses submitted by Apex is attached as Exhibit "2".
21

22 27. On July 3, 2025, I appraised the Labor and Workforce Development Agency ("LWDA") of
23 the Preliminary Approval Hearing date set for August 14, 2025 by electronically submitting the same
24 documents filed with this Court via online filing. A true copy of an auto-reply e-mail from the
25 LWDA's DIR PAGA Unit confirming receipt of submission of the Settlement Agreement is attached
26 hereto as **Exhibit "3"**.
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1 I declare under penalty of perjury under the laws of the State of California that the
2 forgoing is true and correct this 3rd day of July 2025 in the state of California.

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6 Natalie Mirzayan
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EXHIBIT 1

CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND CLASS NOTICE

This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and between Plaintiff DANIEL MITCHELL (“Plaintiff”), on behalf of himself, the Class, the State of California, and Aggrieved Employees, and Defendants THOVAN HOSPITALITY, LLC dba AGNES RESTAURANT & CHEESERY; THOMAS KALB; VANESSA TILAKA; and ALLAN LIAO (“Defendants”). The Agreement refers to Plaintiff and Defendants collectively as “Parties,” or individually as “Party.”

1. DEFINITIONS.

- 1.1 “Action” means the Plaintiff’s lawsuit against Defendants captioned *Daniel Mitchell v. Thovan Hospitality, LLC et al.* initiated on December 13, 2023, and amended on February 7, 2024, and pending in the Superior Court of the State of California, County of Orange, Case No. 30-2024-01377755-CU-OE-CXC.
- 1.2 “Administrator” means Apex Class Action, LLC (“Apex”), the neutral entity the Parties have agreed to appoint to administer the Settlement.
- 1.3 “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with approval of this Settlement.
- 1.4 “Aggrieved Employee” means all current and former non-exempt employees of Defendants in California who worked for Defendants during the PAGA Period.
- 1.5 “Class” means all current and former non-exempt employees of Defendants in California who worked for Defendants during the Class Period.
- 1.6 “Class Counsel” means Natalie Mirzayan of Mirzayan Law, APLC.
- 1.7 “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Action.
- 1.8 “Class Data” means Class Member identifying information in Defendants’ possession including the Class Member’s name, last-known mailing address, Social Security number, email address (if available), and number of Class Period Workweeks and PAGA Pay Periods.
- 1.9 “Class Member” or “Settlement Class Member” means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non-Participating Class Member who qualifies as an Aggrieved Employee).
- 1.10 “Class Member Address Search” means the Administrator’s investigation and search for current Class Member mailing addresses using all reasonably available

sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Class Members.

- 1.11 “Class Notice” means the COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to Class Members, attached as **Exhibit A** and incorporated by reference into this Agreement. [The Class Notice shall be translated into Spanish by the Administrator.]
- 1.12 “Class Period” means the period from February 7, 2020 to March 28, 2025.
- 1.13 “Class Representative” means Daniel Mitchell.
- 1.14 “Class Representative Service Payment” means the payment to the Class Representative for initiating the Action and providing services in support of the Action.
- 1.15 “Court” means the Superior Court of California, County of Orange.
- 1.16 “Defendants” means named Defendants Thovan Hospitality, LLC dba Agnes Restaurant & Cheesery, Thomas Kalb, Vanessa Tilaka, and Allan Liao.
- 1.17 “Defense Counsel” means Katherine Den Bleyker and Janna Akers of O’Hagan Meyer LLP.
- 1.18 “Effective Date” means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no Participating Class Member objects to the Settlement, the day the Court enters Judgment; (b) if one or more Participating Class Members objects to the Settlement, the day after the deadline for filing a notice of appeal from the Judgment; or if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur.
- 1.19 “Final Approval” or “Final Approval Order” means the Court’s Order Granting Final Approval of the Settlement.
- 1.20 “Final Approval Hearing” means the Court’s hearing on the Motion for Final Approval of the Settlement.
- 1.21 “Final Judgment” means the Judgment entered by the Court upon granting Final Approval of the Settlement.
- 1.22 “Gross Settlement Amount” means \$240,000.00, which is the total amount Payors agree to pay under the Settlement except as provided in Paragraph 8 below. The Gross Settlement Amount will be used to pay Individual Class Payments,

Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses, Class Representative Service Payment, and the Administrator's Expenses Payment.

- 1.23 "Individual Class Payment" means the Participating Class Member's pro rata share of the Net Settlement Amount calculated according to the number of Workweeks worked during the Class Period.
- 1.24 "Individual PAGA Payment" means the Aggrieved Employee's pro rata share of 25% of the PAGA Penalties calculated according to the number of Workweeks worked during the PAGA Period.
- 1.25 "Judgment" means the judgment entered by the Court based upon the Final Approval.
- 1.26 "LWDA" means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subdivision (i).
- 1.27 "LWDA PAGA Payment" means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subdivision (i).
- 1.28 "Net Settlement Amount" means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to Participating Class Members as Individual Class Payments.
- 1.29 "Non-Participating Class Member" means any Class Member who opts out of the Settlement by sending the Administrator a valid and timely Request for Exclusion.
- 1.30 "PAGA Pay Period" means any Pay Period during which an Aggrieved Employee worked for Defendants for at least one day during the PAGA Period.
- 1.31 "PAGA Period" means the period from February 6, 2023 through March 28, 2025.
- 1.32 "PAGA" means the Private Attorneys General Act (Lab. Code, § 2698 *et seq.*).
- 1.33 "PAGA Notice" means Plaintiff's February 6, 2024, letter to Defendants and the LWDA providing notice pursuant to Labor Code section 2699.3, subdivision (a).
- 1.34 "PAGA Penalties" means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees (\$5,000) and 75% to LWDA (\$15,000) in settlement of PAGA claims.
- 1.35 "Participating Class Member" means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement.

- 1.36 “Payors” means Thovan Hospitality, LLC dba Agens Restaurant and Cheesery, Vanessa Tilaka and Thomas Kalb, or all Defendants, other than Allan Liao.
- 1.37 “Plaintiff” means Daniel Mitchell, the named plaintiff in the Action.
- 1.38 “Preliminary Approval” means the Court’s Order Granting Preliminary Approval of the Settlement.
- 1.39 “Preliminary Approval Order” means the proposed Court Order Granting Preliminary Approval of PAGA Settlement.
- 1.40 “Released Class Claims” means the claims being released as described in Paragraph 5.2 below.
- 1.41 “Released PAGA Claims” means the claims being released as described in Paragraph 5.3 below.
- 1.42 “Released Parties” means Defendants, any potential “joint employer,” and any and all of Defendants’ affiliated companies and their respective parent companies, subsidiaries, affiliates, shareholders, members, agents (including, without limitation, any investment bankers, accountants, insurers, reinsurers, attorneys, and any past, present, or future directors, officers, employees, or other person acting on Defendants’ behalf), owners, predecessors, successors, and assigns.
- 1.43 “Request for Exclusion” means a Class Member’s submission of a written request to be excluded from the Class Settlement signed by the Class Member.
- 1.44 “Response Deadline” means 45 days after the Administrator mails a Notice to Class Members and Aggrieved Employees, and shall be the last date on which Class Members may: (a) fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax, email, or mail his or her Objection to the Settlement. Class Members to whom Notice Packets are resent after having been returned undeliverable to the Administrator shall have an additional 7 calendar days beyond the Response Deadline has expired.
- 1.45 “Settlement” means the disposition of the Action effected by this Agreement and the Judgment.
- 1.46 “Workweek” means any week during which a Class Member worked for Defendants for at least one day, during the Class Period.

2. RECITALS.

- 2.1 On February 6, 2024, Plaintiff sent notice to Defendant and the State of California LWDA of his intent to pursue a PAGA claim, premised on the following theories

(1) Failure to Pay Minimum and Overtime Wages; (2) Unlawful Taking of Employee Tips and/or Gratuities; (3) Failure to Provide Meal Periods; (4) Failure to Provide Rest Breaks; (5) Failure to Provide Paid Sick Leave; (6) Failure to Provide Requisite Wage Notice Pursuant to Labor Code section 2810.5; (7) Failure to Provide Wage Statements; (8) Failure to Pay All Wages Upon Termination; (9) Failure to Pay All Wages During Employment, and (10) Failure to Keep Accurate Payroll Records.

- 2.2 On February 7, 2024, Plaintiff filed a Class Action Complaint (the “class action”) in Orange County Superior Court purporting to assert claims on behalf of himself and all of Agnes’ current and former non-exempt California employees during the relevant statute of limitations periods for (1) Failure to Pay Minimum; (2) Failure to Overtime Wages; (2) Failure to Pay Split Shift Premiums; (3) Failure to Provide Meal Periods; (4) Failure to Provide Rest Breaks; (5) Failure to Provide Wage Statements; (6) Failure to Pay All Wages Upon Termination; (7) Conversion; (8) Injunctive Relief; and (9) Violation of California Business & Professions Code section 17200 (Unfair Competition).
- 2.3 On April 17, 2024, Plaintiff amended his Complaint to add an additional cause of action under PAGA for Penalties, Pursuant to Labor Code § 2698 *et seq.* The FAC is the operative complaint in the Action (the “Operative Complaint.”)] Defendants deny the allegations in the Operative Complaint, deny any failure to comply with the laws identified in in the Operative Complaint and deny any and all liability for the causes of action alleged.
- 2.4 Pursuant to Labor Code section 2699.3, subdivision (a), Plaintiff gave timely written notice to Defendants and the LWDA by sending the PAGA Notice.
- 2.5 On January 27, 2025, the Parties participated in an all-day mediation presided over by mediator Tagore Subramaniam, which led to this Agreement to settle the Action.
- 2.6 Prior to negotiating the Settlement, Plaintiff obtained, through informal discovery, a class list of putative Class Members with unique employee identifying numbers, dates of employment, and hourly rates; information regarding the number of Workweeks worked during the Class Period and pay periods worked during the PAGA Period; a 20% randomized sampling of employee time and payroll records; and various policies and procedural documents, including employee handbooks and documents related to tips. Plaintiff’s investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 (“*Dunk/Kullar*”).
- 2.7 The Court has not granted class certification.
- 2.8 The Parties, Class Counsel, and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

3. MONETARY TERMS.

- 3.1 Gross Settlement Amount. Except as otherwise provided by Section 8 below, Payors promise to pay \$240,000.00 (Two Hundred and Forty Thousand Dollars and Zero Cents) in settlement of this matter, and no more as the Gross Settlement Amount and to separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments. Payors have no obligation to pay the Gross Settlement Amount prior to the deadlines stated in Paragraph 4.3 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Payors.
- 3.2 Payments from the Gross Settlement Amount. The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval:
- 3.2.1 To Plaintiff: Class Representative Service Payment to the Class Representative of not more than \$10,000 (in addition to any Individual Class Payment [and any Individual PAGA Payment] the Class Representative is entitled to receive as a Participating Class Member). Defendants will not oppose Plaintiff's request for a Class Representative Service Payment that does not exceed this amount. As part of the motion for Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiff will seek Court approval for any Class Representative Service Payments no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Representative Service Payment less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay the Class Representative Service Payment using IRS Form 1099. Plaintiff assumes full responsibility and liability for employee taxes owed on the Class Representative Service Payment.
- 3.2.2 To Class Counsel: A Class Counsel Fees Payment of not more than 40%, which is currently estimated to be \$96,000. Defendants will not oppose requests for Court approval of this payment provided that it does not exceed this amount. A Class Counsel Litigation Expenses Payment for reasonable costs, subject to proof, and provided that Plaintiff's/Class/PAGA Counsel submits a declaration substantiating the costs. As part of the Final Approval motion, Plaintiff and/or Class Counsel will file an application or motion for a Class Counsel Fees Payment and/or a Class Litigation Expenses Payment. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to Class Counsel or any other Plaintiff's Counsel arising from any claim to any portion any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The

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

- 3.2.3 To the Administrator: An Administrator Expenses Payment not to exceed \$8,500 except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than \$8,500, the Administrator will retain the remainder in the Net Settlement Amount.
- 3.2.4 To Each Participating Class Member: An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks.
 - 3.2.4.1 Tax Allocation of Individual Class Payments. 20% of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. The remaining 80% of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for [e.g., interest and penalties] (the "Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment.
 - 3.2.4.2 Effect of Non-Participating Class Members on Calculation of Individual Class Payments. Non-Participating Class Members will not receive any Individual Class Payments. The Administrator will retain amounts equal to their Individual Class Payments in the Net Settlement Amount for distribution to Participating Class Members on a pro rata basis.
- 3.2.5 To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$20,000.00 (Twenty Thousand Dollars and Zero Cents) to be paid from the Gross Settlement Amount, with 75% (\$15,000.00) allocated to the LWDA PAGA Payment and 25% (\$5,000.00) allocated to the Individual PAGA Payments.
 - 3.2.5.1 The Administrator will calculate each Individual PAGA Payment by: (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$5,000.00) by the total number of PAGA Period

Pay Periods worked by all Aggrieved Employees during the PAGA Period; and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

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

4. SETTLEMENT FUNDING AND PAYMENTS.

- 4.1 Class Workweeks. Based on a review of their records to date, Defendants estimate there are 263 Class Members who collectively worked a total of 12,036.29 Workweeks.
- 4.2 Class Data. Not later than 30 days after service on Defendants of the Court grant of Preliminary Approval of the Settlement, Defendants will simultaneously deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement. 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.
- 4.3 Funding of Gross Settlement Amount. Payors shall fully fund the Gross Settlement Amount in three equal installments, with the first installment occurring 30 days from final approval or the appeals deadline on final approval, if there are any objections, the second installment occurring 6 months after the first installment payment, and the final payment occurring 6 months after the second installment payment.
- 4.4 Payments from the Gross Settlement Amount. Within 7 days after Agnes makes the first payment to fund the Gross Settlement Amount, the Administrator will mail checks to (a) the Administration Expenses Payment; (b) the Class Counsel Litigation Expenses Payment; and (c) the Class Representative Service Payment. Within 7 days after the Agnes makes the second payment to fund the Gross Settlement Amount, the Administrator will mail checks to the LWDA PAGA Payment, the Class Counsel Fees Payment. The Administrator shall make a

settlement disbursement by check within 7 days of the third and final payment of the Gross Settlement Amount to Individual Class Payments, all Individual PAGA Payments to facilitate tax reporting and reduce administration costs when payment is made within the same year.

- 4.4.1 The Administrator will issue checks for the Individual Class Payments and PAGA Payments and send them to the Participating Class Members and Aggrieved Employees via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. The Administrator will send checks for Individual Settlement Payments to all Participating Class Members (including those for whom Class Notice was returned undelivered). The Administrator will send checks for Individual PAGA Payments to all Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved Employees (including those for whom Class Notice was returned undelivered). The Administrator may send Participating Class Members a single check combining the Individual Class Payment and the Individual PAGA Payment. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database.
- 4.4.2 The Administrator must conduct a Class Member and Aggrieved Employee Address Search for all other Participating Class Members and Aggrieved Employees whose checks are returned undelivered without USPS forwarding address. Within 7 days of receiving a returned check, the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Class Member and Aggrieved Employee Address Search. The Administrator need not take further steps to deliver checks to Participating Class Members and Aggrieved Employees whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Participating Class Member and/or Aggrieved Employee whose original check was lost, misplaced, or requested by the Participating Class Member and/or Aggrieved Employee prior to the void date.
- 4.4.3 For any Participating Class Member and/or Aggrieved Employee whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b).
- 4.4.4 The payment of Individual Class Payments and Individual PAGA Payments shall not obligate Defendants to confer any additional benefits or make any additional payments to the Participating Class Members or Aggrieved

Employees (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

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

5.1 Plaintiff's Release. Plaintiff and his 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 Operative Complaint and (b) all PAGA claims that were, or reasonably could have been, alleged based on facts contained in the Operative Complaint, Plaintiff's PAGA Notice, or ascertained during the Action and released under 5.2, below]. ("Plaintiff's Release.") Plaintiff's Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time, or based on occurrences outside the Class Period. Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff's discovery of them.

5.1.1 Plaintiff's Waiver of Rights Under California Civil Code Section 1542. For purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release, and that if known by him or her would have materially affected his or her settlement with the debtor or Released Party.

5.2 Release by Participating Class Members Who Are Not Aggrieved Employees: All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release the Released Parties from (i) all claims that were alleged, or reasonably could have been alleged, based on the Class Period facts stated in Plaintiff's pleadings, including but not limited to, (a) any and all claims involving any alleged (1) Failure to Pay Minimum Wages, Lab Code §§ 1182.12, 1197, 1194, 1194.2, 1197.1; (2) Failure to Pay Overtime Wages, Lab Code §§ 510, 1194, 1194.2, 1197, 1197.1, 1198; (3) Failure to Pay Split-Shift Premiums, Lab Code § 1198, IWC Wage Order 5-2001, §§4(C); (4) Failure to Provide Meal Periods, Lab Code §§ 226.7, 512; (5) Failure to Authorize and Permit Rest Breaks, Lab Code §§

226.7, 512; (6) Waiting Time Penalties, Lab Code §§ 201-203; (7) Failure to Provide Accurate Itemized Wage Statements, Lab Code §§ 226, 226.3; (8) Unlawful Taking of Tips/Gratuities, Lab Code §§ 350-351; (9) Failure to Provide Sick Leave, Lab Code § 245.5, 246, 246.5, 247, 247.5, 248.5, 249; and (10) Failure to Provide Timely Wages, Lab Code § 204. Participating Class Members only release these claims for the duration of the Class Period. Except as set forth in Section 5.3 of this Agreement, Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.

- 5.3 PAGA Release by Plaintiff as Representative of the LWDA, and all Aggrieved Employees. Plaintiff as representative of the LWDA, and all Aggrieved Employees 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 Plaintiff's PAGA Notice lodged with the LWDA for the alleged (1) Failure to Pay Minimum Wages, Lab Code §§ 1182.12, 1197, 1194, 1194.2, 1197.1; (2) Failure to Pay Overtime Wages, Lab Code §§ 510, 1194, 1194.2, 1197, 1197.1, 1198; (3) Failure to Pay Split-Shift Premiums, Lab Code § 1198, IWC Wage Order 5-2001, §§4(C); (4) Failure to Provide Meal Periods, Lab Code §§ 226.7, 512; (5) Failure to Authorize and Permit Rest Breaks, Lab Code §§ 226.7, 512; (6) Waiting Time Penalties, Lab Code §§ 201-203; (7) Failure to Provide Accurate Itemized Wage Statements, Lab Code §§ 226, 226.3; (8) Unlawful Taking of Tips/Gratuities, Lab Code §§ 350-351; (9) Failure to Provide Sick Leave, Lab Code § 245.5, 246, 246.5, 247, 247.5, 248.5, 249; and (10) Failure to Provide Timely Wages, Lab Code § 204; and (11) Failure to Provide Requisite Wage Notice, Lab Code § 2810.5. Plaintiff as representative of the LWDA and all Aggrieved Employees only release these claims, as contained in Plaintiff's PAGA Notice lodged with the LWDA, for the duration of the PAGA Period.

6. **MOTION FOR PRELIMINARY APPROVAL.** The Parties agree to jointly prepare and file a motion for preliminary approval ("Motion for Preliminary Approval") that complies with the Court's current checklist for Preliminary Approvals.

- 6.1 Defendants' Declaration in Support of Preliminary Approval. Within 21 days of the full execution of this Agreement, Defendants will prepare and deliver to Class Counsel a signed Declaration from Defendants and Defense Counsel disclosing all facts relevant to any actual or potential conflicts of interest with the Administrator. In their Declarations, Defense Counsel and Defendants shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.

- 6.2 Plaintiff's Responsibilities. Plaintiff will prepare and deliver to Defense Counsel for obtaining Preliminary Approval, including: (i) a draft of the notice, and memorandum in support, of the Motion for Preliminary Approval that includes an analysis of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under Labor Code Section 2699, subd. (f)(2)); (ii) a draft proposed Order Granting Preliminary Approval and Approval of PAGA Settlement; (iii) a draft proposed Class Notice; (iv) a signed declaration from the Administrator attaching its "not to exceed" bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Class Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Class Members; and the nature and extent of any financial relationship with Plaintiff, Class Counsel or Defense Counsel; (v) a signed declaration from Plaintiff confirming willingness and competency to serve and disclosing all facts relevant to any actual or potential conflicts of interest with Class Members, the Administrator; (v) a signed declaration from each Class Counsel firm attesting to its competency to represent the Class Members; its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code section 2699, subd. (l)(2)); (vi) a redlined version of the parties' Agreement showing all modifications made to the Model Agreement ready for filing with the Court; and (vii) all facts relevant to any actual or potential conflict of interest with Class Members, the Administrator. In their Declarations, Plaintiff and Class Counsel Declaration shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.
- 6.3 Responsibilities of Counsel. Class Counsel is responsible for expeditiously finalizing and filing the Motion for Preliminary Approval no later than 14 days after the full execution of this Agreement; obtaining a prompt hearing date for the Motion for Preliminary Approval; and for appearing in Court to advocate in favor of the Motion for Preliminary Approval. Class Counsel is responsible for delivering the Court's Preliminary Approval to the Administrator.
- 6.4 Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for Preliminary Approval and/or the supporting declarations and documents, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant Preliminary Approval or conditions Preliminary Approval on any material change to this Agreement, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court's concerns.

7. SETTLEMENT ADMINISTRATION.

- 7.1 Selection of Administrator. The Parties have jointly selected Apex to serve as the Administrator and verified that, as a condition of appointment, Apex agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.
- 7.2 Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports state and federal tax authorities.
- 7.3 Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund (“QSF”) under US Treasury Regulation section 468B-1.

7.4 Notice to Class Members.

7.4.1 No later than three (3) business days after receipt of the Class Data, the Administrator shall notify Class Counsel that the list has been received and state the number of Class Members, PAGA Members, Workweeks, and Pay Periods in the Class Data.

7.4.2 Using best efforts to perform as soon as possible, and in no event later than 7 days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service (“USPS”) mail, the Class Notice (with Spanish translation) substantially in the form attached to this Agreement as **Exhibit A**. The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member, and the number of Workweeks and PAGA Pay Periods (if applicable) used to calculate these amounts. Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database.

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

7.4.4 The deadlines for Class Members’ written objections, Challenges to Workweeks and/or Pay Periods, and Requests for Exclusion will be extended an additional 7 days beyond the 45 days otherwise provided in the Class Notice for all

Class Members whose notice is re-mailed. The Administrator will inform the Class Member of the extended deadline with the re-mailed Class Notice.

7.4.5 If the Administrator, Defendants, or Class Counsel is contacted by or otherwise discovers any persons who believe they should have been included in the Class Data and should have received Class Notice, the Parties will expeditiously meet and confer in person or by telephone, and in good faith in an effort to agree on whether to include them as Class Members. If the Parties agree, such persons will be Class Members entitled to the same rights as other Class Members, and the Administrator will send, via email or overnight delivery, a Class Notice requiring them to exercise options under this Agreement not later than 7 days after receipt of Class Notice, or the deadline dates in the Class Notice, which ever are later.

7.5 Requests for Exclusion (Opt-Outs).

7.5.1 Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later than 45 days after the Administrator mails the Class Notice (plus an additional 7 days for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a signed letter from a Class Member or his/her representative that reasonably communicates the Class Member's election to be excluded from the Settlement and includes the Class Member's name, address and email address or telephone number. To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline.

7.5.2 The Administrator may not reject a signed Request for Exclusion as invalid because it fails to contain all the information specified in the Class Notice. The Administrator shall accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of the person as a Class Member and the Class Member's desire to be excluded. The Administrator's determination shall be final and not appealable or otherwise susceptible to challenge. If the Administrator has reason to question the authenticity of a Request for Exclusion, the Administrator may demand additional proof of the Class Member's identity. The Administrator's determination of authenticity shall be final and not appealable or otherwise susceptible to challenge.

7.5.3 Every Class Member who does not submit a timely and valid Request for Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all benefits and bound by all terms and conditions of the Settlement, including the Participating Class Members' Release under Paragraphs 5.2 and 5.3 of this Agreement, regardless of whether the Participating Class Member actually receives the Class Notice or objects to the Settlement.

7.5.4 Every Class Member who submits a valid and timely Request for Exclusion

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

7.5.5 The Parties agree that if 10% or more of the Class Members opt out of the settlement, Defendants shall have the option to cancel the Agreement within 30 days of the expiration of the opt-out period. Defendants agree not to induce or influence Class Members to opt out of the settlement. If Defendants exercise this option, Defendants will pay all costs incurred by the Administrator.

7.6 Challenges to Calculation of Workweeks. Each Class Member shall have 45 days after the Administrator mails the Class Notice (plus an additional 7 days for Class Members whose Class Notice is re-mailed) to challenge the number of Class Workweeks and PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice. The Class Member may challenge the allocation by communicating with the Administrator via fax, email or mail. The Administrator must encourage the challenging Class Member to submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the Workweeks contained in the Class Notice are correct so long as they are consistent with the Class Data. The Administrator's determination of each Class Member's allocation of Workweeks and/or Pay Periods shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall promptly provide copies of all challenges to calculation of Workweeks and/or Pay Periods to Defense Counsel and Class Counsel and the Administrator's determination the challenges.

7.7 Objections to Settlement.

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

7.7.2 Participating Class Members may send written objections to the Administrator by fax, email, or mail. In the alternative, Participating Class Members may appear in Court (or hire an attorney at their own expense to appear in Court) to present verbal 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 30 days after the Administrator's mailing of the Class Notice (plus an additional 7 days for Class Members whose Class Notice was re-mailed).

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

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

7.8.1 Email Address and Toll-Free Number. The Administrator will maintain and monitor an email address and a toll-free telephone number to receive Class Member calls, faxes, and emails.

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

7.8.3 Weekly Reports. The Administrator must, on a weekly basis, provide written reports to Class Counsel and Defense Counsel that, among other things, tally the number of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for Exclusion (whether valid or invalid) received, objections received, challenges to Workweeks and/or Pay Periods received and/or resolved, and checks mailed for Individual Class Payments and Individual PAGA Payments (“Weekly Report”). The Weekly Reports must include provide the Administrator’s assessment of the validity of Requests for Exclusion and attach copies of all Requests for Exclusion and objections received.

7.8.4 Workweek and/or Pay Period Challenges. The Administrator has the authority to address and make final decisions consistent with the terms of this Agreement on all Class Member challenges over the calculation of Workweeks and/or Pay Periods. The Administrator’s decision shall be final and not appealable or otherwise susceptible to challenge.

7.8.5 Administrator’s Declaration. Not later than 14 days after the Response Deadline, the Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its due diligence and compliance with all of its obligations under this Agreement, including, but not limited to, its mailing of the Class Notice, the total number of Class Notices returned as undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the total number of Requests for Exclusion from the Settlement it received (both valid or invalid), the

number of written objections and attach the Exclusion List. The Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator's declaration(s) in Court.

7.8.6 Final Report by Settlement Administrator. Within 10 days after the Administrator disburses all funds in the Gross Settlement Amount, the Administrator will provide Class Counsel and Defense Counsel with a final report detailing its disbursements by employee identification number only of all payments made under this Agreement. At least 15 days before any deadline set by the Court, the Administrator will prepare, and submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all payments required under this Agreement. Class Counsel is responsible for filing the Administrator's declaration in Court.

8. CLASS SIZE ESTIMATES

8.1 Based on their records, Defendants estimate that, as of the date of this Settlement Agreement, there are 263 Class Members who worked a total of 12,036.29 Workweeks during the Class Period. If the number of workweeks is more than 10% higher or more than 13,266.92 workweeks worked, then Defendants shall, increase the Gross Settlement Amount proportionally by workweeks worked in excess of 13,266.92 multiplied by the workweek value.

9. DEFENDANT'S RIGHT TO WITHDRAW. If the number of valid Requests for Exclusion identified in the Exclusion List exceeds 25% of the total of all Class Members, Defendants may, but are not obligated, elect to withdraw from the Settlement. The Parties agree that, if Defendants withdraw, the Settlement shall be void ab initio, have no force or effect whatsoever, and that neither Party will have any further obligation to perform under this Agreement; provided, however, Payors will remain responsible for paying all Settlement Administration Expenses incurred to that point. Defendants must notify Class Counsel and the Court of its election to withdraw not later than 7 days after the Administrator sends the final Exclusion List to Defense Counsel; late elections will have no effect.

10. MOTION FOR FINAL APPROVAL. Not later than 16 court days before the calendared Final Approval Hearing, Plaintiff will file in Court, a motion for final approval of the Settlement that includes a request for approval of the PAGA settlement under Labor Code section 2699, subd. (l), a Proposed Final Approval Order and a proposed Judgment (collectively "Motion for Final Approval"). Plaintiff shall provide drafts of these documents to Defense Counsel as soon as practicable prior to filing the Motion for Final Approval. Class Counsel and Defense Counsel will expeditiously meet and confer in person or by telephone, and in good faith, to resolve any disagreements concerning the Motion for Final Approval.

10.1 Response to Objections. Each Party retains the right to respond to any objection

raised by a Participating Class Member, including the right to file responsive documents in Court no later than five court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.

- 10.2 Duty to Cooperate. If the Court does not grant Final Approval or conditions Final Approval on any material change to the Settlement (including, but not limited to, the scope of release to be granted by Participating Class Members or Aggrieved Employees), the Parties will expeditiously work together in good faith to address the Court's concerns by revising the Agreement as necessary to obtain Final Approval. The Court's decision to award less than the amounts requested for the Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Administrator Expenses Payment shall not constitute a material modification to the Agreement within the meaning of this paragraph.
- 10.3 Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action and the Settlement solely for purposes of: (i) enforcing this Agreement and/or Judgment; (ii) addressing settlement administration matters; and (iii) addressing such post-Judgment matters as are permitted by law.
- 10.4 Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment reflected set forth in this Settlement, the Parties, their respective counsel, and all Participating Class Members who did not object to the Settlement as provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the Parties' obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.
- 10.5 Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material modification of this Agreement (including, but not limited to, the scope of release to be granted by Participating Class Members or Aggrieved Employees), this Agreement shall be null and void. The Parties shall nevertheless expeditiously work together in good faith to address the appellate court's concerns and to obtain Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional Administration Expenses reasonably incurred after remittitur. An appellate decision to vacate, reverse, or modify the Court's award of the Class Representative Service Payment or any payments to Class Counsel shall not constitute a material modification of the Judgment within the meaning of this paragraph, as long as the Gross Settlement Amount remains unchanged.

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

12. **ADDITIONAL PROVISIONS.**

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

12.2 Confidentiality Prior to Preliminary Approval. Plaintiff, Class Counsel, Defendants and Defense Counsel separately agree that, until the Motion for Preliminary Approval of Settlement is filed, they and each of them will not disclose, disseminate and/or publicize, or cause or permit another person to disclose, disseminate or publicize, any of the terms of the Agreement directly or indirectly, specifically or generally, to any person, corporation, association, government agency, or other entity except: (1) to the Parties' attorneys, accountants, or spouses, all of whom will be instructed to keep this Agreement confidential; (2) counsel in a related matter; (3) to the extent necessary to report income to appropriate taxing authorities; (4) in response to a court order or subpoena; or (5) in response to an inquiry or subpoena issued by a state or federal government agency. Each Party agrees to immediately notify each other Party of any judicial or agency order, inquiry, or subpoena seeking such information. Plaintiff, Class Counsel, Defendants and Defense Counsel separately agree not to, directly or indirectly, initiate any conversation or other communication, before the filing of the Motion for Preliminary Approval, any with third party regarding this Agreement or the matters giving rise to this Agreement except to respond only that "the matter was resolved," or words to that effect. This paragraph does not restrict Class Counsel's communications with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.

12.3 No Solicitation. The Parties separately agree that they and their respective counsel and employees will not solicit any Class Member to opt out of or object to the Settlement, or appeal from the Judgment. Nothing in this paragraph shall be

construed to restrict Class Counsel's ability to communicate with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.

- 12.4 Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.
- 12.5 Attorney Authorization. Class Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiff and Defendants, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.
- 12.6 Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.
- 12.7 No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.
- 12.8 No Tax Advice. Neither Plaintiff, Class Counsel, Defendants nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.
- 12.9 Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.
- 12.10 Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
- 12.11 Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.

- 12.12 Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
- 12.13 Confidentiality. To the extent permitted by law, all agreements made, and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.
- 12.14 Use and Return of Class Data. Information provided to Class Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the Class Data provided to Class Counsel by Defendants in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than 90 days after the date when the Court discharges the Administrator's obligation to provide a Declaration confirming the final pay out of all Settlement funds, Plaintiff shall destroy, all paper and electronic versions of Class Data received from Defendants unless, prior to the Court's discharge of the Administrator's obligation, Defendants makes a written request to Class Counsel for the return, rather than the destructions, of Class Data.
- 12.15 Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
- 12.16 Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.
- 12.17 Notice. All notices, demands or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

To Plaintiff:

Natalie Mirzayan
mirzayan@outlook.com
Mirzayan Law, APLC
26632 Towne Centre Drive, Suite 300
Foothill Ranch, CA 92610

To Defendants:

Kate Den Bleyker
kdenbleyker@ohaganmeyer.com
Janna K. Akers
jakers@ohaganmeyer.com

O'Hagan Meyer LLP
550 S. Hope Street, Suite 2400
Los Angeles, CA 90071

12.18 Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

12.19 Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to Code of Civil Procedure section 583.330 to extend the date to bring a case to trial under Code of Civil Procedure section 583.310 for the entire period of this settlement process.

Dated: 06/02/2025


Daniel Mitchell (Jun 3, 2025 16:40 PDT)

Plaintiff Daniel Mitchell

Dated: Jun 12, 2025


Vanessa Tilaka (Jun 12, 2025 12:26 PDT)

Vanessa Tilaka for:
Defendant Thovan Hospitality LLC dba Agnes
Restaurant & Cheesery

Dated: Jun 12, 2025


Vanessa Tilaka (Jun 12, 2025 12:26 PDT)

Defendant Vanessa Tilaka

Dated: Jun 12, 2025

Thomas Kalb
Thomas Kalb (Jun 12, 2025 16:28 PDT)

Defendant Thomas Kalb

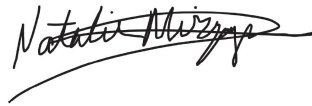
Dated: Jun 18, 2025


Allan Liao (Jun 18, 2025 15:07 PDT)

Defendant Allan Liao

Dated: June 10, 2025

MIRZAYAN LAW, APLC



Natalie Mirzayan
Attorney for Plaintiff, the Class, and Aggrieved
Employees

Dated: Jun 18, 2025

O'HAGAN MEYER LLP



Janna Akers (Jun 18, 2025 15:59 PDT)

Kate Den Bleyker
Janna K. Akers
Attorneys for Defendants

FINAL Mitchell v. Thovan Settlement Agreement Signed by Plaintiff and Counsel

Final Audit Report

2025-06-18

Created:	2025-06-11
By:	Janna Akers (jakers@ohaganmeyer.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAAXZALUjcgqwdAKBvV1XvGbHi7ATmi7Fvg

"FINAL Mitchell v. Thovan Settlement Agreement Signed by Plaintiff and Counsel" History

-  Document created by Janna Akers (jakers@ohaganmeyer.com)
2025-06-11 - 1:32:53 AM GMT
-  Document emailed to Vanessa Tilaka (vanessa@agnesla.com) for signature
2025-06-11 - 1:32:58 AM GMT
-  Document emailed to Thomas Kalb (thomas@agnesla.com) for signature
2025-06-11 - 1:32:58 AM GMT
-  Document emailed to Allan Liao (allan.liao.la@gmail.com) for signature
2025-06-11 - 1:32:58 AM GMT
-  Email viewed by Vanessa Tilaka (vanessa@agnesla.com)
2025-06-12 - 7:25:34 PM GMT
-  Document e-signed by Vanessa Tilaka (vanessa@agnesla.com)
Signature Date: 2025-06-12 - 7:26:47 PM GMT - Time Source: server
-  Email viewed by Thomas Kalb (thomas@agnesla.com)
2025-06-12 - 11:26:26 PM GMT
-  Document e-signed by Thomas Kalb (thomas@agnesla.com)
Signature Date: 2025-06-12 - 11:26:54 PM GMT - Time Source: server
-  Email viewed by Allan Liao (allan.liao.la@gmail.com)
2025-06-18 - 10:07:12 PM GMT
-  Document e-signed by Allan Liao (allan.liao.la@gmail.com)
Signature Date: 2025-06-18 - 10:07:56 PM GMT - Time Source: server

✔ Agreement completed.
2025-06-18 - 10:07:56 PM GMT

FINAL Mitchell v. Thovan Settlement Agreement - fully executed

Final Audit Report

2025-06-18

Created:	2025-06-18
By:	Janna Akers (jakers@ohaganmeyer.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAAGGAVsaUxMfsOcJOOkyV10SDUN1bYa-W-

"FINAL Mitchell v. Thovan Settlement Agreement - fully executed" History

-  Web Form created by Janna Akers (jakers@ohaganmeyer.com)
2025-06-18 - 10:57:47 PM GMT
-  Web Form filled in by Janna Akers (jakers@ohaganmeyer.com)
2025-06-18 - 10:59:25 PM GMT
-  Email verification link emailed to Janna Akers (jakers@ohaganmeyer.com)
2025-06-18 - 10:59:27 PM GMT
-  Email viewed by Janna Akers (jakers@ohaganmeyer.com)
2025-06-18 - 10:59:59 PM GMT
-  E-signature verified by Janna Akers (jakers@ohaganmeyer.com)
2025-06-18 - 10:59:59 PM GMT
-  Agreement completed.
2025-06-18 - 10:59:59 PM GMT

EXHIBIT A

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

Daniel Mitchell v. Thovan Hospitality, LLC et al.
Case No. 30-2024-01377755-CU-OE-CXC

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

You may be eligible to receive money from an employee class action lawsuit ("Action") against Thovan Hospitality, LLC dba Agnes Restaurant and Cheesery; Thomas Kalb; Vanessa Tilaka; and Allan Liao (collectively, "Agnes") for alleged wage-and-hour violations. The Action was filed by former Agnes employee Daniel Mitchell ("Plaintiff") who alleges Agnes violated various provision of the California Labor Code and seeks (1) unpaid sick leave; (2) accurate wage statements; (3) unpaid wages; (4) statutory penalties and other relief for a class of non-exempt hourly employees ("Class Members") who worked for Agnes during the Class Period (February 7, 2020 to March 28, 2025.); and (2) penalties under the Labor Code Private Attorney General Act ("PAGA") for all non-exempt employees who worked for Agnes during the PAGA Period (February 6, 2023 to March 28, 2025) ("Aggrieved Employees"). Agnes strongly denies the allegations in all respects and contends that it complied with governing law at all times. Agnes further maintains that the case was not suited for class certification and that it was not manageable for PAGA purposes.

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

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

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

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

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

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

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

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

You Don't Have to Do Anything to Participate in the Settlement	If you do nothing, you will be a Participating Class Member, eligible for an Individual Class Payment and an Individual PAGA Payment (if any). In exchange, you will give up your right to assert the wage claims against Agnes that are covered by this Settlement (Released Claims).
You Can Opt-out of the Class Settlement but not the PAGA Settlement	If you don't want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion. Once excluded, you will be a Non-Participating Class Member and no longer eligible for an Individual Class Payment. Non-Participating Class Members cannot object to any portion of the proposed Settlement. See Section 6 of this Notice.
The Opt-out Deadline is _____	You cannot opt-out of the PAGA portion of the proposed Settlement. Agnes must pay Individual PAGA Payments to all Aggrieved Employees and the Aggrieved Employees must give up their rights to pursue Released Claims (defined below).
Participating Class Members Can Object to the Class Settlement but not the PAGA Settlement Written Objections Must be Submitted by _____	All Class Members who do not opt-out ("Participating Class Members") can object to any aspect of the proposed Settlement. The Court's decision whether to finally approve the Settlement will include a determination of how much will be paid to Class Counsel and Plaintiff who pursued the Action on behalf of the Class. You are not personally responsible for any payments to Class Counsel or Plaintiff, but every dollar paid to Class Counsel and Plaintiff reduces the overall amount paid to Participating Class Members. You can object to the amounts requested by Class Counsel or Plaintiff if you think they are unreasonable. See Section 7 of this Notice.

1. WHAT IS THE ACTION ABOUT?

Plaintiff is a former Agnes employee. The Action accuses Agnes of violating California and municipal labor laws by failing to pay minimum and overtime wages, unlawfully taking employees tips and/or gratuities, failing to provide meal periods and rest breaks, failing to provide paid sick leave, failing to provide requisite wage notice, failing to provide wage statements, failing to pay all wages upon termination, failing to pay all wages during employment, and failing to keep accurate payroll records. Based on the same claims, Plaintiff has also asserted a claim for civil penalties under the Private Attorneys General Act (Labor Code §§ 2698, et seq.) ("PAGA"). Plaintiff is represented by Natalie Mirzayan of Mirzayan APLC ("Class Counsel") in the Action.

Agnes strongly denies violating any laws or failing to pay any wages. Agnes contends that it complied with all governing laws at all times. Agnes sharply disputes that the case was properly suited for class certification, and it denies that the PAGA claim was manageable.

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

So far, the Court has made no determination whether Agnes violated any laws. In the meantime, Plaintiff and Agnes hired an experienced, neutral mediator in an effort to resolve the Action by negotiating an end to the case by agreement (settle the case) rather than continuing the expensive and time-consuming process of litigation. The negotiations were successful. By signing a lengthy written settlement agreement ("Agreement") and agreeing to jointly ask the Court to enter a judgment ending the Action and enforcing the Agreement, Plaintiff and Agnes 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, Agnes does not admit any violations or concede the merit of any claims.

Plaintiff and Class Counsel strongly believe the Settlement is a good deal for you because they believe that: (1) Agnes 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 whether to finally approve the Settlement.

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

1. Agnes Will Pay \$240,000.00 as the Gross Settlement Amount (Gross Settlement). The Administrator of the account will use the Gross Settlement to pay the Individual Class Payments, Individual PAGA Payments, Class Representative Service Payment, Class Counsel's attorney's fees and expenses, the Administrator's expenses, and penalties to be paid to the

California Labor and Workforce Development Agency (“LWDA”). Assuming the Court grants Final Approval, the Court will enter Judgment. The Judgment will be final on the date the Court enters Judgment, or a later date if Participating Class Members object to the proposed Settlement or the Judgment is appealed (the “Effective Date”).

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

- Up to \$96,000.00 (40% of the Gross Settlement) to Class Counsel for attorneys’ fees and for litigation expenses incurred by Class Counsel who have worked and incurred expenses on the Action without payment.
- Up to \$10,000 as a Class Representative Award for filing the Action, working with Class Counsel and representing the Class. A Class Representative Award will be the only monies Plaintiff will receive other than Plaintiff’s Individual Class Payment and any Individual PAGA Payment.
- Up to \$8,500.00 to the Administrator for services administering the Settlement.
- Up to \$20,000.00 for PAGA Penalties, allocated 75% to the LWDA PAGA Payment and 25% in Individual PAGA Payments to the Aggrieved Employees based on their PAGA Period Pay Periods.

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

3. Net Settlement Distributed to Class Members. After the Administrator receives the complete Gross Settlement amount and makes the above deductions in amounts approved by the Court, the Administrator will distribute the rest of the Gross Settlement (the “Net Settlement”) by making Individual Class Payments to Participating Class Members based on their Class Period Workweeks.
4. Taxes Owed on Payments to Class Members. Plaintiff and Agnes are asking the Court to approve an allocation of 20% of each Individual Class Payment to taxable wages (“Wage Portion”) and 80% to penalties and interest (“Non-Wage Portion.”). The Wage Portion is subject to withholdings and will be reported on IRS W-2 Forms. Agnes will separately pay employer payroll taxes it owes on the Wage Portion. The Individual PAGA Payments are counted as penalties rather than wages for tax purposes. The Administrator will report the Individual PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms.

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

5. Need to Promptly Cash Payment Checks. The front of every check issued for Individual Class Payments and Individual PAGA Payments will show the date when the check expires (the void date). If you don’t cash it by the void date, your check will be automatically cancelled, and the monies will be deposited with the California Controller’s Unclaimed Property Fund in your name. If the monies represented by your check is sent to the Controller’s Unclaimed Property, you should consult the rules of the Fund for instructions on how to retrieve your money.
6. Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated as a Participating Class Member, participating fully in the Settlement, unless you notify the Administrator in writing, not later than **DATE**, that you wish to opt-out. The easiest way to notify the Administrator is to send a written and signed Request for Exclusion by the Response Deadline. The Request for Exclusion should be a signed letter from you or your representative setting forth your name, present address, telephone number, and a simple signed statement electing to be excluded from the Settlement. Excluded Class Members (*i.e.*, Non-Participating Class Members) will not receive Individual Class Payments, but will preserve their rights to personally pursue wage and hour claims against Agnes. You cannot opt-out of the PAGA portion of the Settlement. Class Members who exclude themselves from the Class Settlement (Non-Participating Class Members) remain eligible for Individual PAGA Payments and are required to give up their right to assert PAGA claims against Agnes based on the PAGA Period facts alleged in the Action.
7. The Proposed Settlement Will be Void if the Court Denies Final Approval. It is possible the Court will decline to grant Final Approval of the Settlement or decline enter a Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiff and Agnes have agreed that, in either case, the Settlement will be void: Agnes will not pay any money and Class Members will not release any claims against Agnes.
8. Administrator. The Court has appointed a neutral company, **Apex Class Action, LLC** (the “Administrator”), to send this

Notice, calculate and make payments, and process Class Members' Requests for Exclusion. The Administrator will also decide Class Member Challenges over Workweeks, mail and re-mail settlement checks and tax forms, and perform other tasks necessary to administer the Settlement. The Administrator's contact information is contained in Section 9 of this Notice.

9. **Participating Class Members' Release.** After the Judgment is final and Agnes has fully funded the Gross Settlement and separately paid all employer payroll taxes, Participating Class Members will be legally barred from asserting any of the claims released under the Settlement. This means that unless you opted out by validly excluding yourself from the Class Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Agnes or related entities for wages based on the Class Period facts and PAGA penalties based on PAGA Period facts, as alleged in the Action and resolved by this Settlement.

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

All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release the Released Parties from all claims that were alleged, or reasonably could have been alleged, based on the Class Period facts stated in the Operative Complaint [and ascertained in the course of the Action] including but not limited to, any and all claims involving any alleged: (1) Failure to Pay Minimum Wages; (2) Failure to Pay Overtime Wages; (3) Failure to Pay Split-Shift Premiums; (4) Failure to Provide Meal Periods; (5) Failure to Authorize and Permit Rest Breaks; (6) Waiting Time Penalties; (7) Failure to Provide Accurate Itemized Wage Statements; (8) Unlawful Taking of Tips/Gratuities; (9) Failure to Provide Sick Leave; and (10) Failure to Provide Timely Wages. Except as set forth in Section 5.3 of the Settlement Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.

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

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

All Participating and Non-Participating Class Members who are Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in Plaintiff's PAGA pleadings and the PAGA Notice, including but not limited to, any and all claims involving any alleged: (1) Failure to Pay Minimum Wages; (2) Failure to Pay Overtime Wages; (3) Failure to Pay Split-Shift Premiums; (4) Failure to Provide Meal Periods; (5) Failure to Authorize and Permit Rest Breaks; (6) Waiting Time Penalties; (7) Failure to Provide Accurate Itemized Wage Statements; (8) Unlawful Taking of Tips/Gratuities; (9) Failure to Provide Sick Leave; (10) Failure to Provide Timely Wages; (11) Failure to Provide Requisite Wage Notice; and (12) Violations of the Labor Code Private Attorneys General Act of 2004. Aggrieved Employees only release these claims for the duration of the PAGA Period.

4. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?

1. **Individual Class Payments.** The Administrator will calculate Individual Class Payments by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members, and (b) multiplying the result by the number of Workweeks worked by each individual Participating Class Member.
2. **Individual PAGA Payments.** The Administrator will calculate Individual PAGA Payments by (a) dividing \$5,000.00 by the total number of PAGA Pay Periods worked by all Aggrieved Employees and b) multiplying the result by the number of Pay Periods worked by each individual Aggrieved Employee.
3. **Workweek/Pay Period Challenges.** The number of Class Workweeks you worked during the Class Period and the number of PAGA Pay Periods you worked during the PAGA Period, as recorded in Agnes records, are stated in the first page of this Notice. You have until **DATE** to challenge the number of Workweeks and/or Pay Periods credited to you. You can submit your challenge by signing and sending a letter to the Administrator via mail, email or fax. Section 9 of this Notice has the Administrator's contact information.

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

5. HOW WILL I GET PAID?

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

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

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

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

7. HOW DO I OBJECT TO THE SETTLEMENT?

Only Participating Class Members have the right to object to the Settlement. Before deciding whether to object, you may wish to see what Plaintiff and Agnes are asking the Court to approve. At least 16 court days before the Final Approval Hearing, Class Counsel and/or Plaintiff will file in Court a Motion for Final Approval that includes, among other things, the reasons why the proposed Settlement is fair, and stating the amount Class Counsel is requesting for attorneys' fees, litigation expenses, and the amount Plaintiff is requesting as a Class Representative Service Award. Upon reasonable request, Class Counsel (whose contact information is in Section 9 of this Notice) will send you copies of these documents at no cost to you.

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

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

8. CAN I ATTEND THE FINAL APPROVAL HEARING?

You can, but don't have to, attend the Final Approval Hearing on **DATE** at **TIME** in Department CX-102 of the Orange County Superior Court, located the Civil Complex Center at 751 W. Santa Ana Blvd., Santa Ana, CA 92701. At the Hearing, the judge will decide whether to grant Final Approval of the Settlement and how much of the Gross Settlement will be paid to Class Counsel, Plaintiff, and the Administrator. The Court will invite comment from objectors, Class Counsel, and Defense Counsel before making a decision. You can attend or hire a lawyer to attend. Check the Court's website for the most current information.

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

9. HOW CAN I GET MORE INFORMATION?

The Agreement sets forth everything Agnes and Plaintiff have promised to do under the proposed Settlement. If you have questions or would like additional information, you can telephone or send an email to Class Counsel or the Administrator using the contact information listed below or consult the Orange County Superior Court website by going to (<https://civilwebshopping.occourts.org/Search.do#searchAnchor>) and entering the Case Number for the Action, *Daniel Mitchell v. Thovan Hospitality, et al.*, Case No. 30-2024-01377755-CU-OE-CXC.

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

Class Counsel:

Natalie Mirzayan
mirzayanlaw@outlook.com
Mirzayan Law, APLC
26632 Towne Center Drive, Suite 300
Foothill Ranch, CA 92610
Telephone: (949) 285-3550

Settlement Administrator:

Name of Company:

Email Address:

Mailing Address:

Telephone:

Fax Number:

10. WHAT IF I LOSE MY SETTLEMENT CHECK?

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

11. WHAT IF I CHANGE MY ADDRESS?

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

EXHIBIT 2



Quotation Request:

Natalie Mirzayan
 Mirzayan Law, APLC
 Mirzayanlaw@outlook.com
 949.285.3550

Case Name:

Date:
 RFP Number:

Daniell Mitchell v Thovan Hospitality

Thursday, January 30, 2025
 49240001

Prepared By:

Nick Day
 Apex Class Action LLC
 nickday@apexclassaction.com
 949.563.6650

Settlement Specifications	
Estimated Class Size:	298
Certified Language Translation:	Yes
Static Settlement Website:	No
Percentage of Undeliverable Mail:	20%

Professional Services	Fee Calculation	Rate(s)	Quantity	Estimated Cost
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Data Analytics and Standardization				
Import and Standardize Data*	Per Hour	\$125.00	2	\$250.00
Data Analyst	Per Hour	\$150.00	2	\$300.00
*Data provided must be in a workable format. Apex can standardize provided data at an additional cost of \$150/hr.				
Sub Total:				\$550.00

Mailing of Class Notice				
Form Set Up	Per Hour	\$120.00	1	\$120.00
Print & Mail Class Notice	Per Piece	\$1.50	298	\$447.00
USPS First Class Postage	Per Piece	\$0.73	298	\$217.54
Remail Undeliverable Mail (Skip-Trace)	Per Piece	\$2.00	60	\$119.20
Receive and Process Undeliverable Mail	Per Hour	\$75.00	1	\$75.00
Process Class Member Correspondence via mail, e-mail & fax	Per Piece	\$75.00	1	\$75.00
NCOA Address Update (USPS)	Static Rate	\$67.78	1	\$67.78
Certified Language Translation: Spanish	Static Rate	\$1,200.00	1	\$1,200.00
Sub Total:				\$2,321.52

Project Management				
Project Management	Per Hour	\$150.00	2	\$300.00
Project Coordinator	Per Hour	\$90.00	2	\$180.00
Data Analyst and Reporting	Per Hour	\$140.00	1	\$140.00
Sub Total:				\$620.00



Professional Services	Fee Calculation	Rate(s)	Quantity	Estimated Cost
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Toll-Free Contact Center, Website & Reporting				
Bilingual Toll-Free Contact Center	Static Rate	\$95.00	1	\$95.00
Settlement Status Reports	Static Rate	\$750.00	1	Waived
			Sub Total:	\$95.00

Distribution & Settlement Fund Management				
Settlement Calculations (Preliminary and Final)	Per Hour	\$120.00	2	\$240.00
Account Management and Reconciliation	Per Hour	\$140.00	2	\$280.00
Print & Mail Distribution Settlement Check (W-2/1099)	Per Piece	\$1.50	298	\$447.00
USPS First Class Postage	Per Piece	\$0.73	298	\$217.54
Print & Mail Distribution Settlement Check (W-2/1099)	Per Piece	\$1.50	298	\$447.00
USPS First Class Postage	Per Piece	\$0.73	298	\$217.54
Remail Distribution to Updated Address (Skip Trace)	Per Piece	\$2.00	45	\$89.40
Individual Income Tax Preparation & Reporting	Per Hour	\$100.00	8	\$800.00
QSF Income Tax Reporting (per calendar year)	Per Year	\$1,200.00	1	\$1,200.00
Unclaimed Funds: State Controller's Unclaimed Property Fund	Static Rate	\$500.00	1	\$500.00
			Sub Total:	\$4,438.48

Post Distribution Reconciliation				
Bank Account Reconciliation	Per Hour	\$135.00	1	\$135.00
Project Management Reconciliation	Per Hour	\$100.00	1	\$100.00
Declarations	Per Hour	\$120.00	2	\$240.00
			Sub Total:	\$475.00

WILL NOT EXCEED:				\$8,500.00
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Thank you for your business!



Terms & Conditions

The following Terms and Conditions govern the provision of all services to be provided by Apex Class Action and its affiliates ("Apex") to the Client. These terms and conditions are binding and shall apply to all services provided by Apex in relation to any related services or products.

1. **Services:** Apex commits to providing the Client with the administrative services detailed in the attached Proposal (the "Services").
2. **Payment Terms:** As compensation for the legal services to be provided, the Client agrees to pay Apex all fees detailed in the Proposal. The fees quoted in the Proposal (and any subsequent proposals for additional services) are estimates based on the information provided to Apex by the Client. Apex makes no representation that the estimated fees in the Proposal or any subsequent proposals for additional services shall equal the actual fees charged by Apex to the Client, which fees (including individual line items) may be greater or less than estimated. If additional services are requested on an hourly basis and are not specifically detailed in the Proposal, Apex will prepare estimates for such services subject to approval by the Client. In the performance of such additional services, Apex will charge standard hourly fees which shall apply.
3. **Incurred Expenses:** In relation to the provision of services outlined in this agreement, the Client agrees to reimburse Apex for all reasonable out-of-pocket expenses incurred. Such expenses may include, but are not limited to, costs associated with postage, media production or publication, banking fees, brokerage fees, messenger and delivery service expenses, travel expenses, filing fees, office supplies, meals, staff overtime expenses, and other related costs and expenses. If not otherwise specified in writing, fees for print notice and certain expenses, such as media publication and postage, must be paid immediately upon invoicing and, in certain cases, at least ten (10) days prior to the date on which such expenses will be incurred.
4. **Invoicing:** Apex shall present invoices for its fees and expenses on a monthly basis, except as provided in Section 3. The Client agrees to pay each invoice within 30 days of receipt. In case of non-payment within 90 days of the billing date, an additional service charge of 1.5% per month may apply. Apex reserves the right to increase its prices, charges, and rates annually, subject to reasonable adjustments. If any price increases exceed 10%, Apex shall give thirty (30) days' notice to the Client. In the event of any unpaid invoices beyond 120 days of the due date, Apex reserves the right to withhold services and reports until payment is received, subject to notice to the Client. It is important to note that Apex's failure to provide services and reports in such instances shall not constitute a default under this agreement.
5. **Case Duration:** The duration of these Terms and Conditions, except for the data storage obligations stated in Section 13, shall be in effect until 30 days following the completion of the Services as described in the Proposal. The parties may extend these Terms and Conditions in writing for a mutually agreed-upon period beyond this initial 30-day period.
6. **Termination of Services:** Either party may terminate the Services by providing thirty (30) days written notice to the other party. Alternatively, termination may occur immediately upon written notice for Cause, as defined below. Cause means (i) Apex's gross negligence or willful misconduct that causes serious and material harm to the Client; (ii) the Client's failure to pay Apex invoices for more than one hundred twenty (120) days from the date of the invoice; or (iii) the accrual of invoices or unpaid services where Apex reasonably believes it will not be paid. Termination of the Services shall not relieve the Client of its obligation to pay Apex for services rendered prior to the termination.
7. **Independent Contractor:** As an independent contractor, Apex will provide services under the terms of this agreement. It is agreed that neither Apex nor any of its employees will be considered an employee of the Client. Consequently, Apex and its employees will not be eligible for any benefits provided by the Client to its employees. The Client will not make any tax deductions from the payments due to Apex for state or federal tax purposes. Apex will be solely responsible for paying all taxes and other payments due on payments received from the Client under this agreement.
8. **Apex warrants** that the Services outlined in the Proposal will be performed in accordance with the standards generally adhered to by professionals providing similar services. It is acknowledged that the Services may entail the likelihood of some human and machine errors, omissions, delays, and losses that may result in damage. However, Apex shall not be held liable for such errors, omissions, delays, or losses unless they are caused by its gross negligence or willful misconduct. In the event of any breach of this warranty by Apex, the Client's sole remedy will be limited to Apex's rerunning, at its expense, any inaccurate output provided that such inaccuracies occurred solely as a result of Apex's gross negligence or willful misconduct under this agreement.
9. **Limitation of Liability:** The Client acknowledges that Apex shall not be held liable for any consequential, special, or incidental damages incurred by the Client in relation to the performance of Services, whether the claim is based on breach of warranty, contract, tort (including negligence), strict liability, or any other grounds. Under no circumstances shall Apex's liability to the Client, for any Losses (including court costs and reasonable attorney's fees), arising out of or in connection with these Terms and Conditions, exceed the total amount charged or chargeable to the Client for the specific service(s) that caused the Losses.
10. **Indemnification:** The Client agrees to indemnify and hold harmless Apex from any losses, suits, actions, judgments, fines, costs, liabilities, or claims arising from any action or proceeding relating to the Services provided by Apex, regardless of whether or not it results in liability (collectively referred to as "Indemnified Claims"). However, this indemnification provision shall not apply to the extent that such Indemnified Claims are caused by Apex's willful misconduct, gross negligence, or breach of these Terms and Conditions. This provision shall survive termination of the Services.

11. **Confidentiality:** Apex will uphold strict confidentiality between Apex and the Client and applies to all non-public records, documents, systems, procedures, processes, software, and other information received by either party in connection with the performance of services under these terms. Both Apex and the Client agree to keep confidential all such non-public information, including any material marked or identified as confidential or proprietary. Any such confidential information shall not be disclosed, provided, disseminated, or otherwise made available to any third party, except as required to fulfill the parties' obligations under these terms. The parties acknowledge that in the event of any request to disclose any confidential information in connection with a legal or administrative proceeding, or otherwise to comply with a legal requirement, prompt notice of such request must be given to the other party to enable that party to seek an appropriate protective order or other remedy or to waive compliance with the relevant provisions of these terms. If the Client seeks a protective order or another remedy, Apex, at the Client's expense, will cooperate with and assist the Client in such efforts. If the Client fails to obtain a protective order or waives compliance with the relevant provisions of these terms, Apex will disclose only that portion of the confidential information that it determines it is required to disclose. This confidentiality provision shall survive termination of the services provided. Both parties acknowledge and agree that any breach of this terms may cause irreparable harm to the non-breaching party and that injunctive relief may be necessary to prevent any actual or threatened breach. The terms set forth between the parties supersede all prior negotiations, understandings, and agreements between the parties concerning confidentiality. These terms may only be amended in writing and signed by both parties.
12. **Ownership** of the programs, system data, and materials provided by Apex to the Client during the course of providing services herein shall solely belong to Apex. It is acknowledged that fees and expenses paid by the Client do not confer any rights in such property. It is also understood that the said property is made available to the Client solely for the purpose of using it during and in connection with the services provided by Apex.
13. **Upon the completion of the administration and unless retention instructions are ordered by the court, Apex will notify the client that it will destroy and/or return all confidential information and property within 90 days upon the client's written request. Alternatively, the material may be stored for one year at a monthly fee of \$1.50 per storage box for paper documents and \$0.01 per image for electronic copies over a period of three years, which compensates Apex for its electronic and hard-copy storage costs. Apex will not be liable for any damages, liability, or expenses incurred in connection with any delay in delivery of, or damage to disks, magnetic tapes, or any input data provided by the client or its representatives unless Apex has agreed in writing to assume such responsibility.**
14. **COMPLETE AGREEMENT.** These Terms and Conditions, along with the attached Proposal, represent the complete agreement and understanding between the parties and override any prior agreements (whether written or oral) between Apex and the Client regarding the subject matter. Any modification to these Terms and Conditions may only be made in writing and must be signed by both Apex and the Client. The headings in this document are included for convenience only and do not alter or restrict any provisions in these Terms and Conditions. They may not be used in the interpretation of these Terms and Conditions.
15. **This provision outlines the requirements for providing notice or other communication under this agreement. All such communications must be in writing and can be delivered either by personal delivery or through U.S. Mail with prepaid postage or overnight courier. Once delivered personally or sent through the mail, the notice will be considered given after five (5) days from the deposit date in the U.S. Mail. Alternatively, if sent through an overnight courier, the notice will be considered given one business day after delivery to the such courier. It's important to note that the notice must be provided to a responsible officer or principal of the Client or Apex, depending on the case.**
16. **Force Majeure:** In the event of any failure or delay in performance due to circumstances beyond Apex's control, including but not limited to strikes, lockouts, fires, floods, acts of God or public enemy, riots, civil disorders, insurrections, war or war conditions, or interference by civil or military authorities, Apex shall not be held liable for any resulting loss or damage. The time for performance under this agreement shall be extended for a period equal to the duration of the disabling cause and a reasonable time thereafter. This provision shall constitute a force majeure clause and shall be construed accordingly.
17. **The applicable state and federal laws shall govern the interpretation and enforcement of these Terms and Conditions. No choice of law or conflict of laws provisions shall affect this governing law provision.**
18. **Severability:** This applies to all clauses and covenants contained within these Terms and Conditions. In the event that any clause or covenant is deemed invalid, illegal, or unenforceable, the remaining provisions shall remain valid and enforceable to the fullest extent permissible by law. The validity, legality, and enforceability of the remaining provisions shall in no way be affected or impaired by the invalidity, illegality, or unenforceability of any provision deemed so.
19. **Nonwaiver:** This applies to these Terms and Conditions. This means that any failure by one party to enforce a provision of these terms on one or more occasions shall not be construed as a waiver of that provision. In other words, any failure to enforce a provision does not give up the right to enforce it in the future. All provisions of these Terms and Conditions remain in full force and effect, regardless of any prior failure to enforce them.