

JCL LAW FIRM, APC

Jean-Claude Lapuyade (State Bar #248676)
Sydney Castillo-Johnson (State Bar #343881)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 599-8292
Facsimile: (619) 599-8291
jlapuyade@jcl-lawfirm.com
scastillo@jcl-lawfirm.com

ZAKAY LAW GROUP, APLC

Shani O. Zakay (State Bar #277924)
Julieann Alvarado (State Bar #334727)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 255-9047
Facsimile: (858) 404-9203
shani@zakaylaw.com
julieann@zakaylaw.com

Attorneys for PLAINTIFFS

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SANTA CLARA

JAMES E. AGUILAR, an individual; PAMELA
CAZARES, an individual, on behalf of themselves
and on behalf of all persons similarly situated,

Plaintiffs,

vs.

T & K, L.P., a California Limited Partnership; and
DOES 1-50, Inclusive.

Defendants.

Case No. 21CV384674

**DECLARATION OF JEAN-CLAUDE
LAPUYADE, ESQ. IN SUPPORT OF
PLAINTIFFS' MOTION FOR FINAL
APPROVAL OF CLASS AND PAGA
ACTION SETTLEMENT**

Hearing Date: October 26, 2023
Hearing Time: 1:30 p.m.
Department: 1

Trial Date: None
Action Filed: July 23, 2021

1 I, Jean-Claude Lapuyade, Esq., declare as follows:

2 1. I am over eighteen years of age and if called as a witness, I could and would competently
3 testify to the following facts from my own personal knowledge. I am an attorney-at-law and the owner
4 of the law firm of JCL LAW FIRM, APC (hereinafter "Class Counsel"). I am counsel of record for
5 Plaintiffs JAMES E. AGUILAR and PAMELA CAZARES (hereafter "Plaintiffs" or "Class
6 Representatives") in this wage and hour class and representative action filed against Defendant T&K,
7 L.P. (hereinafter "Defendant").

8 2. This declaration is being submitted in support of Plaintiffs' Motion for Final Approval of
9 Class Action and PAGA Settlement.

10 3. Attached hereto as **Exhibit "1"** is a true and correct copy of the fully executed Joint
11 Stipulation and Agreement for Class and Representative Action Settlement and Release (hereinafter
12 "Settlement Agreement"). Attached thereto as **Exhibit "A"** is a true and correct copy of the Notice
13 Packet.

14 4. Attached hereto as **Exhibit "2"** is a true and correct copy of the conformed May 30, 2023,
15 Preliminary Approval Order.

16 5. Attached hereto as **Exhibit "3"** is a true and correct copy of the March 6, 2023, proof of
17 filing the proposed Settlement with the LWDA.

18 6. Attached hereto as **Exhibit "4"** is a true and correct copy of the October 3, 2023, proof
19 of filing this motion seeking final approval of this Settlement with the LWDA.

20 7. Attached hereto as **Exhibit "5"** is a true and correct copy of the JCL Law Firm, APC's
21 "Firm Resume" detailing the credentials and a summary of cases on which Counsel has been appointed
22 Class Counsel.

23 I. INTRODUCTION

24 8. An objective evaluation of the proposed settlement of Two Million Dollars and Zero
25 Cents (\$2,000,000.00) ("Maximum Settlement Amount") confirms that the relief negotiated on behalf
26 of the Settlement Class is fair, reasonable, and valuable. The Settlement is a product of informed,
27 adversarial, and non-collusive negotiations, between experienced counsel, and presided over by Hon.
28 Carl J. West (Ret.), a highly regarded jurist and mediator. After deducting any Court-approved

1 attorneys' fees and expenses, service awards, administration expenses, and the payments to the Labor
2 & Workforce Development Agency ("LWDA"), the net settlement amount shall be distributed to the
3 Settlement Class based on the number of Workweeks they worked while employed by Defendant during
4 the Class Period. ***As of the filing of this motion, the Class greeted news of the Settlement with 99.58%***
5 ***approval.***¹ There are only eight opt-outs and zero objections to the Settlement. The high approval by
6 the Settlement Class evidences the clear fairness and reasonableness of the Settlement.

7 9. This Settlement provides substantial recovery to Settlement Class Members. Plaintiffs
8 estimate that the Settlement, if approved, would result in a Net Settlement Amount of approximately
9 **\$1,163,333.34**. This will result in an average Individual Class Payment of **\$613.57**, and a high payment
10 of **\$3,881.73**. Aggrieved Employees will receive an estimated average gross payment of **\$21.19** and a
11 high payment of **\$73.97**.

12 10. The relief offered by the Settlement is immediate and is particularly impressive when
13 viewed against the difficulties encountered by plaintiffs pursuing similar wage and hour cases (*see*
14 *infra*). Indeed, by settling now rather than proceeding to trial, the Settlement Class will not have to wait
15 (possibly years) for relief, nor will they have to bear the risks associated with prolonged and uncertain
16 litigation.

17 11. As discussed below, the proposed Settlement satisfies all criteria for final settlement
18 approval under California law and falls well within the range of reasonableness. Accordingly, the Class
19 Representative and Class Counsel respectfully request this Court grant final approval of the Agreement
20 and entry of the proposed Final Approval Order and Judgment.

21 **II. OVERVIEW OF THE LITIGATION**

22 12. Defendant owns and operates restaurants throughout Northern California, including in
23 Santa Clara County. Plaintiff Aguilar worked for Defendant as a non-exempt employee in California
24 from August 2020 to April 2021. Plaintiff Cazares worked for Defendant as a non-exempt employee
25 in California from November 2020 to April 2021. At all times during their employment, Plaintiffs
26 earned an hourly wage and were entitled to legally complaint meal and/or rest periods, minimum,
27 regular, and overtime wages. Throughout their employment, Plaintiffs were subject to Defendant's
28

¹ As of the filing date of this Motion, 229 Notices were deemed undeliverable. ILYM Dec. at ¶ 10.

1 written policies and procedures contained in, among other documents, the T&K, LP Employee
2 Handbook.

3 13. Defendant forcefully denies liability for each of Plaintiffs' claims. Further, Defendant
4 asserts that it fully complied with all applicable employment laws and raised several other significant
5 defenses to Plaintiffs' claims, including but not limited to, facially compliant meal and rest period
6 policies, compliant wage statements, reimbursement for all required business expenses, and payment of
7 all wages when due.

8 14. On May 19, 2021, Plaintiffs served Defendant and the Labor and Workforce
9 Development Agency ("LWDA") with a Notice of Violations ("PAGA Notice"). Plaintiffs' PAGA
10 Notice set forth the facts and theories supporting Defendant's alleged violations of various provisions
11 of the California Labor Code and applicable Industrial Welfare Commissions ("IWC") Wage Order and
12 of their intent to pursue claims under California Labor Code Private Attorneys General Act, Cal. Lab.
13 Code sections 2698 *et seq* ("PAGA").

14 15. On July 23, 2021, Plaintiff Aguilar filed a class action complaint in the Santa Clara
15 Superior Court, Case Number 21CV384674 (the "Action"). The Action alleged nine causes of action
16 against Defendant for: (1) Unfair Competition in Violation of California Business and Professions Code
17 §§ 17200 *et seq*; (2) Failure to Pay Minimum Wages in Violation of Cal. Lab. Code §§ 1194, 1197 and
18 1197.1; (3) Failure to Pay Overtime Wages in Violation of Cal. Lab. Code §§ 510 *et seq.*; (4) Failure to
19 Provide Required Meal Periods in Violation of Cal. Lab. Code §§ 226.7 and 512; (5) Failure to Provide
20 Required Rest Periods in Violation of Cal. Lab. Code §§ 226.7 and 512; (6) Failure to Provide Accurate
21 Itemized Wage Statements in Violation of Cal. Lab. Code § 226; (7) Failure to Provide Wages When
22 Due in Violation of Cal. Lab. Code §§ 201, 202, and 203; (8) Failure to Reimburse Employees for
23 Required Expenses in Violation of Cal. Lab. Code § 2802; and (9) Violations of the Private Attorney
24 General Act at Lab. Code §§ 2698 *et. seq.* ("Class Claims"). On March 4, 2022, the First Amended
25 Class Action Complaint was filed to add Plaintiff Cazares as an additional plaintiff and class
26 representative.

27 16. After commencing written discovery, the Parties agreed to mediation. To prepare for
28 mediation, the Parties agreed to informally produce documents and data points subject to the mediation

1 privilege, including but not limited to, a sample of the Class Members' time data and certain payroll
2 data points. As discussed *infra*, Plaintiffs' counsel retained the forensic consultants at Berger
3 Consulting Group ("BCG") to analyze Defendant's time and payroll data.

4 17. On August 29, 2022, the Parties participated in a full day mediation with Hon. Carl J.
5 West (Ret.), a highly regarded jurist and mediator. After arms-length negotiations and bargaining, the
6 Parties reached an agreement to settle based on Judge West's Mediator's proposal and signed a
7 Memorandum of Understanding. After reaching an agreement in principle, the Parties drafted and
8 negotiated a long-form settlement agreement, which is the subject of the instant motion.

9 **III. THE SETTLEMENT BEFORE THE COURT**

10 18. The Court preliminarily approved an initial Maximum Settlement Amount of Two
11 Million Dollars and Zero Cents (\$2,000,000.00) based on a total of an estimated 94,000 Workweeks
12 worked by the Class during the Class Period. The Maximum Settlement Amount shall be used: (1) to
13 satisfy Individual Settlement Payments; (2) to satisfy the Service Awards; (3) to satisfy the Class
14 Counsel Attorneys' Fees and Expenses; (4) to satisfy the PAGA Payment; and (5) to satisfy the
15 Administration Expenses incurred in this action.

16 19. As explained in further detail below, the Settlement is fair, adequate, and reasonable to
17 the class and should be granted final approval. This is evidenced by the high approval of the Settlement
18 by the Settlement Class, the absence of any objections to the Settlement and the average Individual
19 Class Payment of \$613.57.

20 **IV. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE**

21 **A. Class Counsel Conducted a Thorough Investigation**

22 20. Months before filing the Action, Class Counsel began their pre-filing investigation into
23 the Plaintiffs' complaints. Class Counsel's investigation started with several lengthy interviews with
24 Plaintiffs. As part of the interview process, the Plaintiffs produced documents related to their
25 employment, including time and payroll records. At the conclusion of the interviews, Class Counsel
26 determined that each of Plaintiffs' complaints appeared to substantiate Plaintiffs' claim that Defendant's
27 failed to, among other things, pay for all time worked, reimburse for mandatory business expenses, and
28 provide compliant meal and rest periods.

1 21. To prepare for mediation, Class Counsel requested documents and data points to further
2 evaluate Plaintiffs' claims and Defendant's liability exposure to the Class Members. In response to
3 Class Counsel's request, Defendant produced, among other things, the time and payroll records for all
4 of the Class Members, aggregate workweek and pay period data, and copies of applicable handbooks,
5 policies, and agreements. In total, Defendant produced several pages of pertinent policy documents,
6 nearly 2.5 million unique cells of time records for Class Members, and more than 13,000 pages of wage
7 statements for Class Counsel to analyze.

8 22. Class Counsel then retained the statisticians and economists at BCG to evaluate the Class
9 Members' payroll and time data. BCG provides data analysis and damage modeling consulting services
10 specializing in wage and hour class actions. BCG's team of financial and data analysts are credentialed
11 and experienced experts in their fields and have provided their expertise on thousands of cases.

12 23. BCG analyzed Defendant's time and payroll data to assist in the development of various
13 damage models. Among other things, BCG determined the approximate amount of unpaid wages,
14 amount of unpaid overtime wages, number of workweeks, pay periods, average length of shifts and
15 average number of hours worked per week. BCG also estimated the number of missed, late, or truncated
16 meal and rest periods, and the amount of missed meal and rest period premiums paid during the Class
17 Period.

18 24. Overall, Class Counsel thoroughly investigated the claims at issue, including: (1)
19 determining Plaintiffs' suitability as a putative class representative through interviews, background
20 investigations, and analysis of their employment files; (2) evaluating all of Plaintiffs' potential claims;
21 (3) researching similar wage and hour class actions as to the claims brought, the nature of the positions,
22 and the type of employer; (4) analyzing the Settlement Class's time and payroll records; (5) analyzing
23 Defendant's labor policies and practices; (6) researching settlements in similar cases as well as
24 outstanding issues which could affect settlement approval; (7) evaluating Plaintiffs' claims and
25 estimating Defendant's liability for purposes of settlement; (8) drafting the mediation brief; and (9)
26 participating in the mediation. This investigation allowed Class Counsel to fully assess the nature and
27 magnitude of the claims being settled, as well as the impediments to recovery, such as to make an
28 independent assessment of the reasonableness of the terms to which the Parties have agreed.

1 25. Class Counsel only agreed to enter the Settlement following this thorough investigation
2 and evaluation of Plaintiffs' claims. Based on its investigation of the facts, applicable law, and
3 marketplace for similar settlements, and considering the risk of significant delay and uncertainty
4 associated with litigation, and the various defenses asserted by Defendant, Class Counsel believe this
5 Agreement to be in the best interest of the Class Members. Because the Settlement's terms are fair,
6 reasonable, and adequate, the Court should preliminarily approve the Settlement.

7 **B. The Parties Settled At Mediation**

8 26. On August 29, 2022, the Parties conducted a full-day mediation with Hon. Carl J. West
9 (Ret.), a highly regarded jurist and mediator. Judge West helped to manage the Parties' expectations
10 and provided a useful, neutral analysis of the issues and risks to both sides. The Parties made substantial
11 progress with Judge West's assistance. Namely, the Parties exchanged information regarding their
12 respective claims and defenses, including their respective evaluations of the damages. After more than
13 eight hours of arm's length and adversarial negotiations, the mediation concluded with a settlement
14 based on a Mediator's proposal. The amount of the service awards was not negotiated until after the
15 parties agreed to the Maximum Settlement Amount and many other terms. No action would likely have
16 been taken by Class Members individually, and no compensation would have been recovered for them,
17 but for Plaintiffs' service on behalf of the Class.

18 **C. Class Counsel is Experienced in Similar Litigation**

19 27. Plaintiffs are represented by competent and experienced counsel to pursue their claims. I
20 established the JCL Law Firm, APC ("Firm"), in 2010. The Firm is a boutique plaintiff firm representing
21 aggrieved employees and consumers throughout California in wage and hour class actions and complex
22 multi-party product liability matters. The Firm currently consists of myself, Jean-Claude Lapuyade,
23 Esq. (Partner/Owner), Sydney Castillo-Johnson, Esq. (Associate Attorney), Monnett De La Torre, Esq.
24 (Associate Attorney), Tesla Stone (Paralegal), Laura Gonzalez-Mendez (Paralegal), Jennifer Heming
25 (Paralegal), and Madelyn Uchiyama (Legal Assistant).

26 28. I am qualified to represent the Plaintiffs, the State of California, and the Aggrieved
27 Employees. I have extensive experience with wage and hour class and representative actions litigation
28 like this matter, and employment matters in general. Additionally, I have extensive complex mass tort

1 litigation experience and complex construction product liability experience. I can, will and have
2 adequately represented the interests of the Plaintiffs, the State of California, and the Aggrieved
3 Employees throughout this action.

4 29. I have represented consumers and employees in California class actions, and complex
5 multi-party product liability actions exclusively for more than 14 years. I have been in practice as a
6 plaintiffs' civil litigation attorney since April 2007.

7 30. I am qualified to represent the Plaintiffs, the State of California and the Aggrieved
8 Employees. I have extensive experience with wage and hour class and representative actions litigation
9 like this matter, and employment matters in general. My credentials are reflected in the JCL Law Firm,
10 APC, Firm Resume, a true and correct copy of which is attached hereto as **Exhibit "6"** Some of the
11 major cases the Firm has undertaken are also set forth in **Exhibit "6."**

12 31. Since 2010, I have successfully tried two (2) cases to conclusion, each resulting in a
13 favorable verdict for the firm's clients.

14 32. Finally, I have published appellate experience in *William Blanchette et al., v. The*
15 *Superior Court of Imperial County, (GHA Enterprises)*, 8 Cal.App.5th 521.

16 33. Consequently, I have been named to the prestigious Thomson Reuters, Super Lawyers,
17 Rising Star in 2015, 2016, 2017 and, again, in 2018. According to Thomson Reuters, the Super Lawyers,
18 Rising Star list recognizes the top 2.5% of eligible attorneys. (see
19 https://www.superlawyers.com/about/selection_process.html.)

20 **D. The Total Settlement Amount is Fair and Reasonable**

21 34. Here, the Settlement is clearly within the "ballpark" of reasonableness because the
22 Settlement provides a sizeable recovery to the Settlement Class and need not necessarily obtain 100
23 percent of the damages sought to be fair, reasonable, and ultimately, meaningful. *Wershba*, 91
24 Cal.App.4th at 250. While the Maximum Settlement Amount of Two Million Dollars and Zero Cents
25 (\$2,000,000.00) represents a discount on Defendant's potential exposure if Plaintiffs established
26 liability on all claims and were awarded the full amount of the estimated damages at trial, this
27 compromise is reasonable because (1) the formidable defenses raised by Defendant presented a risk that
28 could award significantly less in damages than Plaintiffs' estimate and (2) any theoretical post-trial

1 recovery may require many more years of litigation, resulting in added fees and costs without any
2 guarantee of recovery for the Class.

3 35. As detailed at the time of preliminary approval, the Maximum Settlement Amount is fair
4 and reasonable considering the nature and magnitude of the claims being settled and the various
5 potential impediments to recovery. Class Counsel developed varied economic damages models
6 measuring Defendant's liability exposure while accounting for the uncertainties of continued litigation.
7 The various models were informed by Class Counsel's investigation, including the analysis of a
8 significant sample of time and payroll data. As detailed in greater depth during the preliminary approval
9 process, Class Counsel projected a range of Defendant's liability exposure for the claims asserted on
10 behalf of the Settlement Class. The Gross Settlement Amount represents between approximately 10.5%
11 and 18.6% of Defendant's *class-wide* liability exposure as estimated by Class Counsel at the time of
12 mediation.

13 36. Clearly the goal of this litigation to obtain redress for the class has been met by this
14 Settlement. Given the amount of the Settlement, the risks of litigation and the arm's length negotiations
15 between experienced counsel, the settlement is fair and reasonable, and is therefore entitled to final
16 approval.

17 **E. The Strength of Plaintiff's Case and Risks of Continued Litigation**

18 37. Although Class Counsel believes strongly in Plaintiffs' claims, it would be misguided to
19 ignore the asserted defenses. If successful on any one of its defenses, Defendant could defend the action
20 or, at least, drastically undercut Plaintiffs' claims.

21 38. With respect to the most immediate challenge, i.e., class certification, the risks attendant
22 to the certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart*
23 *Associates, Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit, vacated reversed and remanded
24 a \$110 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed
25 the trial court to enter judgement in favor of the employer. *See also O'Conner v. Uber Technologies,*
26 *Inc.* (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action); *see also*
27 *Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor
28 plaintiffs in a wage and hour class action)); *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th

1 1077, 1088 (“[T]he reason, if any, that employees might not take their breaks were predominantly
2 individualized questions of fact not susceptible to class treatment.”); *Ali v. U.S.A. Cab Ltd.* (2009) 176
3 Cal.App.4th 1333, 1341 (affirming denial of certification because employees’ declarations attesting to
4 having taken meal and rest breaks demonstrated that individualized inquiries were required to show
5 harm); *Campbell v. Best Buy Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following
6 *Brinker* and denying certification of proposed off-the-clock and rest and meal break classes due to lack
7 of uniform policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying
8 certification of driver meal and rest period claims based on the predominance of individual issues).
9 Collectively, the examples cited above illustrate the uncertain nature of class litigation. Consequently,
10 the uncertainty of obtaining certification through a contested motion is a significant risk factor favoring
11 settlement.

12 39. Although Plaintiffs are confident about the strength of their claims, Plaintiffs nevertheless
13 recognizes that Defendant has factual and legal defenses that, if successful, would potentially defeat or
14 impair the value of the lawsuit. Legally, the fast-changing landscape of wage and hour litigation can
15 drastically affect the value of Plaintiffs’ claims and, in fact, already has.

16 40. As demonstrated by the decisions in *Magadia, supra*, 999 F.3d 668, *O’Conner v. Uber*
17 *Technologies* (N.D. Cal. 2018) 82 F.Supp.3d 1133 and *Duran v. U.S. Bank National Assn.* (2014) 59
18 Cal.4th 1, the complexities and duration of further litigation cannot be overstated. There is little doubt
19 that if Defendant faced a large adverse judgement, Defendant undoubtedly has the resources to post a
20 bond and appeal. A post-judgment appeal by Defendant would have required many more years to
21 resolve, assuming the judgment was affirmed. If the judgment was not affirmed in total, then the case
22 could have dragged on for years after the appeal. The benefits of a guaranteed recovery today outweigh
23 an uncertain result three or more years in the future.

24 41. The Class Representatives and Class Counsel recognize the expense and length of a trial
25 against Defendant through possible appeals which could take another three years. In arriving at their
26 informed belief that the present settlement is fair and adequate, Class Counsel accounted for the
27 uncertain outcome and risk inherent in complex actions such as this one. Class Counsel is also mindful
28 of and recognize the inherent problems of proof under, and alleged defenses to, the claims asserted in

1 the litigation. Moreover, post-trial motions and appeals would have been inevitable. Costs would have
2 mounted, and recovery would have been delayed if not denied, thereby reducing the benefits of an
3 ultimate victory. Class Representatives and Class Counsel believe that the Settlement confers
4 substantial monetary and non-monetary benefits upon the Class. Based upon their evaluation, Class
5 Representatives and Class Counsel have determined that the Settlement set forth in the Agreement is in
6 the best interest of the Class, is fair, reasonable, and adequate, and should be granted final approval.

7 **IV. THE PENALTIES UNDER PAGA ARE REASONABLE**

8 42. Here, Plaintiffs and Defendant negotiated a good faith PAGA Payment in the amount of
9 \$100,000.00 which is 5% of the Gross Settlement Amount. As illustrated above, this amount falls well
10 within the range of approved PAGA Settlements. Seventy-five percent (75%) of the PAGA Payment
11 (\$3,750.00) will be paid to the LWDA ("LWDA Payment") with the remaining twenty-five percent
12 (25%) to be distributed to the Aggrieved Employees, which is within the range of PAGA Payment
13 approved by courts and should be approved.

14 43. Class Counsel gave the LWDA notice of this Settlement and proposed allocation by filing
15 a copy of the Settlement, the Motion for Preliminary Approval, and this motion seeking final approval
16 with the LWDA.

17 I declare under the penalty of perjury under the laws of the State of California that the foregoing
18 is true and correct. Executed this 3rd day of October 2023, at San Diego, California.

19 **JCL LAW FIRM, APC**

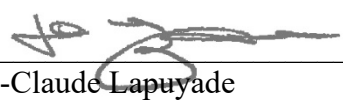
20 By: 
21 Jean-Claude Lapuyade

EXHIBIT 1

1 **JOINT STIPULATION AND AGREEMENT FOR CLASS AND REPRESENTATIVE**
2 **ACTION SETTLEMENT AND RELEASE**

3 This Joint Stipulation and Agreement for Class and Representative Action Settlement and Release is
4 made and entered into by Plaintiffs James E. Aguilar and Pamela Cazares, individually and as
5 representatives of the Settlement Class, as defined below, and T & K, L.P. (“Defendant”). This
6 Stipulation is subject to the approval of the Court and is made for the sole purpose of attempting to
7 consummate settlement and resolution of the Action, Released Class Claims, and Released PAGA
8 Claims, as defined below, subject to the following terms and conditions. As detailed below, in the
9 event the Court does not enter an order granting final approval of the Settlement, as defined below, or
10 the conditions precedent are not met for any reason, this Stipulation is void and of no force or effect
11 whatsoever.

12 **I. DEFINITIONS**

13 As used in this Stipulation, the following terms shall have the meanings specified below. To
14 the extent terms or phrases used in this Stipulation are not specifically defined below, they are defined
15 elsewhere in this Stipulation.

16 1.1 “Action” or “Litigation” mean the lawsuit pending in the Court, entitled *James E.*
17 *Aguilar, et al. v. T & K, L.P., et al.*, filed on July 23, 2021, in the Santa Clara County Superior Court,
18 and assigned Case No. 21cv384674, with the First Amended Complaint filed on March 4, 2022.

19 1.2 “Administration Expenses” shall include all costs and expenses associated with and
20 paid to the Settlement Administrator, which are anticipated not to exceed Twenty-Five Thousand
21 Dollars and Zero Cents (\$25,000.00).

22 1.3 “Aggrieved Employees” shall mean all individuals who are or previously were
23 employed by Defendant in California and classified as a non-exempt employee at any time during the
24 PAGA Period.

25 1.4 “James E. Aguilar,” “Pamela Cazares,” “Plaintiffs,” or “Class Representatives” mean
26 James E. Aguilar and Pamela Cazares, the named plaintiffs in the Action, who will represent the Class
27 subject to court approval.
28

1 1.5 “Class” or “Class Members” means all individuals who are or previously were
2 employed by Defendant in California and classified as a non-exempt employee at any time during the
3 Class Period.

4 1.6 “Class Counsel” and “Plaintiff’s Counsel” mean:

5 Shani O. Zakay, Esq.
6 Zakay Law Group, APLC
7 5440 Morehouse Drive, Suite 3600
8 San Diego, CA 92121

9 Jean-Claude Lapuyade, Esq.
10 JCL Law Firm, APC
11 5440 Morehouse Drive, Suite 3600
12 San Diego, CA 92121

13 1.7 “Class List” means information regarding Class Members that Defendant will in good
14 faith compile from its records and provide to the Settlement Administrator, including Class Members
15 names, Last Known Address, dates of employment, and social security numbers.

16 1.8 “Class Notice” means the Notice of Proposed Class Action Settlement and Hearing
17 Date for Court Approval, as set forth in the form of **Exhibit 1** attached hereto, or as otherwise
18 approved by the Court, which is to be mailed to Class Members.

19 1.9 “Class Period” means the period commencing July 23, 2017 up to and including
20 October 29, 2022.

21 1.10 “Settlement” shall mean the settlement embodied in this Stipulation, which is subject
22 to Court approval.

23 1.11 “Complaint” means the Class Action Complaint filed in the Action on July 23, 2021
24 and the First Amended Class Action Complaint filed on March 4, 2022.

25 1.12 “Counsel for Defendant” or “Defense Counsel” means Beth A. Kahn and Ryan C.
26 McKim of Clark Hill LLP.

27 1.13 “Court” means the Superior Court of the State of California, for the County of Santa
28 Clara.

 1.14 “Effective Date” shall be the date when all of the following events have occurred: (a)
this Stipulation has been executed by all Parties; (b) the Court has given preliminary approval to the
Settlement; (c) notice has been given to the Class Members providing them with an opportunity to opt

1 out of the Settlement; (d) the Court has held a Final Approval Hearing and entered the Final Approval
2 order and Judgment; and (e), the later of the following events: (i) the expiration of the period for filing
3 any appeal, writ, or other appellate proceeding challenging the Final Approval Order and Judgment
4 has elapsed without any appeal, writ or other appellate proceeding having been filed; or the dismissal
5 of any appeal, writ, or other appellate proceeding opposing the Settlement with no right to pursue
6 further remedies or relief; (ii) or any appeal, writ, or the issuance of such other final appellate order
7 upholding the Final Approval Order and Judgment with no right to pursue further remedies or relief.
8 In this regard, it is the intention of the Parties that the Settlement shall not become effective until the
9 Final Approval Order and Judgment is completely final and there is no further recourse by an
10 appellant or objector who seeks to contest the Settlement.

11 1.15 "T & K, L.P." or "Defendant" mean the defendant in the Action and employer of
12 Plaintiffs and the Class Members.

13 1.16 "Hearing on Preliminary Approval" or "Preliminary Approval Hearing" mean the
14 hearing held on the motion for preliminary approval of the Settlement.

15 1.17 "Maximum Settlement Amount" means the agreed upon non-reversionary settlement
16 amount totaling two million dollars and zero cents (\$2,000,000.00) to be paid in full settlement of the
17 Action, Released PAGA Claims, and Released Class Claims, including the Net Settlement Amount
18 (which is inclusive of 25% of the PAGA Payment and Employees' Share of the Employment and
19 Payroll Taxes), Administration Expenses, Attorneys' Fees and Expenses, Service Award, and LWDA
20 Payment, as further described in Section 6.1. Defendant's (employer's) share of payroll taxes as to the
21 Individual Settlement Amounts constituting wages shall be paid by Defendant separately from and in
22 addition to the Maximum Settlement Amount.

23 1.18 "Individual Settlement Amount" means a Class Member's total gross share of the Net
24 Settlement Amount, which shall be allocated and distributed to Class Members based on the number
25 of Workweeks credited to the Class Member, as further described in Section 6.2.

26 1.19 "Individual Settlement Payment" shall mean the payment to Class Members as
27 determined by the Individual Settlement Amount calculation described in Section 6.2.
28

1.20 “Judgment” or “Final Approval Order and Judgment” mean the order finally certifying the Class for settlement purposes and finally approving this Stipulation and Settlement and entering judgment, substantially in the form attached hereto as **Exhibit 3**, which shall constitute approval pursuant to California Rule of Court 3.769(a) and be a judgment for purposes of California Rule of Court 3.771(a).

1.21 “Last Known Address” means the most recently recorded mailing address for a Class Member that is contained in the employment, payroll, or personnel records maintained by Defendant.

1.22 “LWDA” means California’s Labor and Workforce Development Agency, and necessarily includes the Division of Labor Standards and Enforcement (DLSE) within the Department of Industrial Relations (DIR).

1.23 “NCOA Check” means within fifteen (15) calendar days from the date the Preliminary Approval Date, the Settlement Administrator will perform a National Change of Address (“NCOA”) check for Class Members’ most current address based on the information provided by Defendant, prior to mailing the Court-approved Class Notice to the Class Members.

1.24 “Net Settlement Amount” means the portion of the Maximum Settlement Amount that is available for distribution to Class Members, as further described in Section 6.1.

1.25 “Notice of Proposed Class Action Settlement” or “Class Notice” mean a notice to be approved by the Court, substantially in the form attached hereto as **Exhibit 1**, which will constitute notice to the Class pursuant to California Rule of Court 3.769(f) and, once approved by the Court, shall be deemed compliant with California Rule of Court 3.766(d).

1.26 “Notice Mailing Deadline” means the deadline for the Settlement Administrator to mail the Class Notice to Class Members, which shall be no later than thirty (30) calendar days after the Preliminary Approval Date.

1.27 “PAGA Payment” means, subject to the approval of the Court, the amount of One Hundred Thousand Dollars and Zero Cents (\$100,000.00), from the Maximum Settlement Amount, for penalties under the Private Attorneys General Act of 2004, as codified at California Labor Code § 2698, *et seq.* (“PAGA”).

1 1.28 “PAGA Period” means the period from May 19, 2020, up to and including October 29,
2 2022.

3 1.29 “Parties” or “Settling Parties” mean, collectively, Plaintiffs and Defendant
4 (individually they are each referred to as “Party” or “Settling Party”).

5 1.30 “Employment and Payroll Taxes” shall mean the employee’s and employer’s share of
6 state and federal employment and payroll taxes and withholdings with respect to the wage-portion of
7 Individual Settlement Amounts. The employees’ share of the Employment and Payroll Taxes is
8 included in the Maximum Settlement Amount that Defendant will pay (subject to the occurrence of the
9 Effective Date). The employer’s share of the Employment and Payroll Taxes is not included in the
10 Maximum Settlement Amount and will be paid by Defendant separately from and in addition to the
11 Maximum Settlement Amount.

12 1.31 “Preliminary Approval Date” shall mean the date on which the Court grants
13 preliminary approval of this Stipulation.

14 1.32 “Preliminary Approval Order” or “Order Granting Preliminary Approval of the
15 Settlement and Setting a Final Approval Hearing” shall mean an order to be executed and filed by the
16 Court, substantially in the form attached hereto as **Exhibit 2**, which will constitute an order certifying
17 a provisional class for settlement purposes only pursuant to California Rule of Court 3.769(d) and an
18 order setting a final approval/fairness hearing pursuant to California Rule of Court 3.769(e).

19 1.33 “Released Class Claims” shall mean all claims that were alleged or reasonably could
20 have been alleged in the Complaint based on the facts contained therein, arising during the Class
21 Period, including, but not limited to, California Labor Code sections 200, 201, 201.3, 201.5, 202,
22 201.3, 202, 203, 204, 205.5, 206.5, 210, 218.5, 218.6, 226, 226.2, 226.3, 226.7, 246, 510, et seq., 512,
23 515, 558, 1174, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, 2804, 2698 et seq.,
24 2699, 2699.3, 2699.5, and any federal counterparts, Code of Civil Procedure sections 382, 395, 395.5,
25 410.10, 474, and any federal counterparts, California Business and Professions Code section 17200, et
26 seq., 17203, any IWC Wage Orders, any claims involving any alleged unfair competition in violation
27 of Cal. Bus. & Prof. Code § 17200, et seq., failure to pay minimum wages in violation of Cal. Labor
28 Code §§ 1194, 1197 & 1197.1, failure to pay overtime wages in violation of Cal. Lab. Code §§ 510, et

1 seq., failure to provide required meal periods in violation of Cal. Lab Code §§ 226.7 & 512 and the
2 applicable IWC Wage Order, failure to provide required rest periods in violation of Cal. Lab. Code §§
3 226.7 & 512 and the applicable IWC Wage Order, failure to provide accurate itemized statements in
4 violation of Cal. Lab. Code §§ 226, 226.2, failure to provide wages when due in violation of Cal. Lab.
5 Code §§ 201, 202, and 203, failure to timely pay wages in violation of Cal. Lab. Code § 204, failure to
6 reimburse employees for required expenses in violation of Cal. Lab. Code § 2802, and unpaid wages
7 due to alleged off the clock work.

8 1.34 “Released PAGA Claims” shall mean all claims for PAGA penalties that were alleged,
9 or reasonably could have been alleged, based on the facts stated in the complaint, first amended
10 complaint, and PAGA notice provided to the LWDA pursuant to Labor Code section 2699.3, subd. (a),
11 including but not limited to, claims involving Labor Code sections 200 , 201, 201.3, 201.5, 202, 201.3,
12 202, 203, 204, 205.5, 206.5, 210, 218.5, 218.6, 226, 226.2, 226.3, 226.7, 246, 510, et seq., 512, 515,
13 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, 2804, 2698 et seq., 2699,
14 2699.3, 2699.5, the applicable IWC Wage Order, any alleged failure to pay minimum wages in
15 violation of Cal. Labor Code §§ 1194, 1197 & 1197.1, failure to pay overtime wages in violation of
16 Cal. Lab. Code §§ 510, et seq., failure to provide required meal periods in violation of Cal. Lab Code
17 §§ 226.7 & 512 and the applicable IWC Wage Order, failure to provide required rest periods in
18 violation of Cal. Lab. Code §§ 226.7 & 512 and the applicable IWC Wage Order, failure to provide
19 accurate itemized statements in violation of Cal. Lab. Code §§ 226, 226.2, failure to provide wages
20 when due in violation of Cal. Lab. Code §§ 201, 202, and 203, failure to timely pay wages in violation
21 of Cal. Lab. Code § 204, failure to reimburse employees for required expenses in violation of Cal.
22 Lab. Code § 2802, and unpaid wages due to alleged off the clock work, that occurred during the
23 PAGA Period.

24 1.35 “Released Parties” shall mean Defendant, Taco Bell Corp., Yum! Brands, Inc. and all
25 of their respective current and former partners, parents, subsidiaries, predecessors, successors, joint
26 employers, and their affiliated entities, and each of their respective owners, officers, directors,
27 managing agents, exempt-employees, partners, shareholders, agents, and any other successors, heirs,
28 assigns, or legal representatives, any attorneys, insurers, and claims representatives.

1 1.36 “Request for Exclusion” means a request in writing to be excluded from the Settlement
2 which contains: the full name, address, telephone number, last four digits of social security number,
3 and signature of the Class Member; the case name and number of the Action; and a statement
4 indicating that he or she wishes to be excluded from the Settlement.

5 1.37 “Response Deadline” means the deadline for a Class Member to submit a Request for
6 Exclusion, Objection, and/or Workweeks Dispute, by mail to the Settlement Administrator, which is
7 no later than forty-five (45) calendar days after the Class Notice is mailed to the Class.

8 1.38 “Service Award” means any additional monetary payment provided to the Class
9 Representatives, not to exceed Ten Thousand Dollars and Zero Cents (\$10,000.00) each, subject to
10 Court approval.

11 1.39 “Settlement Hearing” or “Final Approval Hearing” or “Settlement Fairness Hearing”
12 mean a hearing set by the Court for the purpose of: (i) determining the fairness, adequacy, and
13 reasonableness of the Stipulation and associated settlement pursuant to class action procedures and
14 requirements; (ii) determining the good faith of the Stipulation and associated settlement; and (iii)
15 entering the Final Approval Order and Judgment. This hearing is intended to be the settlement hearing
16 or final approval hearing required under California Rule of Court 3.769(a).

17 1.40 “Settlement Administrator” means ILYM GROUP, Inc., which the Parties have agreed
18 will be responsible for administration of the Settlement and related matters, subject to approval and
19 appointment by the Court.

20 1.41 “Settlement Class” or “Settlement Class Member(s)” or “Members of the Settlement
21 Class” means any, or collectively all Class Members who do not submit timely and valid Requests for
22 Exclusion to opt out of the settlement pursuant to Section 5.6 and, thus, become bound by the
23 Judgment.

24 1.42 “Settlement” shall mean the settlement embodied in this Stipulation, which is subject to
25 Court approval.

26 1.43 “Stipulation” means the Joint Stipulation and Agreement for Class and Representative
27 Action Settlement and Release and all of its attachments and exhibits, which the Settling Parties
28

1 understand and agree sets forth all material terms and conditions of the Settlement between them, and
2 which is subject to Court approval.

3 1.44 “Updated Address” means a mailing address that was located by way of NCOA Check
4 or Experian Skip Tracing or an updated mailing address provided by the United States Postal Service
5 or a Class Member.

6 **II. FACTUAL & PROCEDURAL BACKGROUND OF ACTION**

7 2.1 Plaintiffs’ Claims: On July 23, 2021, Plaintiff James E. Aguilar, a former employee of
8 Defendant, filed this Action against Defendant alleging that Defendant has, with respect to Plaintiff
9 and the Class Members, allegedly engaged in unfair competition in violation of Cal. Bus. & Prof.
10 Code § 17200, et seq., failed to pay minimum wages in violation of Cal. Labor Code §§ 1194, 1197 &
11 1197.1, failed to pay overtime wages in violation of Cal. Lab. Code §§ 510, et seq., failed to provide
12 required meal periods in violation of Cal. Lab Code §§ 226.7 & 512 and the applicable IWC Wage
13 Order, failed to provide required rest periods in violation of Cal. Lab. Code §§ 226.7 & 512 and the
14 applicable IWC Wage Order, failed to provide accurate itemized statements in violation of Cal. Lab.
15 Code §§ 226, 226.2, failed to provide wages when due in violation of Cal. Lab. Code §§ 201, 202, and
16 203, failed to timely pay wages in violation of Cal. Lab. Code § 204, and failed to reimburse
17 employees for required expenses in violation of Cal. Lab. Code § 2802. The Complaint also alleged
18 Defendant was liable under PAGA.

19 2.2 Amended Complaint: On March 4, 2022, the First Amended Class Action Complaint
20 was filed to add Plaintiff Pamela Cazares as an additional plaintiff and class representative.

21 2.3 Discovery, Investigation, & Research: Class Counsel has conducted a thorough
22 investigation into the facts of the Action, including extensive informal discovery and exchange of a
23 volume of documents and information, which included and was not limited to, Defendant’s production
24 of a sampling of information/data for the putative class members to allow Plaintiffs and Class Counsel
25 to perform an analysis and valuation of all claims. Prior to mediation the Parties exchanged
26 information and documents to investigate the veracity, strength, and scope of the claims, and to allow
27 analysis and evaluation of the claims and Defendant’s defenses thereto. The Class Representatives
28 have vigorously prosecuted this case, and Defendant has vigorously contested it.

1 2.4 Mediation: On August 29, 2022, the Settling Parties participated in a full-day mediation
2 before experienced employment mediator, the Honorable Carl West (ret.). At mediation, the Parties
3 exchanged information and documents, and engaged in intensive discussions regarding their
4 evaluations of the Litigation and various aspects of the Litigation, including the risks and delays of
5 further litigation, the risks to the Settling Parties of proceeding with class certification, the law relating
6 to the allegations, the evidence produced and analyzed, and the possibility of appeals, among other
7 things. With the assistance of the mediator's evaluation, the Parties reached a settlement of the Action.
8 Based on the information, data, and documents exchanged, and their own independent investigation
9 and evaluation, Class Counsel is of the opinion that the settlement with Defendant for the
10 consideration and on the terms set forth in this Stipulation is fair, reasonable, and adequate and is in
11 the best interest of the Class Members in light of all known facts and circumstances. Further, the Class
12 Representatives have carefully evaluated the terms of the Settlement, and, based upon that review,
13 have determined that it is fair, reasonable, and adequate.

14 2.5 Allegations of the Class Representative and Benefits of Settlement:

15 (a) Based on the exchange of information and documents, the mediation session,
16 and discussions between counsel, Class Representatives and Class Counsel have assessed the Parties'
17 positions and evaluated the value of the claims of the Class. The information and documents
18 exchanged by the Parties and settlement discussions are sufficient to reliably assess the merits of the
19 Parties' respective positions and to compromise the issues on a fair and equitable basis.

20 (b) Plaintiffs and Class Counsel believe that the claims, causes of action,
21 allegations and contentions asserted in the Action have merit. However, Plaintiffs and Class Counsel
22 recognize and acknowledge the expense and delay of continued lengthy proceedings necessary to
23 prosecute the Action against Defendant through trial and through appeals. Class Counsel has taken
24 into account the uncertain outcome of the litigation, the risk of continued litigation in complex actions
25 such as this, as well as the difficulties and delays inherent in such litigation, and the potential difficulty
26 of obtaining certification of the Action as well as trying the claims of the Class Members. Class
27 Counsel is mindful of the potential problems of proof under, and possible defenses to, the claims
28 alleged in the Action. Class Counsel has also taken into account Defendant's potential defenses to

1 Plaintiffs' allegations. Class Counsel believes that the Settlement set forth in this Stipulation confers
2 substantial benefits upon Plaintiffs and the Settlement Class Members and that an independent review
3 of this Stipulation by the Court in the approval process will confirm this conclusion. Based on their
4 own independent investigation and evaluation, Class Counsel has determined that the Settlement set
5 forth in the Stipulation is in the best interests of Plaintiffs and the Class Members.

6 2.6 No Admissions or Concessions Regarding Fault or Liability:

7 (a) Whether or not the Settlement is finally approved, this Stipulation and
8 compliance with this Stipulation shall not be construed as an admission, concession, or indication by
9 either Party with respect to fault or liability whatsoever for the claims asserted in the Action, or as an
10 admission by either Party that the Action is either appropriate or inappropriate for class certification or
11 representative adjudication. The Parties are agreeing that the Action is appropriate for class
12 certification and representative adjudication only for the purposes of settlement as described within
13 this Stipulation.

14 (b) Pursuant to California Evidence Code §§ 1152, 1154, and any other analogous
15 rules of evidence that are applicable, neither the Stipulation, nor any act performed or document
16 executed pursuant to, or in furtherance of, the Stipulation: (a) is or may be deemed to be or may be
17 used as an admission or evidence of, the validity of any Released Class Claims and/or Released PAGA
18 Claims, or of any wrongdoing or liability of the Released Parties, or any of them; or (b) is or may be
19 deemed to be or may be used as an admission or evidence of any fault or omission of the Released
20 Parties, or any of them, in any civil, criminal or administrative proceeding in any court, administrative
21 agency, or other tribunal. Plaintiffs and Class Counsel agree not to argue or present any argument, and
22 hereby waive any argument, that Defendant could not contest (or is estopped from contesting)
23 collective or representative action treatment pursuant to California Labor Code §§ 2698, *et seq.*, and/
24 or class action treatment pursuant to California Code of Civil Procedure § 382, or any corresponding
25 state law or rule, on any grounds if the Court fails to enter Judgment. This Stipulation shall not be
26 deemed an admission by Defendant that collective or representative action pursuant to California
27 Labor Code § 2698, *et seq.* and/or class action treatment pursuant to California Code of Civil
28 Procedure § 382, or any corresponding law or rule in the Action is proper or cannot be contested on

1 any grounds, nor shall the Stipulation be grounds for estoppel against Defendant's right to contest
2 class, representative or collective action treatment for any purpose other than this Stipulation.

3 2.7 Defendant's Denial of Wrongdoing or Liability:

4 (a) Defendant denies and continues to deny each and all of the allegations, claims,
5 and contentions alleged by Plaintiffs in the Action. Defendant has expressly denied and continues to
6 deny all charges of wrongdoing or liability against it arising out of any of the conduct, statements, acts
7 or omissions alleged in the Action. Defendant contends that it complied in good faith with California
8 and federal wage and hour laws and has dealt legally and fairly with Plaintiffs and Settlement Class
9 Members. Defendant contends that it appropriately paid its employees at all times, that it always
10 provided employees with the opportunity to take timely and compliant meal and rest breaks, that it
11 was compliant with all applicable wage-and-hour laws, and all other laws, at all times, and that, if this
12 matter were to be further litigated, it would have strong defenses on the merits and as to class
13 certification. In evaluating its position at mediation, Defendant agreed to the Maximum Settlement
14 Amount with the express understanding that Defendant's share of Employment and Payroll Taxes will
15 be paid separately from and in addition to the Maximum Settlement Amount.

16 (b) Further, Defendant denies that, for any purpose other than settling this Action,
17 these claims are appropriate for class or representative treatment. Nonetheless, Defendant has
18 concluded that further proceedings in the Action would be protracted and expensive and agrees to the
19 Action being fully and finally settled in the manner and upon the terms and conditions set forth in this
20 Stipulation in order to dispose of burdensome and protracted litigation, to permit the operation of
21 Defendant's business without further expensive litigation and the distraction and diversion of its
22 personnel with respect to matters at issue in the Action. In entering into this Stipulation, Defendant has
23 also taken into account the uncertainty and risks inherent in any litigation, especially in complex cases
24 such as the Action.

25 (c) Defendant does not waive, but rather expressly reserves, all rights to challenge
26 all such claims and allegations in the Action upon all procedural and factual grounds, including
27 without limitation the ability to challenge class treatment or representative adjudication on any
28 grounds or to assert any and all defenses or privileges if this Stipulation is deemed void or does not

1 take effect.

2 2.8 Intent of the Settlement: The Settlement set forth herein intends to achieve the
3 following: (1) entry of an order approving the Settlement; (2) entry of Judgment of the Action; (3)
4 discharge of Released Parties from liability for any and all of the Released Class Claims and Released
5 PAGA Claims; and (4) release by the Class Representatives pursuant to section 9.2.

6 **III. CONDITIONAL CLASS CERTIFICATION & APPOINTMENT OF CLASS COUNSEL**

7 3.1 The Settlement Class. For the purposes of this Stipulation and the Settlement of the
8 Action only, the Parties stipulate to conditional class certification of the Settlement Class.

9 3.2 Appointment of Class Counsel and Class Representatives. For purposes of this
10 Stipulation and subject to the Court's approval, the Parties hereby stipulate to the appointment of Class
11 Counsel as counsel for the Class, and Plaintiffs as Class Representatives of the Class, solely in order to
12 effectuate the Settlement pursuant to this Stipulation.

13 **IV. CLASS SETTLEMENT CONSIDERATION**

14 4.1 The Class Representatives Service Award. Class Counsel will request, and Defendant
15 will not oppose, a Service Award to Plaintiffs from the Maximum Settlement Amount in the amount
16 of \$10,000 to each Class Representative (\$20,000 total). This Service Award shall be in addition to
17 whatever payments the Class Representatives are otherwise entitled to as Class Members. The Class
18 Representatives will be issued an IRS Form 1099 and its state and local equivalents for any Service
19 Award received under the Stipulation. Should the Class Representatives Payment not be approved or
20 reduced by the Court, any amount not approved and/or reduced by the Court will be returned to the
21 Net Settlement Amount pursuant to the remaining terms herein.

22 4.2 Payment to Settlement Class Members. Each Settlement Class Member shall be eligible
23 to receive payment of the Individual Settlement Amount, which is a share of the Net Settlement
24 Amount based on the pro rata number of Workweeks allocated to a Settlement Class Member as a
25 proportion of all Workweeks allocated to all Settlement Class Members. The Individual Settlement
26 Amount for each Settlement Class Member shall be calculated in accordance with Section 6.2. Each
27 Settlement Class Member, including Plaintiffs, shall be responsible for the payment of each of their
28 portion of applicable taxes, if any, and required withholding with respect to his or her Individual

1 Settlement Amount and shall hold Defendant harmless from any and all liability with regard thereto.

2 4.3 No Effect on Employee Benefit Plans. Neither the Settlement nor any amounts paid
3 under the Settlement will modify any previously credited hours, days, or weeks of service under any
4 employee benefit plan, policy or program sponsored by Defendant. Such amounts will not form the
5 basis for additional contributions to, benefits under, or any other monetary entitlement under
6 Defendant's sponsored benefit plans, policies or programs. The payments made under the terms of this
7 Stipulation shall not be applied retroactively, currently, or on a going forward basis, as salary,
8 earnings, wages, or any other form of compensation for the purposes of any of Defendant's benefit
9 plan, policy or programs. Defendant retains the right to modify the language of its benefits plans,
10 policies and programs to effect this intent and to make clear that any amounts paid pursuant to this
11 Stipulation are not for "weeks worked," "weeks paid," "weeks of service," or any similar measuring
12 term as defined by applicable plans, policies and programs for purpose of eligibility, vesting, benefit
13 accrual, or any other purpose, and that additional contributions or benefits are not required by this
14 Stipulation. Defendant does not consider the payments provided for under this Settlement as payments
15 of "compensation" for purposes of determining eligibility for, or benefit accrual within, any benefit
16 plans, policies, or programs, or any other plan sponsored by Defendant.

17 4.4 Attorneys' Fees and Expenses to Class Counsel. As part of the motion for final
18 approval of the Settlement, Class Counsel may submit an application for an award of attorneys' fees in
19 an amount not to exceed one third of the Maximum Settlement Amount (i.e., \$666,666.66) and
20 reimbursement of litigation costs and expenses of up to Twenty-Five Thousand Dollars and Zero
21 Cents (\$25,000.00) (together, "Attorneys' Fees and Expenses"). Defendant agrees not to object to any
22 such fee, cost or expense application in those amounts, or lesser amounts. As a condition of this
23 Settlement, Class Counsel has agreed to pursue fees only in the manner reflected by this Section. Any
24 Attorneys' Fees and Expenses awarded by the Court shall be paid from the Maximum Settlement
25 Amount in arriving at the Net Settlement Amount and shall not constitute payment to any Settlement
26 Class Members. If the Court's award of Attorneys' Fees and Expenses is less than set forth above, the
27 Net Settlement Amount shall be recalculated to reflect the actual Attorneys' Fees and Expenses
28 awarded.

1 The Attorneys' Fees and Expenses approved by the Court shall encompass: (a) all work
2 performed and costs and expenses incurred by, or at the direction of, any attorney purporting to
3 represent the Settlement Class through the date of this Stipulation; (b) all work to be performed and
4 costs to be incurred in connection with approval by the Court of the Settlement; and (c) all work to be
5 performed and costs and expenses, if any, incurred in connection with administering the Class
6 Settlement through entry of Judgment.

7 4.5 Settlement Administrator's Costs and Expenses. All costs and expenses due the
8 Settlement Administrator in connection with its administration of the Class Settlement, including, but
9 not limited to, providing the Class Notice, locating Settlement Class Members, processing Requests
10 for Exclusion and Objections, and calculating, administering and distributing Individual Settlement
11 Payments to Settlement Class Members and related tax forms, shall be paid from the Maximum
12 Settlement Amount, and shall not exceed \$25,000.00.

13 4.6 PAGA Payment. Each Aggrieved Employee shall be entitled to receive a portion of the
14 PAGA Payment. The PAGA Payment shall consist of the penalties pursuant to PAGA that the Parties
15 have agreed is a reasonable sum to be paid in settlement of the PAGA claims included in the Action
16 and in Plaintiffs' PAGA notice to the LWDA. The Parties agree that One Hundred Thousand Dollars
17 and Zero Cents (\$100,000.00) of the Maximum Settlement Amount is allocated to the payment
18 required for settlement of the claims under PAGA (the "PAGA Payment"), of which seventy-five
19 percent (75%), or Seventy-Five Thousand Dollars and Zero Cents (\$75,000.00), shall be paid to the
20 LWDA (the "LWDA Payment"), and twenty-five percent (25%), or Twenty-Five thousand Dollars
21 and Zero Cents (\$25,000.00), shall be paid to the Aggrieved Employees on a pro rata basis. The
22 portion of the PAGA Payment allocated to the Aggrieved Employees shall be distributed to the
23 Aggrieved Employees based on the pro rata number of pay periods worked by each particular
24 Aggrieved Employee during the PAGA Period as a proportion of all pay periods worked by all
25 Aggrieved Employees during the PAGA Period.

26 A request to opt out of the class settlement shall not serve to exclude an Aggrieved Employee
27 from participation in the PAGA settlement. Each of the Class Members, who is also an Aggrieved
28 Employee, that opts-out, if any, shall still be entitled to their share of the PAGA Payment. Class

Members who are also Aggrieved Employees shall have no right or ability to opt out of the portion of the settlement agreement releasing the Released PAGA Claims.

With respect to the PAGA Payment and any payments made to individual Aggrieved Employees, all such payments shall be treated as payments owing for penalties and interest thereon and shall not be considered wages. The settlement administrator shall issue to Aggrieved Employees an IRS Form 1099 reflecting such payment. Aggrieved Employees shall be solely responsible for the payment of all taxes with respect to any PAGA payments made to them.

Class Counsel shall comply with Labor Code section 2699(l).

V. NOTICE TO CLASS MEMBERS AND CLAIMS ADMINISTRATION PROCESS

5.1 The Settlement Administrator. The Settlement Administrator will be responsible for mailing the Class Notice (**Exhibit 1**) to Class Members, providing the necessary translation for the Class Notice (Spanish), handling inquiries from Class Members concerning the Class Notice, determination of Individual Settlement Amounts, maintaining the settlement funds in an appropriate account, preparing, administering and distributing Individual Settlement Payments to Settlement Class Members, issuing a final report and performing such other duties as the Parties may direct. On a weekly basis, the Settlement Administrator will provide reports to Class Counsel and Defense Counsel summary information updating them as to the number of valid and timely Requests for Exclusion and complete and timely objections received. The Settlement Administrator will serve on Class Counsel and Defense Counsel via e-mail date-stamped copies of the original Requests for Exclusion and objections no later than five (5) calendar days after their receipt. The Settlement Administrator will provide Class Counsel with proof of mailing of the Class Notice, without listing individual Class Member names or contact information, which the Settlement Administrator will file with the Court at the time Class Counsel files its motion for final approval of the Settlement. No later than fourteen (14) calendar days prior to the Final Approval Hearing, the Settlement Administrator will compile and deliver to Class Counsel and Defense Counsel a report and a declaration with summary information regarding (a) the total amount of final Individual Settlement Amounts of each Settlement Class Member (b) the number of Settlement Class Members to receive such payments, and (c) the final number of timely and valid opt outs and timely and valid objections, without listing Class Member

1 names or contact information. Administration Expenses are not anticipated to exceed \$25,000.00.
2 Prior to the calculation and distribution of the Individual Settlement Payments, the Settlement
3 Administrator shall calculate the total Administration Expenses through the conclusion of their
4 services and such actual amount will be deducted from the Maximum Settlement Amount prior to the
5 final calculation of the Individual Settlement Amounts. Under no circumstances will Settlement
6 Administrator disclose Class Member names and/or contact information to Class Counsel or the Court
7 without prior written authorization from Defendant or subject to legal process, except that the
8 Settlement Administrator shall disclose the names of Class Members who validly Opted Out of the
9 Settlement, for purposes of inserting such Class Members into the Final Approval Order to insure their
10 exclusion.

11 5.2 Notice to Class Members.

12 (a) If, by entering the Preliminary Approval Order, the Court provides authorization
13 to send the Class Notices, the Settlement Administrator will undertake the mailing of the Class Notice
14 to all Class Members, no later than forty-five (45) calendar days after the Preliminary Approval Date.
15 The Class Notices shall be mailed via first class mail through the United States Postal Service, postage
16 pre-paid. The envelope containing the Class Notice shall bear the following phrase in bold type, ¼
17 inch below the return address or ¼ inch above the addressee's address: RETURN SERVICE
18 REQUESTED. The envelope shall also bear the following phrase in the bottom left-hand corner:
19 IMPORTANT – T & K, L.P. CLASS ACTION SETTLEMENT INFORMATION. PLEASE OPEN
20 IMMEDIATELY. The mailing enclosing the Class Notice will not contain any other materials. The
21 Class Notice and its envelope or covering shall be marked to denote the return address of the
22 Settlement Administrator.

23 (b) Defendant shall prepare a list, in an electronically usable format, for the
24 Settlement Administrator containing for each Class Member, to the extent Defendant has such
25 information, the following: the first, last, and middle name; Last Known Address; social security
26 numbers; Workweeks; and any other information required to effectuate the Settlement ("Class List").
27 By approving this Settlement, the Court will be deemed to have authorized Defendant to provide the
28 Settlement Administrator with this information, including the social security numbers of the Class

1 Members. Defendant shall provide this list to the Settlement Administrator within ten (10) calendar
2 days of the Preliminary Approval Date. The Class List, and any other data provided by Defendant to
3 the Settlement Administrator shall be treated as confidential and not subject to disclosure by the
4 Settlement Administrator, except as necessary to address disputes regarding Workweeks, to respond to
5 a specific inquiry from a Class Member, and/or as otherwise necessary for the Settlement
6 Administrator to perform their obligations described in this Stipulation. Further, the Settlement
7 Administrator shall use commercially reasonable efforts to secure the data provided by Defendant at
8 all times so as to avoid inadvertent or unauthorized disclosure or use of such data other than as
9 permitted by this Stipulation and shall destroy the data (and all copies of it) in a complete and secure
10 manner when such data is no longer required for purposes of this Stipulation. At no time during the
11 settlement process will any Class Member's address, telephone number or social security number be
12 filed with the Court. The Settlement Administrator shall ensure that the notices and any other
13 communications to Class Members shall not include the Class Members' social security number,
14 except for the last four digits.

15 (c) Prior to mailing the Class Notice, the Settlement Administrator shall undertake
16 a NCOA check to ascertain the accuracy of the Last Known Address of the Class Members. To the
17 extent this process yields an Updated Address, the Updated Address shall replace the Last Known
18 Address and be treated as the new Last Known Address for purposes of this Stipulation, for Class
19 Notice mailing, and mailing of settlement checks.

20 (d) If a Class Member is known to be deceased, the Class Notice for that deceased
21 Class Member shall be mailed to the Last Known Address (or Updated Address, if applicable) of the
22 legal representative of the deceased Class Member's estate, to the extent known.

23 (e) Unless the Settlement Administrator receives a Class Notice returned from the
24 United States Postal Service for reasons discussed below in this paragraph, that Class Notice shall be
25 deemed mailed and received by the Class Member to whom it was sent five (5) calendar days after
26 mailing. In the event that subsequent to the first mailing of a Class Notice and prior to the Response
27 Deadline, that Class Notice is returned to the Settlement Administrator by the United States Postal
28 Service as undeliverable, without a forwarding address, the Settlement Administrator shall undertake

1 an Experian Skip Tracing with respect to the Class Member to attempt to ascertain the current address
2 of the particular Class Member in question and, if such an address is ascertained, the Settlement
3 Administrator will re-send the Class Notice to the newly-found address within three (3) business days
4 of receipt of the returned Class Notice. In the event that subsequent to the first mailing of a Class
5 Notice and prior to the Response Deadline that Class Notice is returned to the Settlement
6 Administrator by the United States Postal Service with a forwarding address for the recipient, the
7 Settlement Administrator shall re-mail the notice to that address within three (3) business days of
8 receipt of the returned Class Notice, and the forwarding address shall be deemed the Updated Address
9 for that Class Member. In either event, the Class Notice shall be deemed received once it is mailed for
10 the second time. In the event that subsequent to the first mailing of a Class Notice it is returned to the
11 Settlement Administrator by the United States Postal Service as undeliverable, after the Response
12 Deadline, the Settlement Administrator shall be required to take no further action with respect to that
13 Class Notice and it shall be deemed to have been delivered. In the event the Settlement Administrator
14 must re-mail any Class Notice pursuant to the provisions of this Paragraph due to being returned, the
15 Response Deadline shall be extended by ten (10) calendar days from the date of the re-mailing of the
16 Class Notice, for those mailings. The Settlement Administrator shall include a cover letter with any
17 re-mailing informing the Class Member of the re-mailing of the Class Notice and extended Response
18 Deadline. Compliance with the procedures described in this paragraph shall constitute due and
19 sufficient notice to Class Members of the Settlement and of the Final Approval Hearing, and shall
20 satisfy the requirements of due process. Nothing else shall be required of or done by the Parties, Class
21 Counsel, counsel for Defendant, or the Settlement Administrator to provide notice of the Settlement
22 and the Final Approval Hearing.

23 5.3 Declaration of Compliance. No later than twenty (20) calendar days after the Response
24 Deadline (or any applicable extended Response Deadline), the Settlement Administrator shall provide
25 Class Counsel and counsel for Defendant with a declaration attesting to completion of the notice
26 process, including any attempts to obtain Updated Addresses for, and the re-sending of, any returned
27 Class Notices, including any and all other required steps (“Declaration of Compliance”), which shall
28 be filed with the Court by Class Counsel.

1 5.4 Responses to the Notice of Proposed Class Action Settlement. Pursuant to California
2 Rule of Court 3.766(d)(5), Class Members have the option to enter an appearance in this Litigation at
3 their own expense, on their own, or by obtaining their own attorney(s). Class Members who choose
4 this option will be responsible for any attorneys' fees or costs incurred as a result of this election. The
5 Class Notice will advise Class Members of this option.

6 5.5 Objections to Settlement. Class Members who do not submit timely and valid Requests
7 for Exclusion may object to the Settlement by filing written objections ("Objection(s)") with the Court
8 and serving a copy on the Parties by submitting the copy to the Settlement Administrator no later than
9 the Response Deadline. The Objection must: contain the Class Member's full name, dates of
10 employment as an employee of Defendant, address, last four digits of the Settlement Class Member's
11 Social Security number, and signature; contain the case name and number of the Action; set forth the
12 basis for the objection; if the Settlement Class Member intends to appear at the Final Approval
13 Hearing; and identify any counsel representing the Settlement Class Member in connection with the
14 Objection. A Class Member who objects to the Settlement will still be considered a Settlement Class
15 Member. The Settlement Administrator shall provide a copy of any Objections that it receives to
16 Class Counsel and counsel for Defendant. A Class Member who fails to timely file and serve an
17 Objection may still lodge any objection to the Settlement by appearing in person at the Final Approval
18 Hearing, unless otherwise ordered by the Court.

19 5.6 Opting Out of Settlement. Class Members may elect to opt out of the Settlement and,
20 thus, exclude themselves from the Settlement Class. Class Members who wish to exercise this option
21 must mail to the Settlement Administrator a written Request for Exclusion that is postmarked on or
22 before the Response Deadline. If a timely and valid Request for Exclusion is not received by the
23 Settlement Administrator from a Class Member on or before the Response Deadline, then that Class
24 Member will be deemed to have forever waived his or her right to seek exclusion from the Settlement
25 and Settlement Class and shall be bound by the Settlement and Judgment. The Class Notice will
26 advise Class Members of the option to opt out of the Settlement and will contain instructions on how
27 to do so. Class Members who do validly request exclusion from the Settlement by submitting a valid
28 and timely Request for Exclusion shall not be bound by the terms of the Settlement, shall not be

1 allowed to object to the Settlement, and shall not be entitled to any benefits as a result of the
2 Settlement.

3 In the event that any Class Member timely submits a Request for Exclusion, but it is deficient,
4 as soon as possible but not later than five (5) business days after the Settlement Administrator's receipt
5 of such deficient Request for Exclusion, the Settlement Administrator shall send by first class, postage
6 pre-paid, United States mail a notice to such Class Member informing him or her of the deficiency and
7 that he or she has ten (10) calendar days from the date of the deficiency notice (which shall be the date
8 the deficiency notice is mailed) to cure the deficiency and postmark and mail a corrected Request for
9 Exclusion.

10 The Parties agree that the Response Deadline shall not be extended, and no untimely
11 submissions will be honored, under any circumstances, unless mutually agreed to by the Parties.

12 5.7 Right to Monitor and Review. All counsel have the right to monitor and review
13 administration of the Settlement to verify that the monies allocated to the Class Members are
14 distributed in the correct amount and to the proper Class Members, as well as ensure that the proper
15 mailing and administration is taking place (or took place).

16 **VI. CLASS SETTLEMENT FUNDING AND DISTRIBUTION**

17 6.1 Allocation of the Maximum Settlement Amount. The Maximum Settlement Amount,
18 that is, total sum of Two Million Dollars and Zero Cents (\$2,000,000.00) that Defendant shall pay
19 under the terms of the Settlement (subject to the occurrence of the Effective Date), is inclusive of and
20 allocated as follows:

21 (a) Attorneys' Fees and Expenses, not to exceed \$666,666.66 in fees and not to
22 exceed \$25,000.00 in litigation costs and expenses, to Class Counsel;

23 (b) Administration Expenses, not to exceed \$25,000.00, to the Settlement
24 Administrator;

25 (c) Service Award to the Class Representatives, not to exceed \$10,000.00 each;

26 (d) The amount of 75% of the PAGA Payment, in the amount of \$75,000.00, to the
27 State of California for the benefit of the LWDA ("LWDA Payment");
28

1 (e) The amount of 25% of the PAGA Payment, in the amount of \$25,000.00, to the
2 Aggrieved Employees; and

3 (f) Net Settlement Amount.

4 The “Net Settlement Sum” or “Net Settlement Amount” means the net amount that Defendant
5 will pay (subject to the occurrence of the Effective Date) to all Settlement Class Members and is
6 calculated by subtracting Section 6.1(a)-(e) from the Maximum Settlement Amount.

7 The Maximum Settlement Amount may increase subject to Section 7.3 [escalator clause].

8 6.2 Calculation of the Individual Settlement Amounts. Individual Settlement Amounts to
9 be paid to Settlement Class Members shall be paid from the Net Settlement Amount. For purposes of
10 calculating the *estimated* Individual Settlement Amounts, the Settlement Administrator shall calculate
11 the estimated Net Settlement Amount based on the estimated values in Section 6.1(a)-(e) prior to
12 sending Class Notice to the Class Members. Prior to final distribution, the Settlement Administrator
13 shall calculate the *final* Net Settlement Amount based on the actual values in Section 6.1(a)-(e).

14 The portion of the Net Settlement Amount payable to each Settlement Class Member will be
15 calculated as follows:

16 The “Workweeks” are calculated as the combined total of workweeks
17 worked by each employee during the Class Period. The Settlement
18 Administrator shall divide the Net Settlement Amount by the total
19 number of Workweeks worked by each Class Member during the Class
20 Period, this will be calculated by dividing the workweeks worked by
21 each Class Member by the total amount of Workweeks of all Class
22 Members, in order to determine the amount each Settlement Class
23 Member is entitled to for each Workweek (the “Payment Ratio”). The
24 Settlement Administrator will multiply the Payment Ratio by the total
25 number of Workweeks that each Settlement Class Member is credited
26 with to arrive at his or her Individual Settlement Amount. Settlement
27 Class Member will be issued payment of their Individual Settlement
28 Amount subject to reduction for Employment and Payroll Taxes, and the

net payment is referred to as an “Individual Settlement Payment.”

Defendant will provide the Settlement Administrator with any information that is in the Defendant’s possession reasonably necessary to perform the calculation of Workweeks for each Settlement Class Member, and any other reasonably required information the Settlement Administrator requests to perform the calculations required under this Stipulation.

Settlement Class Members will have one hundred and eighty (180) calendar days to negotiate their respective settlement payments under this Agreement. Any checks not negotiated within the one hundred and eighty (180) calendar days will be subject to the handling in conformity with Section 6.5.

6.3 Composition of Payments to Settlement Class Members. Each Individual Settlement Amount will be allocated as follows: 10% shall be reported as wages on IRS Form W-2 and its state and local equivalents, and 90% shall be reported as interest and penalties on IRS Form 1099 and its state and local equivalents. The wage portion shall be subject to Employment and Payroll Taxes. The non-wage portion will not be subject to any Employment and Payroll Taxes.

Other than the withholding of Employment and Payroll Taxes with respect to the wage portion of Individual Settlement Amounts, the Class Representative and the Settlement Class Members are solely responsible for the reporting and payment of the employee’s share of any federal, state, and/or local income or other tax or any other withholdings due with respect to any other funds received as a part of the Settlement, if any. The Class Representatives agree to defend, indemnify and hold Defendant harmless for and against any damage or tax penalty Defendant incurs as a result of the failure by the Class Representatives to pay all taxes due by their receipt of payments pursuant to this Stipulation. Class Counsel agrees to defend, indemnify and hold Defendant harmless for and against any damage or tax penalty Defendant incurs as a result of the failure by Class Counsel to pay all taxes due as a result of Class Counsel’s receipt of payments pursuant to this Stipulation. Defendant shall have no responsibility for deciding the validity of the Individual Settlement Amounts or any other payments made pursuant to this Stipulation, shall have no involvement in or responsibility for the determination or payment of the Settlement Class Member's taxes and required withholdings, and shall have no liability for any errors made with respect to such taxes and required withholdings. Although the Settlement Administrator will calculate and pay the standard applicable taxes and required

1 withholdings, if any, on the portion of the Individual Settlement Amounts constituting wages on the
2 behalf of the Settlement Class Member, Plaintiffs and Settlement Class Members shall be solely
3 responsible for any and all employee's share of tax obligation associated with their respective
4 Individual Settlement Amounts and Service Award.

5 The Parties agree (and the Settlement Administrator shall warrant) that the Settlement shall be
6 administered as a qualifying, designated settlement fund pursuant to Section 468B of the Internal
7 Revenue Code. The Settlement Administrator shall be responsible for issuing all settlement payments
8 and handling all required state and federal tax withholding and reporting related thereto.

9 6.4 Time for Funding and Distribution of Payments under the Settlement. Within ten (10)
10 calendar days after the Effective Date, Defendant shall deposit the Maximum Settlement Amount into
11 a qualified settlement account established by the Settlement Administrator. No later than five (5)
12 business days after Defendant deposits the Maximum Settlement Amount with the Settlement
13 Administrator, the Settlement Administrator shall distribute the following payments: Individual
14 Settlement Payments to Settlement Class Member and Aggrieved Employees, Attorneys' Fees and
15 Expenses to Class Counsel, Service Award to Class Representatives, and LWDA Payment to the
16 LWDA, all in the Court-approved amounts. The Settlement Administrator shall make every effort to
17 pay the applicable taxes and required withholdings, if any, associated with each Settlement Class
18 Member's Individual Settlement Amount and mail the Individual Settlement Payment to each
19 Settlement Class Member, by first-class U.S. mail, to the last-known address no later than five (5)
20 business days after Defendant deposits the Maximum Settlement Amount with the Settlement
21 Administrator. If the Settlement Administrator is not able to do so within the time period set forth
22 above, it shall so inform Class Counsel and Defense Counsel and provide an approximate date by
23 which the applicable taxes and required withholdings shall be paid and the Individual Settlement
24 Payments will be mailed. Under no circumstances shall the Settlement Administrator distribute checks
25 to Settlement Class Members until all Individual Settlement Payments have been considered,
26 calculated and accounted for, and all of the remaining monetary obligations have been calculated and
27 accounted for. Within two hundred (200) calendar days of the Effective Date, the Settlement
28 Administrator shall file with the Court and provide to Class Counsel a declaration of payment. In the

1 event that any Settlement Class Member is deceased, payment shall be made payable to the estate of
2 that Settlement Class Member and delivered to the executor or administrator of that estate, unless the
3 Settlement Administrator has received an affidavit or declaration pursuant to California Probate Code
4 § 13101, in which case payment shall be made to the affiant(s) or declarant(s).

5 6.5 Non-Cashed Settlement Checks. Individual Settlement Payment checks shall be valid
6 for a period of one hundred and eighty (180) calendar days after they are mailed, and thereafter, will
7 be cancelled. Funds associated with cancelled checks will be donated to Child Advocates of Silicon
8 Valley, a 401(c) non-profit, an organization that provides legal aid to low-income individuals and
9 families including related to employment issues.

10 **VII. NULLIFICATION OF THIS STIPULATION**

11 7.1 Non-Approval of the Stipulation. If (a) the Court should for any reason fail to approve
12 this Stipulation in the form agreed to by the Parties, or (b) the Court should for any reason fail to enter
13 Judgment of the Action, or (c) the approval of the Settlement and Judgment is reversed, modified or
14 declared or rendered void, then the Settlement and conditional class certification shall be considered
15 null and void, and neither the Settlement, conditional class certification, nor any of the related
16 negotiations or proceedings, shall be of any force or effect, and all parties to the Settlement shall stand
17 in the same position, without prejudice, as if the Class Settlement had been neither entered into nor
18 filed with the Court. Notwithstanding the foregoing, the Parties may attempt in good faith to cure any
19 perceived defects in the Stipulation to facilitate approval.

20 7.2 Defendant's Right to Void or Rescind Settlement Due to Opt-Outs. If ten percent (10%)
21 or more of the Class Members submit timely and valid Requests for Exclusion, Defendant shall have
22 the option, in its sole discretion, to rescind this Stipulation within ten (10) business days of learning
23 this information, whereupon the Settlement and Stipulation shall be null and void for any and all
24 purposes and may not be used or introduced in the Action or any other proceeding. The Parties will be
25 restored to their respective positions in the Action as if this Settlement was never negotiated, drafted,
26 or agreed upon. The Settlement Administrator shall notify Class Counsel and Counsel for Defendant
27 of the total number of timely and valid Requests for Exclusion and the individual settlement value for
28 each such Class Members had they not opted out by no later than fourteen (14) days after the

1 Response Deadline. Should Defendant choose to void the Settlement under this paragraph, it shall be
2 responsible for all Administration Expenses actually incurred up to the time it sought to void the
3 Settlement.

4 7.3 Escalator Clause. Defendant estimates the number of work weeks during the Class
5 Period to be approximately 94,000. If the actual number of work weeks during the Class Period
6 exceeds 94,000 by more than 10%, Defendant at its exclusive discretion shall either increase the
7 Maximum Settlement Amount proportionately for any excess increase in the total number of work
8 weeks during the Class Period, or in the alternative, Defendant shall have the exclusive option to
9 modify the applicable Class Period to a date to avoid incurring the pro rata increase. For example, if
10 the number of work weeks during the Class Period increases by 12%, the Maximum Settlement
11 Amount will increase by 2% (actual increase minus the 10% tolerated increase).

12 7.4 Invalidation. Invalidation of any material portion of the Settlement shall invalidate the
13 Settlement in its entirety, unless the Parties through their counsel may subsequently agree in writing
14 that the remaining provisions of the Settlement are to remain in full force and effect.

15 7.5 Stay Upon Appeal. In the event of a timely appeal from the approval of the Settlement
16 and Judgment, the Judgment shall be stayed, and Defendant shall not be obligated to fund the
17 Maximum Settlement Amount or take any other actions required by this Stipulation until all appeal
18 rights have been exhausted by operation of law.

19 7.6 Notice in Writing. Unless otherwise ordered by the Court, in the event the Stipulation
20 shall be terminated, cancelled, declared void, or fails to become effective in accordance with its terms,
21 within ten (10) business days after written notification of such event, Defendant and Class Counsel
22 shall notify each other of this event in writing.

23 **VIII. MOTION FOR COURT APPROVAL**

24 8.1 Preliminary Approval. Class Counsel shall promptly submit this Stipulation to the
25 Court for preliminary approval and determination by the Court as to its fairness, adequacy, and
26 reasonableness, and entry of a Preliminary Approval Order substantially in the form filed concurrently
27 herewith as **Exhibit 2**, which schedules a hearing on the question of whether the Settlement should be
28 approved as fair, reasonable, and adequate as to the Settlement Class Members, approving as to form

1 and content the proposed Class Notice attached hereto as **Exhibit 1**, and directing the mailing of the
2 Class Notice to Class Members.

3 Failure of the Court to enter the Preliminary Approval Order in its entirety will be grounds for
4 Parties to terminate the Settlement and the terms of this Stipulation pursuant to Section 7.1; however,
5 pursuant to Section 7.1, the Parties are to take all reasonable steps to cure any deficiencies so as to
6 avoid any termination of the Settlement.

7 8.2 **Final Approval**. The Final Approval Hearing shall be held before the Court. At the
8 Final Approval Hearing, Plaintiffs shall move the Court for the entry of the final order certifying the
9 Settlement Class for settlement purposes only and approving the Settlement as being fair, reasonable
10 and adequate to the Settlement Class Members within the meaning of California Rules of Court, Rule
11 3.769(c), (d) and (e) and for the entry of a final Judgment of the Action consistent with the terms of
12 the Settlement and California Rule of Court 3.769(h). Should the Court require Class Counsel and/or
13 Defense Counsel to submit any pleadings and/or evidence for the Court's determination, the Parties
14 will comply to the extent reasonable.

15 8.3 **Entry of Judgment**. Pursuant to California Rule of Court 3.769(h) and any other
16 applicable rules, if the court approves this Settlement after the Final Approval Hearing, the Court must
17 make and enter Judgment. The Judgment must include a provision for the retention of the court's
18 jurisdiction over the parties to enforce the terms of the Judgment. This Judgment shall be a judgment
19 for purposes of California Rule of Court 3.771(a).

20 **IX. RELEASES AND WAIVERS**

21 9.1 **Release of Claims by Settlement Class Members and Plaintiffs**. Upon the funding of the
22 Maximum Settlement Amount, each Settlement Class Member and Plaintiffs, each release, discharge,
23 and agree to hold harmless the Released Parties, and each of them, of and from any and all Released
24 Class Claims.

25 It is the desire of the Parties and the Class Members to fully, finally, and forever settle,
26 compromise, and discharge the Released Class Claims.

27 Plaintiffs and each Class Member (except those who submit a timely and valid Request for
28 Exclusion), will be bound to the release of Released Class Claims as a result of the Settlement and to

1 the terms of the judgment.

2 9.2 Release of Claims by Plaintiffs. In exchange for Pamela Cazares's Class
3 Representative's Payment and \$9,700.00 of James E. Aguilar's Class Representative's Payment,
4 Plaintiffs on behalf of themselves each release and discharge all Released Parties from any and all
5 claims, including but not limited to: Any and all wage-and-hour claims arising under the laws of the
6 State of California, including, without limitation, statutory, constitutional, contractual, and/or common
7 law claims for wages, damages, restitution, unreimbursed expenses, equitable relief, penalties,
8 liquidated damages, interest, and/or punitive damages (including, without limitation, claims under any
9 applicable Industrial Welfare Commission Wage Order, the California Private Attorneys General Act,
10 or any other provision of the California Labor Code); Title VII of the Civil Rights Act of 1964; 42
11 U.S.C. § 1981; the Americans With Disabilities Act; Sections 503 and 504 of the Rehabilitation Act of
12 1973; the Family Medical Leave Act; the Fair Labor Standards Act; the Employee Retirement Income
13 Security Act; the Occupational Safety and Health Act; the Worker Adjustment and Retraining
14 Notification Act, as amended; the California Unfair Competition Law (Cal. Bus. & Prof. Code §
15 17200 et seq.); the California Fair Employment and Housing Act; any state, civil, or statutory laws,
16 including any and all human rights laws and laws against discrimination; any claims that could have
17 been alleged in the Lawsuit; and any other federal, state, or local statutes, codes, or ordinances; any
18 common law, contract law, or tort law cause of action; and any claims for interest, attorneys' fees,
19 and/or costs. This release does not extend to claims that cannot be released as a matter of law, such as
20 workers' compensation claims.

21 In exchange for Pamela Cazares's Class Representative's Payment and \$9,700.00 of James E.
22 Aguilar's Class Representative's Payment, Plaintiffs expressly waive the protections of California
23 Civil Code section 1542, and it is their intention in executing this Stipulation that the same shall be
24 effective as a bar to each and every claim, complaint, action, debts, promises, demand, cause of action,
25 obligation, damage, liability, charge, attorneys' fees and costs herein above released. The Plaintiffs
26 hereby expressly waive and relinquish all of their rights and benefits, if any, arising under California
27 Civil Code section 1542, which provides:

28 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
 THAT THE CREDITOR OR RELEASING PARTY DOES NOT**

1 **KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT**
2 **THE TIME OF EXECUTING THE RELEASE AND THAT, IF**
3 **KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY**
4 **AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR**
5 **OR RELEASED PARTY.**

6 Plaintiffs may, being aware of Section 1542, hereafter discover facts in addition to or different from
7 those which they now know or believe to be true with respect to the subject matter of all the claims
8 referenced herein, but stipulate and agree that, upon the Effective Date, Plaintiffs shall and hereby do
9 fully, finally and forever settle and release any and all claims against the Released Parties, known or
10 unknown, suspected or unsuspected, contingent or non-contingent, that were asserted or could have
11 been asserted upon any theory of law or equity without regard to the subsequent discovery of existence
12 of such different or additional facts.

13 Plaintiff James E. Aguilar (“Aguilar”) acknowledges that he is knowingly and voluntarily
14 waiving and releasing any rights he may have under the Age Discrimination in Employment Act
15 (“ADEA”). Aguilar also acknowledges that the consideration given in this agreement for the waiver
16 and release is \$300.00 of his \$10,000.00 Class Representative’s Payment and is in addition to anything
17 of value to which he was already entitled. Aguilar further acknowledges that he has been advised by
18 this in writing, as required by the Older Workers’ Benefit Protection Act, that: (a) his waiver and
19 release does not apply to any rights or claims that may arise after the ADEA Effective Date (defined
20 below) of this agreement; (b) he should consult with an attorney prior to executing this agreement; (c)
21 he alone has at least twenty-one (21) days to consider the waiver and release of any rights he may have
22 under the ADEA (although he may execute this agreement earlier) and in the event Aguilar should
23 decide to execute this agreement in fewer than 21 days, Aguilar has done so with the express
24 understanding that Aguilar has been given and declined the opportunity to consider the waiver and
25 release of his rights under the ADEA for a full 21 days; (d) he has seven (7) days following his
26 execution of this agreement to revoke the waiver and release of any rights he may have under the
27 ADEA; (e) this waiver and release of rights that Aguilar may have under the ADEA shall not be
28 effective until the date upon which the revocation period has expired (the “ADEA Effective Date”).
Aguilar may revoke this waiver and release of rights that Aguilar may have under the ADEA only by

1 giving written notice of his revocation to Beth Kahn and Ryan McKim of Clark Hill LLP via
2 electronic mail addressed to bkahn@clarkhill.com and rmckim@clarkhill.com, to be received by no
3 later than the end of the day on the seventh day following Aguilar's execution of this Agreement. In
4 the event Aguilar revokes, he will not receive the amount allocated herein for any potential claim
5 arising under the ADEA and all claims other than those arising under the ADEA remain released.

6 9.3. Release of PAGA Claims. Upon the funding of the Maximum Settlement Amount, each
7 Aggrieved Employee, the State of California and Plaintiffs, each release, discharge, and agree to hold
8 harmless the Released Parties, and each of them, of and from any and all Released PAGA Claims.

9 It is the desire of the Aggrieved Employees, the State of California, and Plaintiffs to fully,
10 finally, and forever settle, compromise, and discharge the Released PAGA Claims.

11 Upon Court approval of this settlement, each Aggrieved Employee, the State of California and
12 each Plaintiff, will be bound to the release of Released PAGA Claims as a result of the Settlement and
13 to the terms of the judgment.

14 **X. DUTIES OF THE PARTIES**

15 10.1 Mutual Full Cooperation. The Parties agree to cooperate fully with one another to
16 accomplish and implement the terms of this Stipulation. Such cooperation shall include, but not be
17 limited to, execution of such other documents and the taking of such other actions as may reasonably
18 be necessary to fulfill the terms of this Settlement. The Parties shall use their best efforts, including all
19 efforts contemplated by this Stipulation and any other efforts that may become necessary by court
20 order or otherwise, to effectuate this Stipulation and the terms set forth herein. As soon as practicable
21 after execution of this Stipulation, Class Counsel, with the cooperation of Defendant and Defense
22 Counsel, shall take all necessary and reasonable steps to secure the Court's preliminary approval and
23 final approval of this Stipulation.

24 10.2 Duty to Support and Defend the Settlement. The Parties agree to abide by all of the
25 terms of the Settlement in good faith and to support the Class Settlement fully and to use their best
26 efforts to defend this Class Settlement from any legal challenge, whether by appeal or collateral attack.

27 10.3 Duties Prior to Court Approval. Class Counsel shall promptly submit this Stipulation to
28 the Court for Preliminary Approval and determination by the Court as to its fairness, adequacy, and

1 reasonableness. Promptly upon execution of this Stipulation, Class Counsel shall apply to the Court
2 for the entry of a Preliminary Order substantially in the form filed concurrently herewith as **Exhibit 2**,
3 scheduling a hearing on the question of whether the proposed Class Settlement should be approved as
4 fair, reasonable, and adequate as to the Settlement Class Members, approving as to form and content
5 the proposed Class Notice attached hereto as **Exhibit 1**, and directing the mailing of the Class Notice
6 to Settlement Class Members.

7 **XI. MISCELLANEOUS PROVISIONS**

8 11.1 Voiding the Stipulation. Pending Court approval and other than as provided in Section
9 VIII (entitled “NULLIFICATION OF THIS STIPULATION”) herein, if any of the conditions set
10 forth in this Stipulation are not met and satisfied, this Stipulation shall, at the option of either Plaintiffs
11 or Defendant, be ineffective, void, and of no further force and effect, and shall not be used or be
12 admissible in any subsequent proceeding, either in this Court or in any other court or forum. If either
13 Party decides to void the Settlement, then the Settlement and conditional class certification shall be
14 considered void, and neither the Settlement, Stipulation, conditional class certification, nor any of the
15 related negotiations or proceedings, shall be of any force or effect, and the Parties shall stand in the
16 same position, without prejudice, as if this Stipulation had been neither entered into nor filed with the
17 Court. Should either Party choose to void the Settlement under this paragraph, such party shall be
18 responsible for all Administration Expenses actually incurred up to the time such Party sought to void
19 the Settlement not to exceed the cap of \$25,000. If both Defendant and Plaintiffs choose to void the
20 Settlement under this paragraph, each shall be responsible for his or its proportionate share of the
21 Administration Fees actually incurred not to exceed the collective cap of \$25,000.

22 11.2 No Prior Assignments. The Parties represent, covenant, and warrant that they have not
23 directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber
24 to any person or entity any portion of any liability, claim, demand, action, cause of action, or right
25 herein released and discharged except as set forth herein.

26 11.3 Non-Admission. Nothing in this Stipulation shall be construed as or deemed to be an
27 admission by any Party of any liability, culpability, negligence, or wrongdoing toward any other Party,
28 or any other person, and the Parties specifically disclaim any liability, culpability, negligence, or

1 wrongdoing toward each other or any other person. Each of the Parties has entered into this Stipulation
2 with the intention to avoid further disputes and litigation with the attendant inconvenience, expenses,
3 and contingencies. Nothing herein shall constitute any admission by the Released Parties of
4 wrongdoing or liability, or of the truth of any factual allegations in the Action. Nothing herein shall
5 constitute any admission by the Released Parties regarding the merits of the Claims in this Action,
6 including but not limited to claims for unpaid wages or other compensation, benefits or penalties under
7 California and/or federal law. Nothing herein shall constitute an admission by the Released Parties that
8 the Action was properly brought as a class or representative action other than for settlement purposes.
9 To the contrary, the Released Parties have denied and continue to deny each and every material factual
10 allegation and all Claims. To this end, the Class Settlement of the Action, the negotiation and
11 execution of this Stipulation, and all acts performed or documents executed pursuant to or in
12 furtherance of this Stipulation or the Class Settlement are not, shall not be deemed to be, and may not
13 be used as, an admission or evidence of any wrongdoing or liability on the part of the Released Parties
14 or of the truth of any of the factual allegations in the Complaint in the Action; and are not, shall not be
15 deemed to be, and may not be used as, an admission or evidence of any fault or omission on the part of
16 the Released Parties in any civil, criminal or administrative proceeding in any court, administrative or
17 governmental agency or other tribunal.

18 11.4 No Publicity.

19 (a) Plaintiffs and Defendant, and their respective counsel, recognize, and accept
20 that the Parties to this Stipulation desire that information regarding the terms of this Stipulation, the
21 fact of the Settlement embodied in this Stipulation, the disposition of the Action, the Action, and all
22 matters relating to the litigation of the Action, including discovery proceedings therein, and evidence
23 obtained during the course of the Action, shall be provided to the Class by way of the Court-approved
24 Class Notice and public access to Court records in the Action, and that this information shall not
25 otherwise be discussed with or presented to the media or press, and shall not be discussed or
26 mentioned in any of Class Counsel's internal or external advertising or marketing materials, including
27 but not limited to any website(s) maintained by Class Counsel.
28

1 (b) Further, Plaintiffs and their counsel agree that they will not issue any press
2 releases, initiate any contact with the press, respond to any press inquiry, post on any internet
3 websites, or have any communication with the press about the Action, and/or the fact, amount or terms
4 of the Settlement. Before the date of the filing of the motion for preliminary approval of the
5 Settlement, Plaintiffs and their counsel will not initiate any contact with Class Members or anyone else
6 about the Settlement, except that: (a) Class Counsel, if contacted by a Class Member, may respond
7 that a settlement has been reached and that the details will be communicated in a forthcoming Court-
8 approved notice; and (b) the Plaintiffs, if contacted by a Class Member, may respond only that the
9 Class Member should contact Class Counsel.

10 11.5 Non-Retaliation. Defendant understands and acknowledges that it has a legal obligation
11 not to retaliate against any Class Member who elects to participate in the Settlement or elects to opt
12 out of the Settlement. Defendant will refer any inquiries regarding this Settlement to the Settlement
13 Administrator or Class Counsel and will not discourage Class Members who are currently working for
14 Defendant, directly or indirectly, from making claims, opting out or objecting to the Class Settlement.

15 11.6 Construction. The Parties hereto agree that the terms and conditions of this Stipulation
16 are the result of lengthy, intensive, arms-length non-collusive negotiations between the Parties and that
17 this Stipulation is not to be construed in favor of or against any Party by reason of the extent to which
18 any Party or its counsel participated in the drafting of this Stipulation. If any of the dates in the
19 Stipulation fall on a weekend, bank or court holiday, the time to act shall be extended to the next
20 business day. Except that should the Response Deadline (or extension(s) thereof specified in the
21 Stipulation relating to a deficiency notice or a re-mailing) fall on a Saturday and regular U.S. Mail
22 service is in operation that day, then no further extension pursuant to this paragraph shall apply to
23 these specific deadlines. The language of all parts of this Stipulation shall in all cases be construed as
24 a whole, according to its fair meaning, and not strictly for or against either Party. No Party shall be
25 deemed the drafter of this Stipulation. The Parties acknowledge that the terms of the Stipulation are
26 contractual and are the product of negotiations between the Parties and their counsel. Each Party and
27 his/its counsel cooperated in the drafting and preparation of the Stipulation. In any construction to be
28

1 made of the Stipulation, the Stipulation shall not be construed against any Party and the canon of
2 contract interpretation set forth in California Civil Code section 1654 shall not be applied.

3 11.7 Governing Law. The Stipulation and the exhibits hereto shall be considered to have
4 been negotiated, executed, and delivered, and to have been wholly performed, in the State of
5 California, and the rights and obligations of the Parties to the Stipulation shall be construed and
6 enforced in accordance with, and governed by, the internal, substantive laws of the State of California
7 without regard to conflict of law principles in all respects, including execution, interpretation,
8 performance, and enforcement.

9 11.8 Notices. Except for mailing of the Class Notice to Class Members, any and all notices
10 or other communications required or permitted under this Stipulation shall be in writing and shall be
11 sufficiently given if delivered to the Party or their counsel by U.S. certified mail, postage prepaid, e-
12 mail, facsimile, or overnight delivery addressed to the address of the Party appearing in this
13 Stipulation.

14 11.9 Captions and Interpretations. Section titles or captions contained herein are inserted as
15 a matter of convenience and for reference only and in no way define, limit, extend, or describe the
16 scope of this Stipulation or any provision thereof.

17 11.10 Modification. This Stipulation may not be changed, altered, or modified, except in
18 writing signed by the Parties' counsel and approved by the Court. In the event that the Court requires
19 certain changes to this Stipulation, the Parties agree that such amendments can be made through a
20 stipulation signed solely by their counsel, provided that such amendment conforms precisely to the
21 Court's order.

22 11.11 Integration Clause. This Stipulation contains the entire agreement between the Parties
23 relating to the Settlement of the Action and the transactions contemplated thereby, and all prior or
24 contemporaneous agreements, understandings, representations, and statements, whether oral or
25 written, and whether by a party or such party's legal counsel, are hereby superseded. No rights under
26 this Stipulation may be waived except in writing executed by the Parties.

27 11.12 Successors and Assigns. This Stipulation shall be binding upon and inure to the benefit
28 of the Parties and Settlement Class Members (excluding only persons who submit a timely and valid

1 Request for Exclusion) and their respective present and former heirs, trustees, executors,
2 administrators, representatives, officers, directors, shareholders, agents, employees, insurers,
3 attorneys, accountants, auditors, advisors, consultants, pension and welfare benefit plans, fiduciaries,
4 parent companies, subsidiaries, affiliates, related companies, joint ventures, predecessors, successors,
5 and assigns.

6 11.13 Corporate Signatories. Any person executing this Stipulation or any such related
7 document on behalf of a partnership hereby warrants and promises, for the benefit of all Parties hereto,
8 that such person has been duly authorized by such partnership to execute this Stipulation or any such
9 related document.

10 11.14 Execution in Counterparts. This Stipulation shall become effective upon its execution
11 by all of the undersigned. The Parties may execute this Stipulation in counterparts, and execution of
12 counterparts shall have the same force and effect as if all Parties had signed the same instrument.
13 Parties may also execute the Stipulation by way of electronic signature or other electronic means.

14 11.15 No Third Party Beneficiaries. The Stipulation shall be binding upon, and inure to the
15 benefit of, the successors and assigns of the Parties hereto; however, this Stipulation is not designed to
16 and does not create any third party beneficiaries unless otherwise specifically provided herein.

17 11.16 No Cooperation with Other Claims. The Class Representatives shall not cooperate with,
18 help, bring, counsel, aid, or in any manner assist any person or entity in filing or pursuing a claim,
19 complaint, class action, collective action, representative action, action, debt, promise, demand,
20 grievance, cause of action, obligation, damage, liability, or charge against Defendant, except as
21 required by law or regulation.

22 11.17 Other Claims. No person shall have any claim against the Class Representative, Class
23 Counsel, the Settlement Administrator, or any of the Released Parties based on the payments made or
24 other actions taken substantially in accordance with this Stipulation and the settlement contained
25 herein or further orders of the Court.

26 11.18 Attorney Fees, Costs and Expenses. Except as otherwise specifically provided for
27 herein, each party shall bear her, his, or its own attorney fees, costs and expenses, taxable or
28

1 otherwise, incurred by them in or arising out of the Action and shall not seek reimbursement thereof
2 from any other party to this Stipulation.

3 11.19 Action to Enforce Agreement. In any suit or court action to enforce the terms of this
4 Stipulation, the prevailing party shall be entitled to recover his or its attorneys' fees and costs.

5 11.20 Court Retains Jurisdiction. The Court shall retain jurisdiction with respect to
6 implementation and enforcement of the terms of the Stipulation, and all parties hereto submit to the
7 jurisdiction of the Court for purposes of implementing and enforcing the Settlement embodied in the
8 Stipulation.

9 11.21 Fair, Adequate, and Reasonable Settlement. The Parties agree that this settlement is
10 fair, adequate, and reasonable, and will so represent to the Court. In addition, Judge Carl West (Ret.),
11 may, at his discretion, execute a declaration supporting the settlement, and the Court may, in its
12 discretion, contact Judge West to discuss the settlement, and whether the settlement is fair and
13 reasonable.

14 11.22 The Parties agree that any dispute relating to the terms of the Stipulation shall be
15 resolved by the Hon. Carl West (Ret.).

16 11.23 Neither Defendant, nor its counsel shall have any liability for any tax implications
17 related to the receipt of settlement funds herein, including by the third-party settlement administrator;
18 any and all such liability and/or obligations shall be borne solely by the recipients of any funds to be
19 paid by Defendant herein. The Parties acknowledge neither Defendant nor Plaintiffs' counsel have
20 provided any tax-related advice whatsoever.

21 11.24 There are no third-party beneficiaries who are to be benefited or who may enforce the
22 terms of this Stipulation.

23 11.25 Plaintiffs represent that Plaintiffs have not assigned Plaintiffs' rights to any other
24 person or entity.

25 11.26 Plaintiffs represent that Plaintiffs have not filed or participated in any other charge or
26 complaint against Defendant, its officers, directors, partners, and/or any of its related/affiliated entities
27 except the instant class action.
28

1 11.27 Plaintiffs and their counsel agree to provide completed and signed W-4 forms from
2 Plaintiffs and W-9 forms from Plaintiffs and Plaintiffs' counsel to Defense Counsel and the Settlement
3 Administrator.

4 11.28 The settlement administrator shall deposit the settlement payment into federally insured
5 bank accounts (i.e., FDIC) so that all money held by the settlement administrator is in federally
6 insured bank accounts. Any interest on the earned money in said bank accounts shall be added to the
7 Net Settlement Amount.

8 11.29 The section and paragraph headings contained in this Stipulation are for reference
9 purposes only and shall not affect in any way the meaning or interpretation of this Stipulation.

10 IN WITNESS WHEREOF, the Parties and their counsel have executed this Stipulation on the
11 date below their signatures or the signature of their representatives. The date of the Stipulation shall be
12 the date of the latest signature.

13 THIS STIPULATION HAS BEEN READ AND AGREED TO INDIVIDUALLY AND ON
14 BEHALF OF THE PROPOSED CLASS:

15
16 *James Edward Aguilar*
17 [James Edward Aguilar \(Feb 15, 2023 15:56 PST\)](#)

Dated: 02-15, 2023

18 Plaintiff James E. Aguilar

19
20 *Pamela*
21 [Pamela Cazares \(Feb 15, 2023 15:41 PST\)](#)

Dated: 2023, 2023

22 Plaintiff Pamela Cazares

23
24 READ AND AGREED TO ON BEHALF OF T & K, L.P.

25
26
27 _____
28 Taylor Loesch

Dated: _____, 2023

1 11.27 Plaintiffs and their counsel agree to provide completed and signed W-4 forms from
2 Plaintiffs and W-9 forms from Plaintiffs and Plaintiffs' counsel to Defense Counsel and the Settlement
3 Administrator.

4 11.28 The settlement administrator shall deposit the settlement payment into federally insured
5 bank accounts (i.e., FDIC) so that all money held by the settlement administrator is in federally
6 insured bank accounts. Any interest on the earned money in said bank accounts shall be added to the
7 Net Settlement Amount.

8 11.29 The section and paragraph headings contained in this Stipulation are for reference
9 purposes only and shall not affect in any way the meaning or interpretation of this Stipulation.

10 IN WITNESS WHEREOF, the Parties and their counsel have executed this Stipulation on the
11 date below their signatures or the signature of their representatives. The date of the Stipulation shall be
12 the date of the latest signature.

13 THIS STIPULATION HAS BEEN READ AND AGREED TO INDIVIDUALLY AND ON
14 BEHALF OF THE PROPOSED CLASS:

15
16
17 _____ Dated: _____, 2023
18 Plaintiff James E. Aguilar

19
20
21 _____ Dated: _____, 2023
22 Plaintiff Pamela Cazares

23
24 READ AND AGREED TO ON BEHALF OF T & K, L.P.

25
26
27 Taylor Loesch Dated: 2/15/2023, 2023
28 Taylor Loesch

EXHIBIT A

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT
& HEARING DATE FOR COURT APPROVAL

James E. Aguilar, et al. v. T & K, L.P., et al.
Superior Court of California, County of Santa Clara
Case No. 21cv384674

To: All individuals who are or previously were employed by T & K, L.P. in California and classified as a non-exempt employee at any time during the period commencing July 23, 2017 up to and including October 29, 2022.

THIS NOTICE MAY AFFECT YOUR RIGHTS.
PLEASE READ IT CAREFULLY.

You are receiving this notice because T & K, L.P.'s ("Defendant") records indicate that you may be entitled to participate in this class action and representative action settlement.

The following recitation does not constitute the findings of the Court. Defendant adamantly denies any and all liability. This notice should not be understood to be an expression of the Court's views on the merits of any claim or defense raised by the parties.

I. WHY IT IS IMPORTANT TO READ THIS NOTICE:

The Superior Court of the State of California for the County of Santa Clara (the "Court") has granted preliminary approval to a proposed Settlement (defined below) of a class action lawsuit and representative action regarding wage and hour claims of all individuals who are or previously were employed by Defendant in California and classified as a non-exempt employee at any time during the period commencing July 23, 2017 up to and including October 29, 2022.

Because your rights may be affected by the Settlement (defined below), it is important that you read this notice carefully. Defendant's records show that you were employed by Defendant sometime during the period commencing July 23, 2017 up to and including October 29, 2022 ("Class Period"). Therefore, you are a "Class Member" in this lawsuit.

The purpose of this notice is to provide you with a brief description of the class action lawsuit and representative action, what investigation of the claims has taken place, to inform you of the terms of the proposed Settlement (defined below) and to discuss your rights and options in connection with the lawsuit and the Settlement (defined below).

II. WHAT YOU NEED TO DO IN RESPONSE TO THIS NOTICE:

You have received this notice because Defendants' records indicate that you are a member of the conditionally certified Class (defined below). You have the following options:

1. **IF YOU WISH TO PARTICIPATE IN THE CLASS ACTION SETTLEMENT AND REMAIN A MEMBER OF THE SETTLEMENT CLASS AND BE ISSUED A PAYMENT UNDER THE SETTLEMENT, YOU (or in the event of a deceased Class Member, the estate or authorized beneficiary) ARE NOT REQUIRED TO TAKE ANY FURTHER ACTION.** You will be issued payment if the Court grants final approval of the Settlement (defined below) and judgment becomes final, and you will release the Released Parties for the Released Claims (see section VIII below for definitions of "Released Claims" and "Released Parties"). If you wish to receive a payment under the Settlement, you must not "opt out" of the Settlement. **To ensure receipt of your payment, you must make sure that your correct mailing address is on file with the Settlement Administrator.**
2. **YOU MAY ELECT TO "OPT OUT" OF THE SETTLEMENT CLASS AND THUS EXCLUDE YOURSELF FROM THE SETTLEMENT.** If you wish to opt out of the Settlement and exclude yourself from the Settlement, you must mail to the Settlement Administrator the enclosed Opt-Out Form or a written request ("Request for Exclusion") postmarked on or before **August 28, 2023**. A Request for Exclusion must include: (1) your full name and signature; (2) the case name and number of the action (i.e., *James E. Aguilar, et al. v. T & K, L.P., et al.*); and (3) a statement indicating that you wish to be excluded from the Settlement. If a timely and complete Opt-Out Form or Request for Exclusion is not received by the Settlement Administrator at the address listed below, postmarked on or before **August 28, 2023**, you will be deemed to have forever waived your right to opt out of the Settlement. Class Members who do not properly opt out of the Settlement shall be "Settlement

Class Member(s).” Class Members who do properly opt out of the Settlement shall not be bound by the terms of the Settlement, shall not be allowed to object to this Settlement, and shall not be entitled to any benefits as a result of this Settlement, including payment of any Individual Settlement Amount (defined below), except a portion of the PAGA payment, if applicable, in the estimated amount of [\$]. All individuals who are or previously were employed by Defendant in California and classified as a non-exempt employee at any time during the period from May 19, 2020, up to and including October 29, 2022 have no right or ability to opt out of the portion of this Settlement releasing Labor Code Private Attorneys General Act of 2004 (“PAGA”) claims. The Settlement Administrator’s address is below:

ILYM Group, Inc.
P.O. Box 2031
Tustin, CA 92781

3. **PROVIDED YOU DO NOT OPT OUT OF THE SETTLEMENT CLASS, YOU MAY OBJECT TO THE SETTLEMENT.** You may object to the Settlement by mailing a written objection (“Objection”) to the Settlement Administrator, on or before **August 28, 2023**, to the address listed in section II.2 above. The Objection must (1) contain your full name, dates of employment as an employee of Defendant, and signature; (2) the case name and number of the action (*James E. Aguilar, et al. v. T & K, L.P., et al.*); (3) the reason(s) for the objection (if any); and (4) identify any counsel representing you in connection with the Objection. You may attend the Settlement Hearing (defined below), including by audio or visual technology, and may ask to speak regarding your objections, regardless of whether you submitted an Objection. More information can be found at www.scscourt.org. If you take no action, you will remain a member of the Class. A Class Member who does not opt out of participation in the Settlement will be bound by the judgment and be issued payment under the Settlement (defined below). If you remain a member of the Class, you will be represented by the following attorneys who have been designated by the Court as Class Counsel:

ZAKAY LAW GROUP, APLC
Shani O. Zakay, Esq.
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121

JCL LAW FIRM, APC
Jean-Claude Lapuyade, Esq.
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121

INFORMATION REGARDING FINAL APPROVAL HEARING. The Final Approval Hearing determines whether the Settlement should be finally approved as fair, reasonable, and adequate and whether the Service Award (defined below) to Plaintiffs, Administration Expenses (defined below) to the Settlement Administrator, and attorneys’ fees and costs to Class Counsel should be awarded. That hearing will be held on **October 26, 2023 at 1:30 p.m.** before the Hon. Sunil Kulkarni, in Department 1 of the Santa Clara Superior Court located at 191 N. First Street, San Jose, CA 95113 (“Settlement Hearing”).

The judge overseeing this case encourages remote appearances. (As of August 15, 2022, the Court’s remote platform is Microsoft Teams.) Class members who wish to appear remotely should contact class counsel at least three days before the hearing if possible. Instructions for appearing remotely are provided at https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml and should be reviewed in advance. Class members may appear remotely using the Microsoft Teams link for Department 1 (Afternoon Session) or by calling the toll free conference call number for Department 1. Any class member who wishes to appear in person should check in at Court Services (1st floor, Downtown Superior Courthouse, 191 N. 1st St., San Jose) and wait for a sheriff’s deputy to escort him or her to the courtroom for the hearing.

If the Court enters judgment based on the Settlement (defined below), the judgment will be posted on the Settlement Administrator’s website. The Settlement Administrator’s website address is **ilymgroup.com**.

You are not required to attend the Settlement Hearing, although you are welcome to attend.

III. WHAT THE CASE IS ABOUT:

On behalf of themselves and on behalf of other employees, James E. Aguilar and Pamela Cazares (collectively "Class Representatives" or "Plaintiffs") claim that Defendant has, with respect to Plaintiffs and the Class Members, allegedly engaged in unfair competition in violation of Cal. Bus. & Prof. Code § 17200, et seq., failed to pay minimum wages in violation of Cal. Labor Code §§ 1194, 1197 & 1197.1, failed to pay overtime wages in violation of Cal. Lab. Code §§ 510, et seq., failed to provide required meal periods in violation of Cal. Lab Code §§ 226.7 & 512 and the applicable IWC Wage Order, failed to provide required rest periods in violation of Cal. Lab. Code §§ 226.7 & 512 and the applicable IWC Wage Order, failed to provide accurate itemized statements in violation of Cal. Lab. Code §§ 226 & 226.2, failed to provide wages when due in violation of Cal. Lab. Code §§ 201, 202, and 203, failed to timely pay wages in violation of Cal. Lab. Code § 204, and failed to reimburse employees for required expenses in violation of Cal. Lab. Code § 2802. The operative complaint also alleges Defendant is liable under PAGA. On behalf of themselves and other employees of Defendant, Plaintiffs seek, *inter alia*, damages, unpaid wages, penalties, attorneys' fees, and interest for alleged wage and hour violations.

Defendant adamantly denies each, every, and all of the allegations of the lawsuit, and maintains that it complied with all California wage and hour laws, such that the Class Representatives cannot properly recover any damages including but not limited to civil penalties under California law. Although Defendant denies these allegations, Defendant has chosen to resolve the matter based upon the terms and conditions set forth in the Joint Stipulation and Agreement for Class and Representative Action Settlement and Release ("Settlement Agreement" or "Settlement"). The Court will determine whether or not to grant final approval of the Settlement.

The Settlement provides for the certification, for settlement purposes only, of all individuals who are or previously were employed by T & K, L.P. in California and classified as a non-exempt employee at any time during the period commencing July 23, 2017 up to and including October 29, 2022.

IV. THE SETTLEMENT OF THE CLAIMS:

On August 29, 2022, the parties participated in a full-day mediation before an employment law mediator, the Hon. Carl West (ret.), which lead to settlement of the entire action.

The Class Representatives and Class Counsel believe the Settlement is in the best interest of the Class.

Through the Settlement, neither Defendant nor any of its employees have admitted any liability or wrongdoing and, in fact Defendant expressly denies any wrongdoing. The Court did not decide in favor of Plaintiffs or Defendant. The Settlement Agreement has been preliminarily approved by the Court. A full copy of the Settlement Agreement, embodied in the document entitled "JOINT STIPULATION AND AGREEMENT FOR CLASS AND REPRESENTATIVE ACTION SETTLEMENT AND RELEASE" as preliminarily approved by the Court, as well as other public documents filed in this case, can be inspected in the Office of the Court Clerk located at 191 N. First Street, San Jose, CA 95113.

V. THE TERMS OF THE CONDITIONAL CLASS ACTION SETTLEMENT:

On behalf of the Class Members, the Class Representatives have reached a Settlement with Defendant and on May 30, 2023 the Court conditionally certified a class, for settlement purposes only, comprised of the following persons (collectively, the "Class"):

All individuals who are or previously were employed by Defendant in California and classified as a non-exempt employee at any time during the Class Period who do not submit timely and valid Requests for Exclusion to opt out of the settlement and, thus, become bound by the Judgment.

Without admitting liability, Defendant has agreed to pay \$2,000,000.00 (the "Gross Settlement Amount") for a release of Defendant and all Released Parties (defined below) from the Released Claims (defined below) (see below for more information). This is a non-reversionary settlement. Settlement Class Members will be bound by the Settlement and will release Defendant and all Released Parties (defined below) from the Released Claims (defined below) (see below for more information).

This Settlement is conditioned upon the Superior Court of the State of California for the County of Santa Clara entering an order at or following the Settlement Hearing finally approving the Settlement as fair, reasonable, adequate, and in the best interests of the Class.

The following payments will be sought, subject to final approval by the Court, from the Gross Settlement Amount:

- (1) Payment in the amount of up to \$10,000.00 to each of the Class Representatives (“Service Award”) in addition to the sums that they will receive as Settlement Class Members, to compensate them for acting on behalf of the Class, including the time they expended to fulfill the role of Class Representatives (e.g., assisting with the investigation of the claims, etc.) and for a general release and waiver of Civil Code section 1542;
- (2) Payment to the Settlement Administrator for the fees and costs of administering this Settlement (“Administration Expenses”), in the estimated maximum amount of \$25,000.00;
- (3) Payment in an amount of \$100,000.00 for penalties pursuant to the California Labor Code Private Attorney General Act of 2004 (“PAGA”), of which 75% of the amount (\$75,000.00) will be distributed to the California Labor Workforce and Development Agency (“LWDA”) and the remaining 25% of the amount (\$25,000.00) of the penalties will be distributed to all individuals who are or previously were employed by Defendant in California and classified as a non-exempt employee at any time from May 19, 2020, up to and including October 29, 2022;
- (4) Payment in an amount of up to \$666,666.66 to Class Counsel as attorneys' fees, to compensate them for their services in litigating this case for approximately 2 years on a contingency basis; and
- (5) Payment in an amount of up to \$25,000.00 to Class Counsel, to reimburse Class Counsel for actual litigation costs and expenses expended in this matter by Class Counsel.

The “Net Settlement Amount” is the Gross Settlement Amount less the above-mentioned requested payments which are subject to final approval by the Court. The Net Settlement Amount will be automatically distributed to Settlement Class Members, and these gross individual shares are known as the “Individual Settlement Amount.” The Individual Settlement Amount for each Settlement Class Member shall be determined on a *pro rata* basis based on his or her number of Workweeks (defined below) as compared to the total Workweeks of all Settlement Class Members. Workweeks are calculated by determining the number of days between the Settlement Class Member’s start and end dates of employment from July 23, 2017 up to and including October 29, 2022 and then dividing by seven (7). If a Settlement Class Member was hired prior to July 23, 2017, then his or her “start date” will be July 23, 2017.

VI. WHAT IS YOUR EXPECTED SHARE:

As discussed above, the Net Settlement Amount will be automatically distributed to Class Members who do not opt out of this Settlement, based on their respective number of Workweeks.

Defendant’s records reflect that you worked [insert number of workweeks] workweeks during the Class Period, and based on this number of Workweeks, your gross Individual Settlement Amount is estimated to be [insert estimated amount].

If you wish to dispute the number of Workweeks attributed to you, you may do so by submitting a written dispute (“Workweeks Dispute”) to the Settlement Administrator at the address listed in section II.2 (above), postmarked on or before **August 28, 2023**. A Workweeks Dispute must state: (a) your full name and signature; (b) the case name and number of the action (*James E. Aguilar, et al. v. T & K, L.P., et al.*); (c) contain a statement indicating your intent to dispute or challenge the number of Workweeks credited to you and clearly identify the number of Workweeks you contend should be credited to you; and (d) include any records or documentation to support the Workweeks Dispute.

The amount stated herein as your estimated Individual Settlement Amount may change depending on the number of Class Members who do not opt-out and the Court's order with respect to the requests for attorneys' fees, litigation costs and expenses, award to class representative, administration expenses, and PAGA payment. Further, your gross Individual Settlement Amount will be allocated as 10% wages (reported on an IRS Form W-2), and 90% interest and penalties (reported on an IRS Form 1099). The wage portion is subject to employee’s and employer’s share of state and federal employment and payroll taxes and withholdings prior to distribution.

VII. WHEN CAN I EXPECT TO RECEIVE MY SHARE OF THE SETTLEMENT:

The Settlement Administrator will distribute the settlement funds after funding has occurred and after the Court enters the final approval order and judgment.

Within five (5) business days after Defendant funds the Gross Settlement Amount, the Settlement Administrator shall distribute the payments as follows: the individual settlement payments to Settlement Class Members and PAGA Group Members (defined below), Service Award to Class Representatives, LWDA payment to the LWDA, Administration Expenses, and fees and expenses to Class Counsel, all in the Court-approved amounts.

VIII. RELEASE OF CLAIMS OF SETTLEMENT CLASS MEMBERS:

If the Court (defined below) grants final approval of the Settlement and upon funding of the Gross Settlement Amount, each Settlement Class Member and Plaintiffs, each release, discharge, and agree to hold harmless the Released Parties (defined below), and each of them, of and from any and all Released Claims (defined below).

It is the desire of the Plaintiffs, Defendant, and the Class Members to fully, finally, and forever settle, compromise, and discharge the Released Class Claims.

Plaintiffs and each Class Member (except those who submit a timely and valid Request for Exclusion), will be bound to the release of Released Class Claims (defined below) as a result of the Settlement and to the terms of the judgment.

“Action” means the lawsuit pending in the Court, entitled *James E. Aguilar, et al. v. T & K, L.P., et al.*, filed on July 23, 2021, in the Santa Clara County Superior Court, and assigned Case No. 21cv384674, with the First Amended Complaint filed on March 4, 2022.

“Complaint” means the Class Action Complaint filed in the Action on July 23, 2021 and the First Amended Class Action Complaint filed on March 4, 2022.

“Released Claims” include all claims that were alleged or reasonably could have been alleged in the Complaint based on the facts contained therein, arising during the Class Period, including, but not limited to, California Labor Code sections 200, 201, 201.3, 201.5, 202, 201.3, 202, 203, 204, 205.5, 206.5, 210, 218.5, 218.6, 226, 226.2, 226.3, 226.7, 246, 510, et seq., 512, 515, 558, 1174, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, 2804, 2698 et seq., 2699, 2699.3, 2699.5, and any federal counterparts, Code of Civil Procedure sections 382, 395, 395.5, 410.10, 474, and any federal counterparts, California Business and Professions Code section 17200, et seq., 17203, any IWC Wage Orders, any claims involving any alleged unfair competition in violation of Cal. Bus. & Prof. Code § 17200, et seq., failure to pay minimum wages in violation of Cal. Labor Code §§ 1194, 1197 & 1197.1, failure to pay overtime wages in violation of Cal. Lab. Code §§ 510, et seq., failure to provide required meal periods in violation of Cal. Lab Code §§ 226.7 & 512 and the applicable IWC Wage Order, failure to provide required rest periods in violation of Cal. Lab. Code §§ 226.7 & 512 and the applicable IWC Wage Order, failure to provide accurate itemized statements in violation of Cal. Lab. Code §§ 226, 226.2, failure to provide wages when due in violation of Cal. Lab. Code §§ 201, 202, and 203, failure to timely pay wages in violation of Cal. Lab. Code § 204, failure to reimburse employees for required expenses in violation of Cal. Lab. Code § 2802, and unpaid wages due to alleged off the clock work.

“Released Parties” means Defendant, Taco Bell Corp., Yum! Brands, Inc. and all of their respective current and former partners, parents, subsidiaries, predecessors, successors, joint employers, and their affiliated entities, and each of their respective owners, officers, directors, managing agents, exempt-employees, partners, shareholders, agents, and any other successors, heirs, assigns, or legal representatives, any attorneys, insurers, and claims representatives.

In connection with the above Released Claims, and in consideration of Defendant’s payments of the Gross Settlement Amount, each and every Class Member who does not opt out, including Plaintiffs, will be deemed also to have acknowledged and agreed that California Labor Code section 206.5 is not applicable to Defendant and the Class Members because there is a good faith dispute as to whether any wages are due at all to any Class Member. California Labor Code section 206.5 provides in pertinent part as follows:

AN EMPLOYER SHALL NOT REQUIRE THE EXECUTION OF A RELEASE OF A CLAIM OR RIGHT ON ACCOUNT OF WAGES DUE, OR TO BECOME DUE, OR MADE AS AN ADVANCE ON WAGES TO BE EARNED, UNLESS PAYMENT OF THOSE WAGES HAS BEEN MADE.

IX. RELEASE OF CLAIMS OF PAGA GROUP MEMBERS:

If the Court grants final approval of the Settlement and the Gross Settlement Amount is funded, each PAGA Group Member (defined below), the State of California and Plaintiffs, each release, discharge, and agree to hold harmless the Released Parties, and each of them, of and from any and all Released PAGA Claims (defined below).

“PAGA Group Member(s)” means all individuals who are or previously were employed by Defendant in California and classified as a non-exempt employee at any time during the period from May 19, 2020, up to and including October 29, 2022.

“Released PAGA Claims” means all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the facts stated in the complaint, first amended complaint, and PAGA notice provided to the LWDA pursuant to Labor Code section 2699.3, subd. (a), including but not limited to, claims involving Labor Code sections 200, 201, 201.3, 201.5, 202, 201.3, 202, 203, 204, 205.5, 206.5, 210, 218.5, 218.6, 226, 226.2, 226.3, 226.7, 246, 510, et seq., 512, 515, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, 2804, 2698 et seq., 2699, 2699.3, 2699.5, the applicable IWC Wage Order, any alleged failure to pay minimum wages in violation of Cal. Labor Code §§ 1194, 1197 & 1197.1, failure to pay overtime wages in violation of Cal. Lab. Code §§ 510, et seq., failure to provide required meal periods in violation of Cal. Lab Code §§ 226.7 & 512 and the applicable IWC Wage Order, failure to provide required rest periods in violation of Cal. Lab. Code §§ 226.7 & 512 and the applicable IWC Wage Order, failure to provide accurate itemized statements in violation of Cal. Lab. Code §§ 226, 226.2, failure to provide wages when due in violation of Cal. Lab. Code §§ 201, 202, and 203, failure to timely pay wages in violation of Cal. Lab. Code § 204, failure to reimburse employees for required expenses in violation of Cal. Lab. Code § 2802, and unpaid wages due to alleged off the clock work, that occurred during the period from May 19, 2020, up to and including October 29, 2022.

X. HOW TO OBTAIN ADDITIONAL INFORMATION:

This Notice is only a summary of the class action lawsuit and the associated Settlement. For more information, you may inspect the Court files and the Settlement Agreement at the Santa Clara County Superior Court, located at 191 N. First Street, San Jose, CA 95113.

You may also contact Class Counsel, the Settlement Administrator, and/or Defendant’s Counsel for more information:

<u>Class Counsel:</u> Shani O. Zakay, Esq. Zakay Law Group, APLC 5440 Morehouse Drive, Suite 3600 San Diego, CA 92121 Jean-Claude Lapuyade, Esq. JCL Law Firm, APC 5440 Morehouse Drive, Suite 3600 San Diego, CA 92121	<u>Defendant’s Counsel:</u> Beth Kahn, Esq. Ryan McKim, Esq. CLARK HILL LLP 555 South Flower Street, 24 th Floor Los Angeles, CA 90071 Telephone: (213) 891-9100 Facsimile: (213) 488-1178 bkahn@clarkhill.com rmckim@clarkhill.com
<u>Settlement Administrator:</u> ILYM Group, Inc. P.O. Box 2031 Tustin, CA 92781 Telephone: (888) 250-6810 Fax: (888) 845-6185 email: claims@ilymgroup.com	

PLEASE DO NOT CALL OR WRITE TO THE COURT ABOUT THIS NOTICE.

Opt-Out Form

James E. Aguilar, et al. v. T & K, L.P., et al.

Case No. 21cv384674

If you wish to opt out of the Settlement and request to exclude yourself from the Settlement, complete this Opt-Out Form and mail it to ILYM Group, Inc., located at **P.O. Box 2031 Tustin, CA 92781** so that it is postmarked no later than **August 28, 2023**. For additional information about the Settlement, please review the accompanying Notice of Proposed Class Action Settlement & Hearing Date for Court Approval.

Full name:

Signature:

EXHIBIT 2

1
2
3
4
5
6
7
8 **SUPERIOR COURT OF CALIFORNIA**
9 **COUNTY OF SANTA CLARA**
10

11 JAMES E. AGUILAR, et al.,

12 Plaintiff,

13 v.

14 T&K, L.P., et al.,

15 Defendants.
16
17

Case No.: 21CV384674

**ORDER CONCERNING PLAINTIFFS’
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION AND
PAGA SETTLEMENT**

18
19 **INTRODUCTION**

20 This is a putative class and Private Attorneys General Act (“PAGA”) action. Plaintiffs
21 James E. Aguilar and Pamela Cazares allege that Defendant T&K, L.P., which operates a chain
22 of franchised Taco Bell restaurants in California, failed to provide employees with compliant
23 meal and rest breaks, failed to pay minimum and overtime wages, issued noncompliant wage
24 statements, and committed other wage and hour violations.

25 Now before the Court is Plaintiffs’ motion for preliminary approval of a settlement, which
26 is unopposed. As discussed below, the Court GRANTS preliminary approval, now that Plaintiffs
27 have provided the additional information requested by the Court.
28

BACKGROUND

Mr. Aguilar began employment with Defendant in August 2020 and Ms. Cazares began employment with Defendant November 2020. (First Amended Class Action Complaint (“FAC”), ¶ 3.) They were both employed by Defendant until March 2021 as non-exempt employees. (*Ibid.*)

According to Plaintiffs, their wages were paid late. (FAC, ¶ 8.) And, while employees routinely earned non-discretionary incentive wages but overtime, double time, and sick pay was paid at their base pay rate rather than the regular rate of pay. (FAC, ¶ 11.) Further, Defendant did not have an immutable time keeping system to record all hours worked and utilized an unlawful rounding policy resulting in employees not being paid for all hours worked. (FAC, ¶ 12.)

Employees frequently had to work through their meal and rest periods. (FAC, ¶¶ 14-15.) Plaintiffs also allege that Defendant failed to provide them with paper wage statements or the option to receive paper wage statements. (FAC, ¶ 20.) Defendant also required employees to use their personal vehicles and cellular phones for work purposes without compensation. (FAC, ¶ 22.)

Based on these allegations, Plaintiffs assert putative class claims for: (1) violation of Business and Professions Code section 17200, et seq.; (2) failure to pay minimum wages, in violation of Labor Code sections 1194, 1197, and 1197.1; (3) failure to pay overtime wages, in violation of Labor Code section 510, et seq.; (4) failure to provide rest breaks violation of Labor Code sections 226.7 and 512 by and the relevant Industrial Wage Commission order; (5) failure to provide rest breaks violation of Labor Code sections 226.7 and 512 by and the relevant wage order; (6) violation of Labor Code section 226 by failing to provide accurate itemized wage statements; (7) failure to provide wage when due under Labor Code sections 201 through 203; (8) failure to reimburse employees for required expenses under Labor Code section 2802; and (9) a representative claim for PAGA penalties (Lab. Code, § 2698, et seq.).

1 Plaintiffs now move for an order preliminarily approving the settlement of the class and
2 PAGA claims, provisionally certifying the settlement class, approving the form and method for
3 providing notice to the class, and scheduling a final fairness hearing.

4 DISCUSSION

5 I. LEGAL STANDARDS FOR SETTLEMENT APPROVAL

6 A. Class Action

7 Generally, “questions whether a [class action] settlement was fair and reasonable,
8 whether notice to the class was adequate, whether certification of the class was proper, and
9 whether the attorney fee award was proper are matters addressed to the trial court’s broad
10 discretion.” (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234–235 (*Wershba*),
11 disapproved of on other grounds by *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th
12 260.)

13 In determining whether a class settlement is fair, adequate and reasonable, the trial court
14 should consider relevant factors, such as the strength of plaintiffs’ case, the risk, expense,
15 complexity and likely duration of further litigation, the risk of maintaining class action status
16 through trial, the amount offered in settlement, the extent of discovery completed and the stage
17 of the proceedings, the experience and views of counsel, the presence of a governmental
18 participant, and the reaction of the class members to the proposed settlement. (*Wershba, supra*,
19 91 Cal.App.4th at pp. 244-245, internal citations and quotations omitted.)

20 In general, the most important factor is the strength of the plaintiffs’ case on the merits,
21 balanced against the amount offered in settlement. (See *Kullar v. Foot Locker Retail, Inc.* (2008)
22 168 Cal.App.4th 116, 130 (*Kullar*).) But the trial court is free to engage in a balancing and
23 weighing of relevant factors, depending on the circumstances of each case. (*Wershba, supra*, 91
24 Cal.App.4th at p. 245.) The trial court must examine the “proposed settlement agreement to the
25 extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or
26 overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a
27 whole, is fair, reasonable and adequate to all concerned.” (*Ibid.*, citation and internal quotation
28 marks omitted.) The trial court also must independently confirm that “the consideration being

received for the release of the class members’ claims is reasonable in light of the strengths and weaknesses of the claims and the risks of the particular litigation.” (*Kullar, supra*, 168 Cal.App.4th at p. 129.) Of course, before performing its analysis the trial court must be “provided with basic information about the nature and magnitude of the claims in question and the basis for concluding that the consideration being paid for the release of those claims represents a reasonable compromise.” (*Id.* at pp. 130, 133.)

B. PAGA

Labor Code section 2699, subdivision (l)(2) provides that “[t]he superior court shall review and approve any settlement of any civil action filed pursuant to” PAGA. The court’s review “ensur[es] that any negotiated resolution is fair to those affected.” (*Williams v. Superior Court* (2017) 3 Cal.5th 531, 549.) Seventy-five percent of any penalties recovered under PAGA go to the Labor and Workforce Development Agency (“LWDA”), leaving the remaining twenty-five percent for the aggrieved employees. (*Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348, 380, overruled on other grounds by *Viking River Cruises, Inc. v. Moriana* (2022) ___ U.S. ___, 2022 U.S. LEXIS 2940.)

Similar to its review of class action settlements, the Court must “determine independently whether a PAGA settlement is fair and reasonable,” to protect “the interests of the public and the LWDA in the enforcement of state labor laws.” (*Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 76–77.) It must make this assessment “in view of PAGA’s purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws.” (*Id.* at p. 77; see also *Haralson v. U.S. Aviation Servs. Corp.* (N.D. Cal. 2019) 383 F. Supp. 3d 959, 971 [“when a PAGA claim is settled, the relief provided for under the PAGA [should] be genuine and meaningful, consistent with the underlying purpose of the statute to benefit the public”], quoting LWDA guidance discussed in *O’Connor v. Uber Technologies, Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110 (*O’Connor*).)

The settlement must be reasonable in light of the potential verdict value. (See *O’Connor, supra*, 201 F.Supp.3d at p. 1135 [rejecting settlement of less than one percent of the potential verdict].) But a permissible settlement may be substantially discounted, given that courts often

1 exercise their discretion to award PAGA penalties below the statutory maximum, even where a
2 claim succeeds at trial. (See *Viceral v. Mistras Group, Inc.* (N.D. Cal., Oct. 11, 2016, No. 15-
3 CV-02198-EMC) 2016 WL 5907869, at *8-9.)

4 **II. SETTLEMENT**

5 **A. Process**

6 According to Plaintiffs' counsel, the parties have engaged in significant written
7 discovery. Defendant produced, inter alia, time and payroll records for a sample of 25% of the
8 class, aggregate workweek and pay period data, and copies of applicable handbooks, policies,
9 and procedures. Class counsel used that data to calculate Defendant's liability exposure.

10 On August 29, 2022, the parties attended mediation with the Honorable Carl West (Ret.).
11 After a full day of negotiations with his assistance, they were able to reach the agreement now
12 before the Court.

13 **B. Settlement Provisions**

14 The non-reversionary gross settlement amount is \$2,000,000. Attorney fees of up to
15 \$666,666.66 (one-third of the gross settlement), litigation costs of up to \$25,000, and up to
16 \$25,000 in administration costs will be paid from the gross settlement. One hundred thousand
17 dollars of the gross settlement amount will be allocated to PAGA penalties, 75 percent of which
18 (\$75,000) will be paid to the LWDA. The named plaintiffs will seek incentive awards of
19 \$10,000 each.

20 The net settlement will be allocated to class members proportionally based on their pay
21 periods worked during the class of July 23, 2017 up to and including October 29, 2022. The
22 PAGA payment will be allocated to aggrieved employees on a pro rata basis based on their
23 number of pay periods worked during the PAGA period of May 19, 2020 up to and including
24 October 29, 2022. Counsel calculates that the average payment will be around \$610.99 to each
25 of the 1,904 class members. Class members will not be required to submit a claim to receive
26 their payments.

27 For tax purposes, settlement payments will be allocated 10 percent to wages and 90
28 percent to penalties and interest. The PAGA payments will be treated as 100 percent penalties

1 and no wages. The employer's share of payroll taxes will be paid in addition to the gross
2 settlement. Funds associated with checks uncashed after 180 days will be paid to Child
3 Advocates of Silicon Valley, an IRS 401(c) nonprofit organization.

4 In exchange for the settlement, class members who do not opt out will release "all claims
5 that were alleged or reasonably could have been alleged in the Complaint based on the facts
6 contained therein, arising during the Class Period, including," including specified wage and hour
7 and expense reimbursement claims. The release is appropriately tailored to the factual
8 allegations at issue. (See *Amaro v. Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th
9 521, 537.) And the PAGA release is appropriately limited to "all claims for PAGA penalties that
10 were alleged, or reasonably could have been alleged, based on the facts stated in the complaint,
11 first amended complaint, and PAGA notice provided to the LWDA pursuant to Labor Code
12 section 2699.3, subd. (a), including but not limited to," specified Labor Code violations.
13 Consistent with the statute, aggrieved employees will not be able to opt out of the PAGA portion
14 of the settlement.

15 **C. Fairness of Settlement**

16 Defendant asserted certain defenses, denying all liability for each claim and articulating
17 that it fully complied with all employment laws. Based on the records provided by Defendant,
18 Plaintiffs' expert found a 39.1 percent rate of meal and rest break deficiencies and estimated the
19 meal rest period damages at \$5,020,621. Plaintiffs allege that they were required to spend time
20 completed work-related tasks before and after their shifts while off-the-clock and Plaintiffs
21 estimated Defendant's exposure for this claim to be \$124,515. With regard to the regular rate
22 theory, class members were underpaid by an estimated \$57,248. The maximum exposure on the
23 business expense claim was \$152,302, or \$5 per month for each class member during the class
24 period. Plaintiffs estimated Defendant's exposure for these wage statement violations to be
25 approximately \$5,369,066, consisting of \$3,337,316 for Labor Code section 203 waiting time
26 penalties and \$2,031,750 for Labor Code section 226 penalties. PAGA penalties could total
27 \$8,242,500.00.

1 Class counsel calculated Defendant's total maximum exposure at \$18,966,252:
2 \$10,723,752 for class liability and another \$8,242,500 for PAGA penalties. Thus, the settlement
3 amount of \$2,000,000.00 represents approximately 18.6% of Defendant's class-wide liability
4 exposure and approximately 10.5% of Defendant's maximum liability exposure with penalties.
5 The PAGA payment of \$100,000 represents approximately five percent of the settlement
6 amount. In light of the large portion of the case's value attributable to highly uncertain penalties,
7 the settlement achieves a good result for the class.

8 For purposes of preliminary approval, the Court finds that the settlement is fair and
9 reasonable to the class, and the PAGA allocation is genuine, meaningful, and reasonable in light
10 of the statute's purposes. Of course, the Court retains an independent right and responsibility to
11 review the requested attorney fees and award only so much as it determines to be reasonable.
12 (See *Garabedian v. Los Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 127–128.)
13 Counsel shall submit lodestar information prior to the final approval hearing in this matter so the
14 Court can compare the lodestar information with the requested fees. (See *Laffitte v. Robert Half*
15 *Intern. Inc.* (2016) 1 Cal.5th 480, 504 [trial courts have discretion to double-check the
16 reasonableness of a percentage fee through a lodestar calculation].) Counsel must disclose their
17 fee sharing arrangement, as well.

18 **D. Proposed Settlement Class**

19 Plaintiff requests that the following settlement class be provisionally certified: “all
20 individuals who are or previously were employed by T&K, L.P. (‘Defendant’) in California and
21 classified as a non-exempt employee at any time during the Class Period.”

22 1. *Legal Standard for Certifying a Class for Settlement Purposes*

23 Rule 3.769(d) of the California Rules of Court state that “[t]he court may make an order
24 approving or denying certification of a provisional settlement class after [a] preliminary
25 settlement hearing.” Code of Civil Procedure section 382 authorizes certification of a class
26 “when the question is one of a common or general interest, of many persons, or when the parties
27 are numerous, and it is impracticable to bring them all before the court”
28

1 Code of Civil Procedure section 382 requires the plaintiff to demonstrate by a
2 preponderance of the evidence: (1) an ascertainable class; and (2) a well-defined community of
3 interest among the class members. (*Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34
4 Cal.4th 319, 326, 332 (*Sav-On Drug Stores*).) “Other relevant considerations include the
5 probability that each class member will come forward ultimately to prove his or her separate
6 claim to a portion of the total recovery and whether the class approach would actually serve to
7 deter and redress alleged wrongdoing.” (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.)
8 The plaintiff has the burden of establishing that class treatment will yield “substantial benefits”
9 to both “the litigants and to the court.” (*Blue Chip Stamps v. Superior Court* (1976) 18 Cal.3d
10 381, 385.)

11 In the settlement context, “the court’s evaluation of the certification issues is somewhat
12 different from its consideration of certification issues when the class action has not yet
13 settled.” (*Luckey v. Superior Court* (2014) 228 Cal.App.4th 81, 93.) As no trial is anticipated in
14 the settlement-only context, the case management issues inherent in the ascertainable class
15 determination need not be confronted, and the court’s review is more lenient in this respect.
16 (*Id.* at pp. 93–94.) But considerations designed to protect absentees by blocking unwarranted or
17 overbroad class definitions require heightened scrutiny in the settlement-only class context, since
18 the court will lack the usual opportunity to adjust the class as proceedings unfold. (*Id.* at p.
19 94.)

20 2. Ascertainable Class

21 A class is ascertainable “when it is defined in terms of objective characteristics and
22 common transactional facts that make the ultimate identification of class members possible when
23 that identification becomes necessary.” (*Noel v. Thrifty Payless, Inc.* (2019) 7 Cal.5th 955, 980
24 (*Noel*).) A class definition satisfying these requirements “puts members of the class on notice
25 that their rights may be adjudicated in the proceeding, so they must decide whether to intervene,
26 opt out, or do nothing and live with the consequences. [Citation.] This kind of class definition
27 also advances due process by supplying a concrete basis for determining who will and will not be
28 bound by (or benefit from) any judgment.” (*Ibid.*)

1 “As a rule, a representative plaintiff in a class action need not introduce evidence
2 establishing how notice of the action will be communicated to individual class members in order
3 to show an ascertainable class.” (*Noel, supra*, 7 Cal.5th at p. 984.) Still, it has long been held
4 that “[c]lass members are ‘ascertainable’ where they may be readily identified ... by reference to
5 official records.” (*Rose v. City of Hayward* (1981) 126 Cal. App. 3d 926, 932, disapproved of on
6 another ground by *Noel, supra*, 7 Cal.5th 955; see also *Cohen v. DIRECTV, Inc.* (2009) 178
7 Cal.App.4th 966, 975-976 [“The defined class of all HD Package subscribers is precise, with
8 objective characteristics and transactional parameters, and can be determined by DIRECTV’s
9 own account records. No more is needed.”].)

10 Here, the 1,904 class members are readily identifiable based on Defendant’s employment
11 and payroll records, and the settlement class is defined based on objective characteristics. The
12 Court finds that the settlement class is numerous, ascertainable, and appropriately defined.

13 3. *Community of Interest*

14 The “community-of-interest” requirement encompasses three factors: (1) predominant
15 questions of law or fact; (2) class representatives with claims or defenses typical of the class; and
16 (3) class representatives who can adequately represent the class. (*Sav-On Drug Stores, supra*, 34
17 Cal.4th at pp. 326, 332.)

18 For the first community of interest factor, “[i]n order to determine whether common
19 questions of fact predominate the trial court must examine the issues framed by the pleadings
20 and the law applicable to the causes of action alleged.” (*Hicks v. Kaufman & Broad Home*
21 *Corp.* (2001) 89 Cal.App.4th 908, 916 (*Hicks*)). The court must also examine evidence of any
22 conflict of interest among the proposed class members. (See *J.P. Morgan & Co., Inc. v.*
23 *Superior Court* (2003) 113 Cal.App.4th 195, 215.) The ultimate question is whether the issues
24 which may be jointly tried, when compared with those requiring separate adjudication, are so
25 numerous or substantial that the maintenance of a class action would be good for the judicial
26 process and to the litigants. (*Lockheed Martin Corp. v. Superior Court* (2003) 29 Cal.4th 1096,
27 1104-1105 (*Lockheed Martin*)). “As a general rule if the defendant’s liability can be determined
28

1 by facts common to all members of the class, a class will be certified even if the members must
2 individually prove their damages.” (*Hicks, supra*, 89 Cal.App.4th at p. 916.)

3 Here, it appears that common legal and factual issues predominate. Plaintiff’s claims
4 arise from Defendant’s wage and hour practices, which would apply to the other class members,
5 who are similarly-situated.

6 As to the second factor,

7 The typicality requirement is meant to ensure that the class representative is able to
8 adequately represent the class and focus on common issues. It is only when a
9 defense unique to the class representative will be a major focus of the litigation, or
10 when the class representative’s interests are antagonistic to or in conflict with the
11 objectives of those she purports to represent that denial of class certification is
12 appropriate. But even then, the court should determine if it would be feasible to
divide the class into subclasses to eliminate the conflict and allow the class action
to be maintained.

13 (*Medraza v. Honda of North Hollywood* (2008) 166 Cal. App. 4th 89, 99, internal citations,
14 brackets, and quotation marks omitted.)

15 Like other members of the class, Plaintiffs were employed by Defendant as non-exempt
16 employees and they allege that they suffered the violations at issue. The anticipated defenses are
17 not unique to Plaintiff as they are based on Defendant’s general compliance with applicable laws
18 and its own policies and procedures. There is no indication before the Court that Plaintiff’s
19 interests are otherwise in conflict with those of the class. The Court finds that Plaintiffs have
20 sufficiently demonstrated typicality.

21 Finally, adequacy of representation “depends on whether the plaintiff’s attorney is
22 qualified to conduct the proposed litigation and the plaintiff’s interests are not antagonistic to the
23 interests of the class.” (*McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 450.) The class
24 representative does not necessarily have to incur all of the damages suffered by each different
25 class member in order to provide adequate representation to the class. (*Wershba, supra*, 91
26 Cal.App.4th at p. 238.) “Differences in individual class members’ proof of damages [are] not
27 fatal to class certification. Only a conflict that goes to the very subject matter of the litigation
28

1 will defeat a party’s claim of representative status.” (*Ibid.*, internal citations and quotation marks
2 omitted.)

3 Here, Plaintiffs would appear to have the same interest in maintaining this action as any
4 other class member would have. Plaintiffs are represented by experienced counsel who are
5 qualified to represent the class. The Court finds that Plaintiffs and their counsel are adequate to
6 represent the class.

7 4. *Substantial Benefits of Class Certification*

8 “[A] class action should not be certified unless substantial benefits accrue both to
9 litigants and the courts. . . .” (*Basurco v. 21st Century Ins.* (2003) 108 Cal.App.4th 110, 120,
10 internal quotation marks omitted.) The question is whether a class action would be superior to
11 individual lawsuits. (*Ibid.*) “Thus, even if questions of law or fact predominate, the lack of
12 superiority provides an alternative ground to deny class certification.” (*Ibid.*) Generally, “a
13 class action is proper where it provides small claimants with a method of obtaining redress and
14 when numerous parties suffer injury of insufficient size to warrant individual action.” (*Id.* at pp.
15 120–121, internal quotation marks omitted.)

16 Here, the class is large, comprised of an estimated 1,904 class members. It would surely
17 be inefficient for the Court to hear and decide the same issues separately and repeatedly for each
18 class member. Further, it would be cost prohibitive for each class member to file suit
19 individually, as each member would have the potential for little to no monetary recovery. It is
20 plain that a class action provides substantial benefits to both the litigants and the Court in this
21 case.

22 **E. Notice**

23 The content of a class notice is subject to court approval. (Cal. Rules of Court, rule
24 3.769(f).) “The notice must contain an explanation of the proposed settlement and procedures
25 for class members to follow in filing written objections to it and in arranging to appear at the
26 settlement hearing and state any objections to the proposed settlement.” (*Ibid.*) In determining
27 the manner of the notice, the court must consider: “(1) The interests of the class; (2) The type of
28 relief requested; (3) The stake of the individual class members; (4) The cost of notifying class

1 members; (5) The resources of the parties; (6) The possible prejudice to class members who do
2 not receive notice; and (7) The res judicata effect on class members.” (Cal. Rules of Court, rule
3 3.766(e).)

4 Here, the notice describes the lawsuit, explains the settlement, and instructs class
5 members that they may opt out of the settlement (except the PAGA component) or object to the
6 settlement. The gross settlement amount and estimated deductions are provided. Class members
7 are informed of their qualifying pay periods as reflected in Defendant’s records and are
8 instructed how to dispute this information. They are given 45 days to request exclusion from the
9 class or submit a written objection to the settlement.¹ Class members are instructed that they
10 may appear at the final fairness hearing to make an oral objection without submitting a written
11 objection. Notice will be provided in Spanish and English.

12 The form of notice is generally adequate, but must be modified to instruct class members
13 that they may opt out of or object to the settlement simply by providing their name, without the
14 need to provide their Social Security Number, phone number, or other personal information.

15 With regard to appearances at the final fairness hearing, the notice shall be further
16 modified to instruct class members as follows:

17 Class members can appear in person at the hearing or remotely. If class members
18 wish to appear remotely, they should contact class counsel at least three days
19 before the hearing if possible. Instructions for appearing remotely are provided
20 at https://www.sccourt.org/general_info/ra_teams/video_hearings_teams.shtml
21 and should be reviewed in advance. Class members may appear remotely using
the Microsoft Teams link for Department 1 (Afternoon Session) or by calling the
toll-free conference call number for Department 1.

22 Turning to the notice procedure, the parties have selected ILYM Group, Inc. as the
23 settlement administrator. Defendant will provide a list of class members to the administrator
24 within 10 days of the date of preliminary approval of the settlement. The administrator will mail
25 the notice packet within 45 days of preliminary approval, after updating class members’
26 addresses using the National Change of Address Database. The deadline for responses will be 45
27

28 ¹ The notice will provide the date by which the class members must respond.

1 days after mailing. Any returned notices will be re-mailed to any forwarding address provided or
2 better address located through a search. Class members who receive a re-mailed notice will have
3 an additional 10 days to respond.

4 The Court notes that Plaintiff already has modified the class notice to conform with the
5 Court's requests. (Supplemental Declaration of Shani O. Zakay, Esq. in Support of Plaintiffs'
6 Motion for Preliminary Approval of Class Action and PAGA Settlement, ¶ 4, Ex. A.)

7 These notice procedures are appropriate and are approved.

8 **F. Settlement of Mr. Aguilar's Individual Claims**

9 The settlement agreement provides that Mr. Aguilar "acknowledges that he is knowingly
10 and voluntarily waiving and releasing any rights he may have under the Age Discrimination in
11 Employment Act ('ADEA'). Mr. Aguilar also acknowledges that the consideration given in this
12 agreement for the waiver and release is \$300.00 of his \$10,000.00 Class Representative's
13 Payment and is in addition to anything of value to which he was already entitled." (Settlement
14 Agreement, at p. 28.) In their original moving papers, Plaintiffs did not provide information
15 regarding the factual basis for any ADEA claim and such a claim was not raised in the FAC.
16 Accordingly, the Court requested additional information regarding this portion of the release.

17 On May 24, 2023, Plaintiffs' counsel provided a supplemental declaration in which he
18 explained that Mr. Aguilar was not aware of the existence of an ADEA claim but that this
19 language was included in the settlement agreement because Mr. Aguilar is over the age of 40. At
20 Defendant's request, \$300 of Mr. Aguilar's \$10,000 incentive payment was allocated as
21 consideration for the release. Mr. Aguilar had the right to revoke the agreement but he has not
22 done so and the time in which to do so has passed. The Court is satisfied with this explanation.

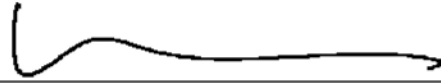
23 **CONCLUSION**

24 The Court GRANTS Plaintiffs' motion for preliminary approval. The final approval
25 hearing shall take place on October 26, 2023 at 1:30 pm. in Dept. 1.

1 Counsel shall submit lodestar information before the final approval hearing in this matter
2 so the Court can compare the lodestar information with the requested fees. Counsel also must
3 disclose their fee sharing arrangement.

4 **IT IS SO ORDERED.**

5 Date: May 30, 2023



6 _____
7 The Honorable Sunil R. Kulkarni
8 Judge of the Superior Court
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EXHIBIT 3

Natalia Michele

From: DIR PAGA Unit <lwdadonotreply@dir.ca.gov>
Sent: Monday, March 6, 2023 3:40 PM
To: Natalia Michele
Subject: Thank you for your Proposed Settlement Submission

03/06/2023 03:39:14 PM

Thank you for your submission to the Labor and Workforce Development Agency.

Item submitted: Proposed Settlement

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

EXHIBIT 4

EXHIBIT 5

JCL LAW FIRM, APC
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Tel: (619) 599-8292
Fax: (619) 599-8291

FIRM RESUME

Areas of Practice: Employee Class Actions, Wage and Hour Class Actions, Civil Litigation, and Unlawful Housing Practices.

ATTORNEY BIOGRAPHIES

Jean-Claude Lapuyade, Esq.
California Bar Number 248676
Founding Partner

Biography:

Mr. Lapuyade is a San Diego based labor and employment attorney representing aggrieved California employees and the victims of unlawful housing practices throughout the State of California. Mr. Lapuyade's litigation practice focuses on representing California employees in wage and hour class actions for unpaid wages, missed meal and rest breaks, and misclassification, wrongful termination cases and tenants in unlawful housing class actions. Mr. Lapuyade prides himself on providing his clients with aggressive, attentive and result driven representation through the litigation process, trial and arbitration. Since 2007, Mr. Lapuyade successfully recovered in excess of \$200 million in monetary awards for his clients.

Mr. Lapuyade served as co-editor of the Insurance Column for Consumer Attorneys of San Diego from 2011 to 2014. As editor, Mr. Lapuyade was responsible for publishing monthly articles in the Trial Bar News periodical analyzing complex insurance coverage issues. Mr. Lapuyade is a four-time recipient of the Super Lawyers Rising Star by Thomson Reuters. To be eligible for inclusion in Rising Stars, a candidate must be either 40 years old or younger or in practice for 10 years or less. While up to 5 percent of the lawyers in a state are named to Super Lawyers, no more than 2.5 percent are named to Rising Stars.

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- California
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- U.S. District Court Central District of California
- U.S. District Court Eastern District of California
- U.S. District Court Northern District of California

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- Consumer Attorneys of San Diego, 2007 to 2020
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 - Honors: Deans Merit Scholarship, California Western School of Law 2005 - 2006
- **University of Arizona**
 - B.A. - 2001
 - Major: History

Honors:

- Super Lawyers Rising Star, Thomson Reuters, 2015 - 2018
- Distinguished Advocate Award for Outstanding Oral Advocacy, 2005 - 2006

Sydney Castillo-Johnson, Esq.
California Bar Number 343881
Associate Attorney

Biography:

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 - Honors:
 - Dean's Honor List: Spring 2021, Fall 2021
 - Public Service Honor Society Fall 2021
 - 3L Academic Merit Scholarship
 - Dean's Diversity, Service, and Leadership Scholarship
 - Activities: Community Law Project Student Manager
- **Azusa Pacific University**
 - B.A. – 2018
 - Major: Criminal Justice

Monnett De La Torre, Esq.
California Bar Number 272884
Senior Associate

Biography:

Ms. De La Torre is a San Diego and Ventura County based labor and employment attorney representing aggrieved California employees throughout the State of California. Ms. De La Torre's litigation practice focuses on representing California employees in wage and hour class and representative actions for unpaid wages, missed meal and rest breaks, misclassification, penalties, and wrongful termination cases. Ms. De La Torre has extensive experience handling internal workplace investigations. Ms. De La Torre has handled matters before the Department of Fair Employment and Housing, Equal Employment Opportunity Commission and Department of Labor.

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- Honors:
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 - Major: Economics
 - Minor: Latin American Studies

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- *Nunes v. Home Depot U.S.A., Inc.*, San Joaquin Superior Court Case No. STK-CV-UOE-2020-0011011 (October 20, 2021 – Hon. Roger Ross approved a \$1.5 million dollar class and PAGA settlement for, *inter alia*, miscalculated meal period premiums and appointed Jean-Claude Lapuyade, Esq. as Class Counsel.)
- *Pillsbury v. T&T Restaurants CA, Inc.*, Del Norte Superior Court Case No. CVUJ-20-1214 (December 14, 2021 – Hon. Darren McElfresh approved \$550 billing rate and appointed Jean-Claude Lapuyade, Esq. as Class Counsel in a wage and hour class action settlement.)
- *Latin v. OneMain General Service Corporation*, Stanislaus County Superior Court Case No. CV-20-002498 (October 22, 2021) Hon. Stacy Speiller approved a PAGA action settlement for \$700,000 wage statement violations. The JCL Law Firm, APC acted as counsel for the plaintiff, the State of California and the Aggrieved Employees.
- *Elias Kaser v. Aviation Consultants, Inc.*, Orange County Superior Court Case No. 30-2021-01191204-CU-OE-CXC (September 22, 2021 – Hon. Peter J. Wilson approved \$550 billing rate in a representative California Labor Code Private Attorney General Act settlement).
- *Rodriguez v. RSI Home Products, Inc.*, San Bernardino Superior Court Case No. CIVDS2023354 (July 30, 2021 – Hon. David Cohn approved a \$1.45 million class and PAGA settlement for, *inter alia*, failure to comply with piece-rate laws, and appointed the JCL Law Firm, APC as Class Counsel)
- *Jer Vang v. Bridge Property Management*, Alameda County Superior Court, Case No RG19047434 (January 8, 2021 – Hon. Winifred Smith approved a class and PAGA settlement for, *inter alia*, unpaid off the clock work. The JCL Law Firm, APC acted as class counsel for the settlement class and as representative PAGA counsel the State of California and the Aggrieved Employees.)
- *Johnson v. Volt Management Corp., Inc. et al.*, Los Angeles County Superior Court, Case No. 19STCV16466 (December 11, 2020 – Hon. Amy Hogue approved a PAGA Settlement negotiated on behalf of the State of California and the aggrieved employees by the JCL Law Firm, APC.)
- *Salazar v. Frontier Auto Sales Inc., dba Frontier Toyota*, Los Angeles Superior Court, Case No. 19STCV20382 (November 24, 2020 – Hon. John P. Doyle appointed the JCL Law Firm, APC as class counsel and approved a class and PAGA settlement for, *inter alia*, missed meal and rest periods.)
- *Villalobos v. Alterra Group, LLC et al.*, Los Angeles County Superior Court, Case No. 19STCV19448 (November 11, 2020 – Hon. Richard Fruin approved a PAGA Settlement for, *inter alia*, unreimbursed business expenses. The JCL Law Firm, APC acted as counsel for the plaintiff, the State of California and the Aggrieved Employees.)
- *Stevens et al., v. Bank of England*, San Diego County Superior Court Case No. 37-2019-00018662-CU-OE-CTL (October 16, 2020 – Hon. John Meyer appointed JCL Law Firm as Class Counsel and granted final approval of wage and hour class action for, *inter alia*, off-the-clock work.)
- *Frazier v. ASA Carlton, Inc.*, San Diego Superior Court Case No. 37-2019-00036147 (October 9, 2020 Hon. Kenneth Medel appointed the JCL Law Firm as Class Counsel and granted final approval of wage and hour class action for off-the-clock work.)
- *Krake et al., v. Central Valley Diner, Inc.*, Placer County Superior Court Case No. SCV0041645 (September 4, 2020 – Hon. Michael Jones appointed JCL Law Firm as class counsel and granted final approval of wage and hour class action for meal period violations.)
- *Conner v. Ascendant Marketing, LLC et al.*, San Diego Superior Court Case No. 37-2019-00026864-CU-OE-CTL (July 24, 2020 Hon. Joel Wohlfeil granted approval of PAGA Settlement for, among other things, off-the-clock work. JCL Law Firm, APC acted as lead counsel.)
- *Guerrero v. Estancia Operations, LLC.*, San Diego Superior Court Case No. 37-2019-00028963 (August 25, 2020 – Hon. Katherine Bacal approved PAGA Settlement for, *inter alia*, missed meal and rest periods. JCL Law Firm, APC, acted as lead counsel.)
- *Moreno v. Dash Lube, et al.*, United States District Court, Southern District of California, Case No. 18cv1922 DMS (AHG) (December 13, 2019 – Granted class certification of Labor Code Section 226 claim and appointed JCL Law Firm, APC, as Class Counsel.)
- *Perkins et al., v. Tahiti Enterprises, Inc., et al.*, Orange County Superior Court Case No. 30-2016-00863095 (October 22, 2019 – Hon. Peter Wilson appointed JCL Law Firm, APC, as Class Counsel and granted final approval for an unlawful housing class action settlement arising out of Civil Code Section 1940.1.)

- *Hill v. Stemak Holdings, Ltd.*, San Diego Superior Court Case No., 37-2018-00000747 (January 28, 2020 – Hon. Kenneth Medel appointed JCL Law Firm, APC as class counsel and granted final approval of wage and hour class action for unpaid overtime.)
- *Shachno et al., v. KT Hotels, LLC, et al.* San Diego Superior Court Case No. 37-2018-00043601 (May 31, 2019 – Hon. Gregory Pollack appointed JCL Law Firm, APC, as Class Counsel and granted preliminary approval for the wage and hour class action settlement involving nearly 900 current and former employees. Final approval scheduled for October 4, 2019)
- *Almanza v. The Express Group, Inc.*, San Bernardino Superior Court Case No. CIVDS1722542 (April 19, 2019 – Hon. David Cohn appointed the JCL Law Firm, APC, as Class Counsel and granted final approval for a wage and hour class action settlement for *inter alia*, missed meal and rest periods and independent contractor misclassification.)
- *Moschetto v. Pillow Global, Inc.* San Diego Superior Court, Case No. 37-2017-00024031-CU-OE-CTL (April 5, 2019 – Hon. John S. Meyer appointed JCL LAW Firm, APC, as Class Counsel and granted final approval for a wage and hour wage class action settlement involving misclassified house cleaners.)
- *Burke v. Friendship Hotel, LLC*, San Diego County Superior Court Case No. 37-2017-00022517-CU-OE-CTL (March 10, 2019 – final approval granted on for an unlawful housing class action arising under Civil Code Section 1940.2)
- *Terrado et al., v. Accredited Debt Relief, LLC*, San Diego County Superior Court Case No. 37-2018-00014181-CU-OE-CTL (February 8, 2019 – Hon. Gregory W. Pollock appointed JCL Law Firm, APC as Class Counsel and granted final approval for a wage and hour class action settlement for meal and rest period violations);
- *Macaspac v. San Antonio Regional Hospital*, San Bernardino Superior Court Case No. CIVDS1512625, (July 27, 2018 – Hon. Thomas S. Garza appointed JCL Law Firm, APC, as Class Counsel and granted final approval for a wage and hour class action settlement involving claims for on duty meal and rest periods.);
- *Summerlin et al. v. Maplebear, Inc. dba Instacart*, Los Angeles Superior Court Case No. BC603030 (2018 - certified and settled wage and hour class action.)
- *Ortega v. Prime Healthcare*, San Diego Superior Court Case No. 37-2014-00011240-CU-OE-CTL (2018 – Approved PAGA only settlement for on duty meal and rest periods)
- *Engstrom v. Bender-Rosenthal, Inc.* San Diego Superior Court Case No. 37-2016-00012373-CU-OE-CTL (2017 - Certified and settled class action for employee misclassification);
- *Crawford v. Outlook Amusements, Inc.*, Los Angeles Superior Court Case No. BC617160 (2017 - Certified and settled wage and hour class action.);
- *Hernandez v. Sunglass Hut Trading, LLC*, San Bernardino Superior Court Case No. CIVDS1505181 (2016 - Certified and settled wage and hour class action);
- *Burns v. Shalom, LLC*, San Diego Superior Court, Case No., 37-2013-00058356-CU-BT-CTL (2015 - certified and settled class action for unlawful housing practices arising out of Civil Code Section 1940.1);

EXHIBIT 6

JCL LAW FIRM, APC
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Tel: (619) 599-8292
Fax: (619) 599-8291

FIRM RESUME

Areas of Practice: Employee Class Actions, Wage and Hour Class Actions, Civil Litigation, and Unlawful Housing Practices.

ATTORNEY BIOGRAPHIES

Jean-Claude Lapuyade, Esq.
California Bar Number 248676
Founding Partner

Biography:

Mr. Lapuyade is a San Diego based labor and employment attorney representing aggrieved California employees and the victims of unlawful housing practices throughout the State of California. Mr. Lapuyade's litigation practice focuses on representing California employees in wage and hour class actions for unpaid wages, missed meal and rest breaks, and misclassification, wrongful termination cases and tenants in unlawful housing class actions. Mr. Lapuyade prides himself on providing his clients with aggressive, attentive and result driven representation through the litigation process, trial and arbitration. Since 2007, Mr. Lapuyade successfully recovered in excess of \$200 million in monetary awards for his clients.

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Sydney Castillo-Johnson, Esq.
California Bar Number 343881
Associate Attorney

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- *Pillsbury v. T&T Restaurants CA, Inc.*, Del Norte Superior Court Case No. CVUJ-20-1214 (December 14, 2021 – Hon. Darren McElfresh approved \$550 billing rate and appointed Jean-Claude Lapuyade, Esq. as Class Counsel in a wage and hour class action settlement.)
- *Latin v. OneMain General Service Corporation*, Stanislaus County Superior Court Case No. CV-20-002498 (October 22, 2021) Hon. Stacy Speiller approved a PAGA action settlement for \$700,000 wage statement violations. The JCL Law Firm, APC acted as counsel for the plaintiff, the State of California and the Aggrieved Employees.
- *Elias Kaser v. Aviation Consultants, Inc.*, Orange County Superior Court Case No. 30-2021-01191204-CU-OE-CXC (September 22, 2021 – Hon. Peter J. Wilson approved \$550 billing rate in a representative California Labor Code Private Attorney General Act settlement).
- *Rodriguez v. RSI Home Products, Inc.*, San Bernardino Superior Court Case No. CIVDS2023354 (July 30, 2021 – Hon. David Cohn approved a \$1.45 million class and PAGA settlement for, *inter alia*, failure to comply with piece-rate laws, and appointed the JCL Law Firm, APC as Class Counsel)
- *Jer Vang v. Bridge Property Management*, Alameda County Superior Court, Case No RG19047434 (January 8, 2021 – Hon. Winifred Smith approved a class and PAGA settlement for, *inter alia*, unpaid off the clock work. The JCL Law Firm, APC acted as class counsel for the settlement class and as representative PAGA counsel the State of California and the Aggrieved Employees.)
- *Johnson v. Volt Management Corp., Inc. et al.*, Los Angeles County Superior Court, Case No. 19STCV16466 (December 11, 2020 – Hon. Amy Hogue approved a PAGA Settlement negotiated on behalf of the State of California and the aggrieved employees by the JCL Law Firm, APC.)
- *Salazar v. Frontier Auto Sales Inc., dba Frontier Toyota*, Los Angeles Superior Court, Case No. 19STCV20382 (November 24, 2020 – Hon. John P. Doyle appointed the JCL Law Firm, APC as class counsel and approved a class and PAGA settlement for, *inter alia*, missed meal and rest periods.)
- *Villalobos v. Alterra Group, LLC et al.*, Los Angeles County Superior Court, Case No. 19STCV19448 (November 11, 2020 – Hon. Richard Fruin approved a PAGA Settlement for, *inter alia*, unreimbursed business expenses. The JCL Law Firm, APC acted as counsel for the plaintiff, the State of California and the Aggrieved Employees.)
- *Stevens et al., v. Bank of England*, San Diego County Superior Court Case No. 37-2019-00018662-CU-OE-CTL (October 16, 2020 – Hon. John Meyer appointed JCL Law Firm as Class Counsel and granted final approval of wage and hour class action for, *inter alia*, off-the-clock work.)
- *Frazier v. ASA Carlton, Inc.*, San Diego Superior Court Case No. 37-2019-00036147 (October 9, 2020 Hon. Kenneth Medel appointed the JCL Law Firm as Class Counsel and granted final approval of wage and hour class action for off-the-clock work.)
- *Krake et al., v. Central Valley Diner, Inc.*, Placer County Superior Court Case No. SCV0041645 (September 4, 2020 – Hon. Michael Jones appointed JCL Law Firm as class counsel and granted final approval of wage and hour class action for meal period violations.)
- *Conner v. Ascendant Marketing, LLC et al.*, San Diego Superior Court Case No. 37-2019-00026864-CU-OE-CTL (July 24, 2020 Hon. Joel Wohlfeil granted approval of PAGA Settlement for, among other things, off-the-clock work. JCL Law Firm, APC acted as lead counsel.)
- *Guerrero v. Estancia Operations, LLC.*, San Diego Superior Court Case No. 37-2019-00028963 (August 25, 2020 – Hon. Katherine Bacal approved PAGA Settlement for, *inter alia*, missed meal and rest periods. JCL Law Firm, APC, acted as lead counsel.)
- *Moreno v. Dash Lube, et al.*, United States District Court, Southern District of California, Case No. 18cv1922 DMS (AHG) (December 13, 2019 – Granted class certification of Labor Code Section 226 claim and appointed JCL Law Firm, APC, as Class Counsel.)
- *Perkins et al., v. Tahiti Enterprises, Inc., et al.*, Orange County Superior Court Case No. 30-2016-00863095 (October 22, 2019 – Hon. Peter Wilson appointed JCL Law Firm, APC, as Class Counsel and granted final approval for an unlawful housing class action settlement arising out of Civil Code Section 1940.1.)

- *Hill v. Stetak Holdings, Ltd.*, San Diego Superior Court Case No., 37-2018-00000747 (January 28, 2020 – Hon. Kenneth Medel appointed JCL Law Firm, APC as class counsel and granted final approval of wage and hour class action for unpaid overtime.)
- *Shachno et al., v. KT Hotels, LLC, et al.* San Diego Superior Court Case No. 37-2018-00043601 (May 31, 2019 – Hon. Gregory Pollack appointed JCL Law Firm, APC, as Class Counsel and granted preliminary approval for the wage and hour class action settlement involving nearly 900 current and former employees. Final approval scheduled for October 4, 2019)
- *Almanza v. The Express Group, Inc.*, San Bernardino Superior Court Case No. CIVDS1722542 (April 19, 2019 – Hon. David Cohn appointed the JCL Law Firm, APC, as Class Counsel and granted final approval for a wage and hour class action settlement for *inter alia*, missed meal and rest periods and independent contractor misclassification.)
- *Moschetto v. Pillow Global, Inc.* San Diego Superior Court, Case No. 37-2017-00024031-CU-OE-CTL (April 5, 2019 – Hon. John S. Meyer appointed JCL LAW Firm, APC, as Class Counsel and granted final approval for a wage and hour wage class action settlement involving misclassified house cleaners.)
- *Burke v. Friendship Hotel, LLC*, San Diego County Superior Court Case No. 37-2017-00022517-CU-OE-CTL (March 10, 2019 – final approval granted on for an unlawful housing class action arising under Civil Code Section 1940.2)
- *Terrado et al., v. Accredited Debt Relief, LLC*, San Diego County Superior Court Case No. 37-2018-00014181-CU-OE-CTL (February 8, 2019 – Hon. Gregory W. Pollock appointed JCL Law Firm, APC as Class Counsel and granted final approval for a wage and hour class action settlement for meal and rest period violations);
- *Macaspac v. San Antonio Regional Hospital*, San Bernardino Superior Court Case No. CIVDS1512625, (July 27, 2018 – Hon. Thomas S. Garza appointed JCL Law Firm, APC, as Class Counsel and granted final approval for a wage and hour class action settlement involving claims for on duty meal and rest periods.);
- *Summerlin et al. v. Maplebear, Inc. dba Instacart*, Los Angeles Superior Court Case No. BC603030 (2018 - certified and settled wage and hour class action.)
- *Ortega v. Prime Healthcare*, San Diego Superior Court Case No. 37-2014-00011240-CU-OE-CTL (2018 – Approved PAGA only settlement for on duty meal and rest periods)
- *Engstrom v. Bender-Rosenthal, Inc.* San Diego Superior Court Case No. 37-2016-00012373-CU-OE-CTL (2017 - Certified and settled class action for employee misclassification);
- *Crawford v. Outlook Amusements, Inc.*, Los Angeles Superior Court Case No. BC617160 (2017 - Certified and settled wage and hour class action.);
- *Hernandez v. Sunglass Hut Trading, LLC*, San Bernardino Superior Court Case No. CIVDS1505181 (2016 - Certified and settled wage and hour class action);
- *Burns v. Shalom, LLC*, San Diego Superior Court, Case No., 37-2013-00058356-CU-BT-CTL (2015 - certified and settled class action for unlawful housing practices arising out of Civil Code Section 1940.1);