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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

AUG 30 2021

BY 
NATHANIEL JOHNSON, DEPUTY

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

VICTOR PEREZ, individually, and on behalf of
all others similarly situated,

Plaintiff,

v.

THE BIG COMPANY, INC. DBA CAPO
FIRESIDE, a California corporation; and DOES
1 through 10, inclusive,

Defendants.

Case No. CIVDS 2009691

CLASS ACTION

*[Assigned for all purposes to Hon. David
Cohn, Dept. S26]*

**DECLARATION OF JUSTIN F.
MARQUEZ IN SUPPORT OF
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

*[Filed with Memorandum of Points and
Authorities the Declaration of Justin F.
Marquez, and Proposed Order]*

PRELIMINARY APPROVAL HEARING

Date: September 22, 2021

Time: 9:00 a.m.

Dept: S-26

**FILE BY FAX
PER CAC
2.303**

1 **DECLARATION OF JUSTIN F. MARQUEZ**

2 I, Justin F. Marquez, declare as follows:

3 1. I am admitted, in good standing, to practice as an attorney in the State of
4 California, the Ninth Circuit Court of Appeals, and the United States District Courts for the
5 Central, Southern, Eastern, and Northern Districts of California. I am a Senior Partner at
6 Wilshire Law Firm, PLC, counsel of record for Plaintiff. I have personal knowledge of the facts
7 set forth in this declaration and could and would competently testify to them under oath if called
8 as a witness. This Declaration is submitted in support of Plaintiff’s Motion for Preliminary
9 Approval of Class Action Settlement.

10 **CASE BACKGROUND**

11 2. Plaintiff and putative class members worked in California as hourly-paid, non-
12 exempt employees for Defendant during the class period. Defendant provides modern fireplace
13 installation and serves customers in Van Nuys, San Diego, Palm Desert, Concord, San Juan
14 Capistrano, Santa Cruz, and Sacramento.

15 3. Plaintiff alleges that Defendant’s payroll, timekeeping, and wage and hour
16 practices resulted in Labor Code violations. Plaintiff alleges that Defendant failed to pay for all
17 hours worked by not recording the actual start and end times of shifts and only paying for 8 hours
18 of work for each workday, regardless of whether an employee worked overtime. Plaintiff further
19 alleges that Defendant failed to provide employees with legally compliant meal and rest periods.
20 Based on these allegations, Plaintiff asserts claims against Defendant for failure to pay overtime
21 wages, failure to pay minimum and straight time wages, failure to provide meal periods, failure
22 to authorize and permit rest periods, inaccurate wage statements, failure to pay all final wages at
23 termination, unfair business practices, and civil penalties under PAGA.

24 4. On May 29, 2020, Plaintiff filed a putative wage-and-hour class action complaint
25 against Defendant The BIG Company, Inc. dba CAPO Fireside for: (1) failure to pay minimum
26 and straight time wages (Labor Code §§ 204, 1194, 1194.2, and 1197); (2) failure to pay
27 overtime wages (Labor Code §§ 1194, and 1198); (3) failure to provide meal periods (Labor
28 Code §§ 226.7 and 512); (4) failure to authorize and permit rest periods (Labor Code §§ 226.7);

1 (5) failure to timely pay final wages at termination (Labor Code §§ 201-203); (6) failure to
2 provide accurate itemized wage statements (Labor Code § 226); and (7) unfair business practices
3 (Business and Professions Code 17200 et seq.). On June 29, 2020, Plaintiff filed a First Amended
4 Complaint adding a claim for civil penalties under Private Attorneys General Act “PAGA”
5 (Labor Code § 2698 et seq.).

6 DISCOVERY AND INVESTIGATION

7 5. Following the filing of the Complaint, the parties exchanged documents and
8 information before mediating this action. Defendant produced a sample of time and pay records
9 for class members. Defendant also provided documents of its wage and hour policies and
10 practices during the class period, and information regarding the total number of current and
11 former employees in its informal discovery responses.

12 6. After reviewing documents regarding Defendant’s wage and hour policies and
13 practices, analyzing Defendant’s timekeeping and payroll records, and interviewing Class
14 Members, Class Counsel was able to evaluate the probability of class certification, success on the
15 merits, and Defendant’s maximum monetary exposure for all claims. Class Counsel also
16 investigated the applicable law regarding the claims and defenses asserted in the litigation. Class
17 Counsel reviewed these records and prepared a damage analysis prior to mediation.

18 SETTLEMENT NEGOTIATIONS

19 7. On May 20, 2021, the parties participated in private mediation with experienced
20 class action mediator Steven J. Serratore. The mediation was conducted via Zoom. The
21 settlement negotiations were at arm’s length and, although conducted in a professional manner,
22 were adversarial. The parties went into the mediations willing to explore the potential for a
23 settlement of the dispute, but each side was also prepared to litigate their position through trial
24 and appeal if a settlement had not been reached.

25 8. After extensive negotiations and discussions regarding the strengths and
26 weaknesses of Plaintiff’s claims and Defendant’s defenses, Mr. Serratore issued a mediator’s
27 proposal that was accepted by all parties, the material terms of which are encompassed within the
28 Settlement. Attached as **Exhibit 1** is a true and correct copy of the Joint Stipulation for Class

1 Action Settlement.

2 9. The settlement includes \$30,000 allocated to Plaintiff's claims under PAGA, with
3 75% of which (\$22,500) will be paid to the LWDA and 25% (\$7,500) will be paid to eligible
4 members of the PAGA Class. (Settlement, ¶ 21.) Class Counsel submitted the proposed
5 settlement to the LWDA before filing this Motion for Preliminary Approval.

6 10. The Settlement provides that Defendant will not oppose a fee application of up to
7 33 1/3% (\$191,666.66) of the Settlement Amount, plus out-of-pocket costs not to exceed
8 \$25,000. (Settlement, ¶ 4.)

9 11. I requested several bids from experienced class action settlement administrators to
10 handle the responsibilities of the Settlement Administrator under this settlement. The Parties
11 accepted the bid of Phoenix Class Action Administration Solutions. In its bid, Phoenix agreed to
12 cap its costs at \$7,500.00 if there are 220 class members. The bid also provides that class notice
13 will be provided in English and Spanish. A true and correct copy of the bid is attached hereto as
14 **Exhibit 2.**

15 12. Plaintiff Victor Perez does not have any interest, financial or otherwise, in the
16 proposed third-party administrator, Phoenix Class Action Administration Solutions.

17 13. No one at Wilshire Law Firm, PLC (meaning the law firm itself and anyone
18 employed at the law firm) has any interest, financial or otherwise, in the proposed third-party
19 administrator Phoenix Class Action Administration Solutions.

20 14. Wilshire Law Firm, PLC has no fee-splitting agreement with any other counsel in
21 this case.

22 **THE PROPOSED SETTLEMENT IS FAIR AND REASONABLE**

23 15. Class Counsel has conducted a thorough investigation into the facts of this case.
24 Based on the foregoing discovery and their own independent investigation and evaluation, Class
25 Counsel is of the opinion that the Settlement is fair, reasonable, and adequate and is in the best
26 interests of the Settlement Class Members in light of all known facts and circumstances, the risk
27 of significant delay, the defenses that could be asserted by Defendant both to certification and on
28 the merits, trial risk, and appellate risk.

1 16. Based on an analysis of the facts and legal contentions in this case, documents and
2 information from Defendant, I evaluated Defendant’s maximum exposure. I took into account
3 the risk of not having the claims certified and the risk of not prevailing at trial, even if the claims
4 are certified. After using the data Defendant provided, including a random sample of
5 timekeeping and payroll records, as well as class member demographics (i.e., the number of class
6 members, workweeks, and average total compensation of the class), with the assistance of a
7 statistics expert I created a damages model to evaluate the realistic range of potential recovery
8 for the class. The damages model is based on the following benchmarks:

- | |
|---|
| 9 Total Class Members: 199 |
| 10 Terminated Class Members during 3-year statute: 93 |
| 11 Avg. number of active employees per year: 102 |
| 12 Total Workweeks: 19,631 |
| 13 PAGA Pay Periods: 4,930 |
| 14 Avg. Hourly Rate: \$20.87 |
| 15 Class period: May 29, 2016 through July 19, 2021, or the date when the Court grants |
| 16 preliminary approval of this settlement, whichever is earlier |

17 17. Discovery and investigation revealed that Defendant failed to pay class members
18 overtime for all hours worked, failed to record any instances of meal period taken or missed, and
19 failed to have a legally compliant written policy providing meal periods and authorizing and
20 permitting rest periods. However, approximately 50% of all class members are subject to
21 arbitration agreements and class action waivers.

22 18. Plaintiff alleges that Defendant failed to pay for all hours worked, including
23 minimum wages, straight time wages, and overtime wages. My expert analyzed Defendant’s
24 timekeeping and payroll records and found many instances where Defendant failed to pay
25 employees for all hours worked, particularly the time employees spent driving between job sites,
26 and many instances where Defendant falsified time records to show that meal periods were taken
27 when in fact employees were working. A more conservative estimate was appropriate given the
28 difficulty of proving an off-the-clock work violation on a class-wide basis. Assuming that

1 Defendant failed to pay employees for 30 minutes of work each shift, and 80% of this work was
2 overtime, potential liability for this claim is \$1,602,296. Because individualized can be a
3 significant obstacle to certifying and proving off-the-clock claims, I discounted this figure by
4 80% to account for the difficulty of prevailing on a motion for class certification and a trial on
5 the merits, yielding a realistic damage estimate of **\$320,459.20**.¹

6 19. With respect to the meal period claim, Plaintiff alleges that Defendant required
7 him and similarly situated class members to work in lieu of taking meal periods, and Defendant
8 lacked legally compliant policies and practices providing meal periods for most of the class
9 period. My expert analyzed Defendant's timekeeping records and found that approximately
10 20.6% of all meal breaks had violations of short, missed, or no meal periods. Potential liability of
11 the meal period claim, which includes shifts 5-6 hours long, shifts over 6 hours long, and shifts
12 over 10 hours long, is \$446,012, including interest; however, I discounted this figure by 80% to
13 account for the difficulty of certifying and proving meal period claims, and to account for the
14 possibility of class members voluntarily choosing to forego a meal period, yielding a realistic
15 damage estimate of **\$89,202.40**.

16 20. With respect to the rest period claim, Plaintiff alleges that Defendant required him
17 and similarly situated class members to work in lieu of taking rest periods, and Defendant lacked
18 legally compliant policies and practices authorizing and permitting employees to take rest
19 periods for most of the class period. Assuming a 100% violation rate for the time period when
20 Defendant's written policies were inadequate, Defendant's potential liability for the rest period
21 claim is \$2,013,657; however, I discounted this figure by 80% to account for the difficulty of
22 certifying and proving rest period claims, particularly because rest periods do not have to be
23 recorded, and to account for the possibility of class members voluntarily choosing to forego a
24 rest period, yielding a realistic damage estimate of **\$402,731.40**.

25 _____
26 ¹ This discount for risk at certification and trial is reasonable because the Judicial Council
27 of California found that only 21.4% of all class actions were certified either as part of a
28 settlement *or* as part of a contested certification motion. *See* Findings of the Study of California
Class Action Litigation, 2000-2006, available at <http://www.courts.ca.gov/documents/class-action-lit-study.pdf>.

1 21. In sum, Plaintiff’s maximum recovery for the unpaid wages due to unpaid work
2 (minimum wages, straight time wages, and overtime wages), meal period, and rest period claims
3 is \$4,061,965, but, **after factoring in the risk and uncertainty of prevailing at certification**
4 **and trial, Plaintiff’s realistic estimated recovery for the non-penalty claims is \$812,393.**

5 22. With respect to Plaintiff’s derivative claims for statutory and civil penalties,
6 Plaintiff estimated that Defendant’s realistic potential liability is **\$350,000.00**. While
7 Defendant’s maximum potential liability for waiting time penalties is \$535,277 based on
8 approximately 93 terminated class members during the 3-year statute, \$368,700 for inaccurate
9 wage statements based on approximately 135 class members who worked 4,519 pay periods
10 within the 1-year statute, and \$493,000 for PAGA violations based on the Court assessing a \$100
11 penalty for initial violations for all 4,930 pay periods within the 1-year statute, I believe that it
12 would be unrealistic to expect the Court to award the full \$1,396,977 in penalties given
13 Defendant’s defenses, the contested nature of Plaintiff’s claims, and the discretionary nature of
14 penalties. Considering that the underlying claims are realistically estimated to be \$812,393, such
15 a disproportionate award would also raise due process concerns. Weighing these factors, and
16 applying a discount to account for the risk and uncertainty of prevailing at trial, I arrived at
17 \$350,000.00 for statutory and civil penalties.

18 23. **Using these estimated figures, Plaintiff predicted that the realistic maximum**
19 **recovery for all claims, including penalties, would be \$1,162,393. This means that the**
20 **\$575,000 settlement figure represents approximately 49.5% of the realistic maximum**
21 **recovery ($\$575,000 / \$21,162,393 = 49.5\%$).** Considering the risk and uncertainty of prevailing
22 at class certification and at trial, particularly in light of many class members being subject to
23 arbitration agreements and class action waivers, this is an excellent result for the Class. Indeed,
24 because of the proposed Settlement, class members will receive timely, guaranteed relief and will
25 avoid the risk of an unfavorable judgment.

26 24. While Plaintiff is confident in the merits of his claims, a legitimate controversy
27 exists as to each cause of action. Plaintiff also recognizes that proving the amount of wages due
28 to each Class Member would be an expensive, time-consuming, and uncertain proposition.

1 25. This settlement avoids the risks and the accompanying expense of further
2 litigation. Although the parties had engaged in a significant amount of investigation, informal
3 discovery and class-wide data analysis, the parties had not yet completed formal written
4 discovery. Plaintiff intended to depose corporate officers and managers of Defendant.
5 Moreover, preparation for class certification and a trial remained for the parties as well as the
6 prospect of appeals in the wake of a disputed class certification ruling for Plaintiff and/or adverse
7 summary judgment ruling. Had the Court certified any claims, Defendant could move to
8 decertify the claims. As a result, the parties would incur considerably more attorneys’ fees and
9 costs through trial.

10 26. The Net Settlement Amount available for Class Member settlement payments is
11 estimated to be \$313,333.34, for a class of 199 persons.² **As a result, each Settlement Class**
12 **Member is eligible to receive an average net benefit of approximately \$1,574.54.**

13 27. The proposed settlement of \$575,000.00 therefore represents a substantial
14 recovery when compared to Plaintiff’s reasonably forecasted recovery. When considering the
15 risks of litigation, the uncertainties involved in achieving class certification, the burdens of proof
16 necessary to establish liability, the probability of appeal of a favorable judgment, it is clear that
17 the settlement amount of \$575,000.00 is within the “ballpark” of reasonableness, and preliminary
18 settlement approval is appropriate.

19 ENHANCEMENT AWARD FOR PLAINTIFF IS REASONABLE

20 28. Class Counsel represent that Plaintiff devoted a great deal of time and work
21 assisting counsel in the case, communicated with counsel very frequently for litigation and to
22 prepare for mediation, and was frequently in contact with Class Counsel during the mediation.
23 Plaintiff’s requested enhancement award is reasonable particularly in light of the substantial
24 benefits Plaintiff generated for all class members.

25 _____
26 ² The Net Settlement Amount is: \$575,000.00 minus \$7,500.00 for class representative
27 service award, minus \$7,500.00 in administration costs, minus \$22,500.00 for PAGA portion sent
28 to the LWDA, minus \$7,500.00 for payments to Aggrieved Employees on a *pro rata basis*, minus
\$191,666.66 for Class Counsel’s attorneys’ fees, and minus \$25,000.00 for Class Counsel’s
litigation expenses.

1 29. Throughout this litigation, Plaintiff, who is a former employee of Defendant, has
2 cooperated immensely with my office and has taken many actions to protect the interests of the
3 class. Plaintiff provided valuable information regarding unpaid overtime, meal period, and rest
4 period claims. Plaintiff also informed my office of developments and information relevant to this
5 action, participated in decisions concerning this action, made himself available to answer
6 questions during the mediation, and provided my office with the names and contact information
7 of potential witnesses in this action. Before we filed this case, Plaintiff provided my office with
8 several documents, including policy documents, and communications from Defendant regarding
9 the claims alleged in this action. The information and documentation provided by Plaintiff was
10 instrumental in establishing the wage and hour violations alleged in this action, and the recovery
11 provided for in the Settlement Agreement would have been impossible to obtain without
12 Plaintiff's participation.

13 30. At the same time, Plaintiff faced many risks in adding himself as the class
14 representative in this matter. Plaintiff faced actual risks with his future employment, as putting
15 himself on public record in an employment lawsuit could also very well affect his likelihood for
16 future employment. Furthermore, as part of this settlement, Plaintiff is executing a general
17 release of all claims against Defendant.

18 31. In turn, class members will now have the opportunity to participate in a settlement,
19 reimbursing them for alleged wage violations they may have never known about on their own or
20 been willing to pursue on their own. If these class members would have each tried to pursue
21 their legal remedies on their own, that would have resulted in each having to expend a significant
22 amount of their own monetary resources and time, which were obviated by Plaintiff putting
23 himself on the line on behalf of these other class members.

24 32. In the final analysis, this class action would not have been possible without the aid
25 of Plaintiff, who put his own time and effort into this litigation, sacrificed the value of his own
26 individual claims, and placed himself at risk for the sake of the class members. The requested
27 enhancement award for Plaintiff for his service as the class representative and for his general
28 release of all individual claims is a relatively small amount of money when the time and effort

1 put into the litigation are considered and in comparison to enhancements granted in other class
2 actions. The requested incentive award is therefore reasonable to compensate Plaintiff for his
3 active participation in this lawsuit. Indeed, in *Karl Adams, III, et al. v. MarketStar Corporation,*
4 et al., No. 2:14-cv-02509-TLN-DB, a wage and hour class action alleging that class members
5 were misclassified as exempt outside salespersons, I was co-lead Class Counsel and helped
6 negotiate a \$2.5 million class action settlement for 339 class members, and the court approved a
7 \$25,000 class representative incentive award for each named plaintiff.

8 THE REQUEST FOR ATTORNEYS' FEES AND COSTS IS REASONABLE

9 33. The Settlement provides for attorney's fees payable to Class Counsel in an amount
10 up to one-third (33 1/3%) of the Settlement Amount, for a maximum fees award of \$191,666.66,
11 plus actual costs and expenses not to exceed \$25,000.00. The proposed award of attorneys' fees
12 to Class Counsel in this case can be justified under either method – lodestar or percentage
13 recovery. Class Counsel, however, intend to base the proposed award of fees, costs and expenses
14 on the percentage method as many of the entries in the time records will have to be redacted to
15 preserve attorney-client and attorney work product privileges.

16 34. I am informed and believe that the fee and costs provision is reasonable. The fee
17 percentage requested is less than that charged by my office for most employment cases. My
18 office invested significant time and resources into the case, with payment deferred to the end of
19 the case, and then, of course, contingent on the outcome.

20 35. It is further estimated that my office will need to expend at least another 50 to 100
21 hours to monitor the process leading up to the final approval and payments made to the class.
22 My office also bears the risk of taking whatever actions are necessary if Defendant fails to pay.

23 36. The risk to my office has been very significant, particularly if we would not be
24 successful in pursuing this class action. In that case, we would have been left with no
25 compensation for all the time taken in litigating this case. Indeed, I have taken on a number of
26 class action cases that have resulted in thousands of attorney hours being expended and
27 ultimately having certification denied or the defendant company going bankrupt. The contingent
28 risk in these types of cases is very real and they do occur regularly. Furthermore, we were

1 precluded from focusing on, or taking on, other cases which could have resulted in a larger, and
2 less risky, monetary gain.

3 37. Because most individuals cannot afford to pay for representation in litigation on
4 an hourly basis, Wilshire Law Firm, PLC represents virtually all of its employment law clients on
5 a contingency fee basis. Pursuant to this arrangement, we are not compensated for our time
6 unless we prevail at trial or successfully settle our clients' cases. Because Wilshire Law Firm,
7 PLC is taking the risk that we will not be reimbursed for our time unless our client settles or wins
8 his or her case, we cannot afford to represent an individual employee on a contingency basis if, at
9 the end of our representation, all we are to receive is our regular hourly rate for services. It is
10 essential that we recover more than our regular hourly rate when we win if we are to remain in
11 practice so as to be able to continue representing other individuals in civil rights employment
12 disputes.

13 38. As of the drafting of this motion, my office has incurred around \$19,211.85 in
14 expenses litigating this action, and we anticipate accruing additional costs up to Final Approval
15 of the Settlement. These expenses were reasonably necessary to the litigation and were actually
16 incurred by my office. They should be reimbursed in full, up to the maximum amount allowed in
17 the Settlement Agreement.

18 MY EXPERIENCE AND QUALIFICATIONS

19 39. Wilshire Law Firm was selected by Best Lawyers and U.S. News & World Report
20 as one of the nation's Best Law Firms in 2021 and is comprised of over 20 attorneys and over
21 200 employees. Wilshire Law Firm is actively and continuously practicing in employment
22 litigation, representing employees in both individual and class actions in both state and federal
23 courts throughout California.

24 40. Wilshire Law Firm is qualified to handle this litigation because its attorneys are
25 experienced in litigating Labor Code violations in both individual, class action, and
26 representative action cases. Wilshire Law Firm has handled, and is currently handling, numerous
27 wage and hour class action lawsuits, as well as class actions involving consumer rights and data
28 privacy litigation.

1 41. I graduated from the University of California, Los Angeles’s College Honors
2 Program in 2004 with Bachelor of Arts degrees in History and Japanese, *magna cum laude* and
3 *Phi Beta Kappa*. As an undergraduate, I also received a scholarship to study abroad for one year
4 at Tokyo University in Tokyo, Japan. I received my Juris Doctor from Notre Dame Law School
5 in 2008.

6 42. My practice is focused on advocating for the rights of consumers and employees
7 in class action litigation and appellate litigation. I am currently the primary attorney in charge of
8 litigating several class action cases in state and federal courts across the United States.

9 43. I have received numerous awards for my legal work. From 2017 to 2020, Super
10 Lawyers selected me as a “Southern California Rising Star.” In 2016 and 2017, the National
11 Trial Lawyers selected me as a “Top 40 Under 40” attorney. I am also rated 10.0 (“Superb”) by
12 Avvo.com.

13 44. I am on the California Employment Lawyers Association (CELA)’s Wage and
14 Hour Committee and Mentor Committee, and I was selected to speak at CELA’s 2019 Advanced
15 Wage & Hour Seminar on the topic of manageability of class actions. Since 2013, I have
16 actively mentored young attorneys through CELA’s mentorship program.

17 45. I am also an active member of the Consumer Attorneys of California (CAOC). In
18 2020, I was selected for a position on CAOC’s Board of Directors. I am also a member of
19 CAOC’s Diversity Committee, and I help assist the CAOC in defeating bills that harm
20 employees. Indeed, I recently helped assist Jacqueline Serna, Esq., Legislative Counsel for
21 CAOC, in defeating AB 443, which proposed legislation that sought to limit the enforceability of
22 California Labor Code § 226.

23 46. As the attorney responsible for day-to-day management of this matter at the
24 Wilshire Law Firm, I have over ten years of experience with litigating wage and hour class
25 actions. Over the last ten years, I have managed and assisted with the litigation and settlement of
26 several wage and hour class actions. In those class actions, I performed similar tasks as those
27 performed in the course of prosecuting this action. My litigation experience includes:

28 a. I served as lead or co-lead in negotiating class action settlements worth over \$10

1 million in gross recovery to class members in 2020.

- 2 b. To my knowledge, I am the only attorney to appear on each of the following *Top*
3 *Verdict* lists for 2018 in California: Top 20 Civil Rights Violation Verdicts, Top 20
4 Labor & Employment Settlements, and Top 50 Class Action Settlements.
- 5 c. As lead counsel, on April 29 2021, I prevailed against CVS Pharmacy, Inc. by
6 winning class certification on behalf of hundreds of thousands of consumers for
7 misleading advertising claims in *Joseph Mier v. CVS Pharmacy, Inc.*, U.S. Dist. Ct.
8 C.D. Cal. no. SA CV 20-1979-DOC-(ADSx).
- 9 d. As lead counsel, I prevailed against Bank of America by: winning class certification
10 on behalf of thousands of employees for California Labor Code violations; defeating
11 appellate review of the court’s order certifying the class; defeating summary
12 judgment; and defeating a motion to dismiss. (*Frausto v. Bank of America, N.A.*
13 (N.D. Cal. 2019) 334 F.R.D. 192, 2020 WL 1290302 (9th Cir. Feb. 27, 2020), 2019
14 WL 5626640 (N.D. Cal. Oct. 31, 2019), 2018 W.L. 3659251 (N.D. Cal. Aug. 2,
15 2018).). The decision certifying the class in *Frausto* is also discussed in *Class*
16 *Certification Under Fed. R. Civ. P. 23 in Action by Information Technology or Call*
17 *Center Employees for Violation of State Law Wage and Hour Rules*, 35 A.L.R. Fed.
18 3d Art. 8.
- 19 e. I was the primary author of the class certification and expert briefs in *ABM*
20 *Industries Overtime Cases* (2017) 19 Cal.App.5th 277, a wage and hour class
21 action for over 40,000 class members for off-the-clock, meal period, split shift,
22 and reimbursement claims. *ABM Industries Overtime Cases* is the first published
23 California appellate authority to hold that an employer’s “auto-deduct policy for
24 meal breaks in light of the recordkeeping requirements for California employers is
25 also an issue amenable to classwide resolution.” (*Id.* at p. 310.)³ Notably, the

26
27 ³ As a California district court observed before the *ABM Industries Overtime* decision,
28 “[t]he case law regarding certification of auto-deduct classes is mixed.” (*Wilson v. TE*
Connectivity Networks, Inc. (N.D. Cal. Feb. 9, 2017) No. 14-CV-04872-EDL, 2017 WL
1758048, *7.)

1 Court of Appeal also held that expert analysis of timekeeping records can also
2 support the predominance requirement for class certification. (*Id.* at p. 310-311.)
3 In 2021, the case settled for \$140 million, making it one of the largest ever wage
4 and hour class action settlements for hourly-paid employees in California.

5 f. I briefed, argued, and won *Yocupicio v. PAE Group, LLC* (9th Cir. 2015) 795 F.3d
6 1057. The Ninth Circuit ruled in my client’s favor and held that non-class claims
7 under California’s Private Attorney Generals Act (“PAGA”) cannot be used to
8 calculate the amount in controversy under the Class Action Fairness Act
9 (“CAFA”). This case is cited in several leading treatises such as *Wright &*
10 *Miller’s Federal Practice & Procedure*, and *Newberg on Class Actions*. In
11 October 2016, the U.S. Supreme Court denied review of a case that primarily
12 concerned *Yocupicio*. That effort was led by Theodore J. Boutrous, who brought
13 the cert petition, with amicus support from a brief authored by Andrew J. Pincus.⁴
14 Considering that leading Supreme Court practitioners from the class action
15 defense bar were very motivated in undermining *Yocupicio* case, but failed, this
16 demonstrates the national importance of the *Yocupicio* decision.

17 g. On December 13, 2018, the United States District Court granted final approval of
18 the \$2,500,000 class action settlement in *Mark Brulee, et al. v. DAL Global*
19 *Services, LLC* (C.D. Cal. Dec. 13, 2018) No. CV 17-6433 JVS(JCGx), 2018 WL
20 6616659 in which I served as lead counsel. In doing so, the Court found: “Class
21 Counsel’s declarations show that the attorneys are experienced and successful
22 litigators.” (*Id.* at p. *10.)

23 h. *Gasio v. Target Corp.* (C.D. Cal. Sep. 12, 2014) 2014 U.S. Dist. LEXIS 129852, a
24 reported decision permitting class-wide discovery even though the employer has a
25 lawful policy because “[t]he fact that a company has a policy of not violating the
26 law does not mean that the employees follow it, which is the issue here.” The

27
28 ⁴ <http://www.chamberlitigation.com/cases/abm-industries-inc-v-castro>

1 court also ordered defendant to pay for the cost of *Belaire-West* notice.

2 i. In 2013, I represented a whistleblower that reported that his former employer was
3 defrauding the State of California with the help of bribes to public employees.
4 The case, a false claims (*qui tam*) action, resulted in the arrest and criminal
5 prosecution of State of California employees by the California Attorney General's
6 Office.

7 j. In 2013, I was part of a team of attorneys that obtained conditional certification
8 for over 2,000,000 class members in a federal labor law case for misclassification
9 of independent contractors that did crowdsourced work on the Internet, *Otey v.*
10 *CrowdFlower, Inc.*, N.D. Cal. Case No. 12-cv-05524-JST (MEJ), resulting in the
11 following pro-plaintiff reported decisions:

- 12 1) 2013 U.S. Dist. LEXIS 151846 (N.D. Cal. Oct. 22, 2013) (holding
13 that an unaccepted Rule 68 offer doesn't moot plaintiff's claims,
14 and granting plaintiff's motion to strike defendant's affirmative
15 defenses based on *Twombly/Iqbal*).
- 16 2) 2013 U.S. Dist. LEXIS 122007 (N.D. Cal. Aug. 27, 2013) (order
17 granting conditional collective certification).
- 18 3) 2013 U.S. Dist. LEXIS 95687 (N.D. Cal. July 8, 2013) (affirming
19 the magistrate judge's discovery ruling which held that "evidence
20 of other sources of income is irrelevant to the question of whether a
21 plaintiff is an employee within the meaning of the FLSA").
- 22 4) 2013 U.S. Dist. LEXIS 91771 (N.D. Cal. June 20, 2013) (granting
23 broad discovery because "an FLSA plaintiff is entitled to discovery
24 from locations where he never worked if he can provide some
25 evidence to indicate company-wide violations").

26 j. From 2012 to 2013, I was part of a team of attorneys that obtained class
27 certification for over 60,000 class members for off-the-clock claims, *Linares v.*
28 *Securitas Security Services USA, Inc.*, Los Angeles Superior Court No.

1 BC416555. We also successfully opposed subsequent appeals to the California
2 Court of Appeal and California Supreme Court.

3 47. Bobby Saadian is the Founding President and Managing Attorney at Wilshire Law
4 Firm. He graduated from California State University, Northridge, Pepperdine University
5 Graziadio Business School and Pepperdine University School of Law. He is listed in both The
6 Best Lawyers in America and Super Lawyers. Through his work with the CAOC, Bobby meets
7 with state attorney generals and legislators to help shape policies designed to protect vulnerable
8 consumers from large corporations. He frequently speaks at trial advocacy, litigation seminars,
9 and other continuing legal education events, including the annual Consumer Attorneys
10 Association of Los Angeles (CAALA) Las Vegas Convention, the National Trial Lawyers
11 Summit and the Association of Plaintiff Interstate Trucking Lawyers of America (APITLA)
12 National Interstate Trucking Supper Summit. He has been named one of the “Most Influential
13 Minority Lawyers” by the Los Angeles Business Journal. The Streets Are For Everyone (SAFE).
14 In 2017, Mr. Saadian started Wilshire Law Firm’s Academic Scholarship Program, which is
15 “committed to helping the next generation of lawyers succeed.” He is also an Executive Board
16 Member of the Los Angeles Trial Lawyers’ Charities (LATLC). He is also rated 10.0 (“Superb”)
17 by Avvo.com and he has been awarded “Client’s Choice Award Winner.” He also holds
18 Martindale-Hubbell AV Preeminent Peer Review Rating, the highest possible rating in both legal
19 ability and ethical standards. In 2014 and 2015, he was awarded the “Litigator Award Winner”,
20 which is awarded to the Top 1% of lawyers nationwide. He is admitted to practice in the State of
21 California, State of Texas and District of Columbia.

22 48. Nicol E. Hajjar is an Attorney at Wilshire Law Firm. She graduated from
23 California State University Los Angeles and Western State College of Law. The National
24 Trial Attorneys selected her as a “Top 10 Wage and Hour Trial Lawyer”, and a “Top 40 under
25 40” attorney. Super Lawyers selected her as one of their “Rising Stars.” She was selected to
26 serve on CAOC’s Board of Directors in 2020 and is an active member of CAALA, CELA,
27 National Employment Lawyers Association (NELA), and the Women Lawyers Association of
28 Los Angeles. She sits on CELA’s women’s committee and wage and hour committee and was

1 selected to speak at CELA’s 2020 Advanced Wage & Hour Seminar. Further, she has
2 extensively litigated employment cases for the past five years, including a successful wage
3 and hour trial wherein the jury awarded her wage and hour damages and she was awarded
4 PAGA penalties.

5 49. Rachel J. Vinson is a second-year Associate Attorney at Wilshire Law Firm. She
6 was admitted to practice law in the State of California and the Central and Southern Districts of
7 California in 2020. Rachel graduated from Claremont McKenna College with a Bachelor in Arts
8 in Philosophy and Government. She received her Juris Doctor from Washington University in St.
9 Louis where she earned a Scholar in Law Award, was Executive Editor of the Washington
10 University Journal of Law and Policy, was a Finalist in the Client Interviewing and Counseling
11 Competition, and successfully second-chaired a felony trial as a Rule 13 Attorney for the
12 Missouri State Public Defender Office. She is also a member of CAALA and CELA.

13 50. My current contingent billing rate of \$800 per hour is consistent with my practice
14 area, lead appellate experience in the Ninth Circuit Court of Appeals, numerous awards received,
15 legal market and accepted hourly rates:

- 16 a. In the December 8, 2008 article “Billable Hours Aren’t the Only Game in Town
17 Anymore,” *NATIONAL LAW JOURNAL*, the following hourly billing rates were
18 reported by Sheppard, Mullin, Richter & Hampton, a leading firm in the defense
19 of wage-and-hour class actions that I opposed when litigating wage-and-hour class
20 actions: Partners: \$475-\$795; Associates: 1st Year - \$275, 2nd Year - \$310, 3rd
21 Year - \$335, 4th Year - \$365, 5th Year - \$390, 6th Year - \$415, 7th Year - \$435,
22 8th Year - \$455. I am an 11th year attorney and Senior Partner, with most of my
23 experience in class action litigation as a primary practice area. Having
24 successfully briefed and argued a published appeal in the Ninth Circuit Court of
25 Appeals involving CAFA and PAGA, having experience certifying large class
26 actions (including *ABM Industries Overtime Cases*, which was decided on appeal),
27 and having received numerous awards for my legal work, my hourly rate should
28 be adjusted upward.

EXHIBIT 1

1 WILSHIRE LAW FIRM
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13 Attorneys for Defendant
 THE BIG COMPANY, INC. dba CAPO FIRESIDE

14
 15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 16 FOR THE COUNTY OF SAN BERNARDINO

17 VICTOR PEREZ, individually and on behalf of
 all others similarly situated,

18 Plaintiff,

19 vs.

20 THE BIG COMPANY, INC. DBA CAPO
 21 FIRESIDE, a California corporation, and DOES
 1 through 10, inclusive,

22 Defendants.

Case No. CIVDS2009691

CLASS ACTION

ASSIGNED FOR ALL PURPOSES TO:
HON. DAVID COHN, DEPT. S26

**SETTLEMENT AGREEMENT AND
STIPULATION TO RESOLVE CLASS
ACTION AND PAGA CLAIMS**

Date Action Filed: May 29, 2020

Trial Date: Not assigned

1 This Settlement Agreement and Stipulation To Resolve Class Action and PAGA Claims
2 (the “Settlement Agreement,” “Agreement,” or “Settlement”) is entered into to resolve the action
3 entitled *Victor Perez v. The BIG Company, Inc. dba CAPO Fireside, et al.*, San Bernardino County
4 Superior Court Case No. CIVDS2009691.

5 **DEFINITIONS**

6 1. Action. “Action” means *Victor Perez v. The BIG Company, Inc. dba CAPO*
7 *Fireside, et al.*, San Bernardino County Superior Court Case No. CIVDS2009691.

8 2. Agreement or Settlement or Settlement Agreement. “Agreement” or “Settlement”
9 or “Settlement Agreement” means this Settlement Agreement and Stipulation To Resolve Class
10 Action and PAGA Claims, entered into by the Parties to resolve the Action.

11 3. Aggrieved Employees. “Aggrieved Employees” means Class Members who
12 worked during the PAGA Period (as defined in Paragraph 22).

13 4. Attorneys’ Fees and Costs. “Attorneys’ Fees and Costs” means the amount
14 authorized by the Court for: (i) an award of attorneys’ fees to Class Counsel for litigation and
15 resolution of the matter, in the amount that does not exceed one-third or 33.33% percent of the
16 Gross Settlement Amount; and (ii) reimbursement of actual costs incurred by Class Counsel in
17 connection with this Action, in an amount to not to exceed twenty-five thousand dollars (\$25,000).

18 5. Class Counsel. “Class Counsel” means Wilshire Law Firm.

19 6. Class or Class Members. “Class” or “Class Members” means all current and former
20 employees who worked in a non-exempt or hourly-paid position for The BIG Company, Inc. dba
21 CAPO Fireside within the state of California during the Class Period.

22 7. Class Notice. “Class Notice” means the Notice of Class Action Settlement,
23 attached as **Exhibit A** to this Agreement, or a substantially similar notice approved by the Court.

24 8. Class Period. “Class Period” means the period from May 29, 2016 to the earlier of:
25 (i) the date the Court enters the Order preliminarily approving the Settlement; or (ii) July 19, 2021.

26 9. Court. “Court” means the San Bernardino County Superior Court, where the
27 Action is currently pending.

28 10. Defendant. “Defendant” means The BIG Company, Inc. dba CAPO Fireside.

1 11. Effective Date. The “Effective Date” of this Agreement will be the later of (i) the
2 61st day after service of notice of entry of the Final Order and Final Judgment, if no appeal, review,
3 or writ has been filed; or (ii) if an appeal, review, or writ is sought from the Final Order or Final
4 Judgment, the day after the Final Order and Final Judgment are affirmed or the appeal, review, or
5 writ is dismissed or denied, and the Final Order and Final Judgment are no longer subject to further
6 judicial review. The Effective Date is conditioned upon the Court’s having entered a Final Order
7 and Judgment as set forth in this Agreement.

8 12. Enhancement Award. “Enhancement Award” means the amount the Court
9 authorizes to be paid to Named Plaintiff in addition to his Individual Settlement Payment, in
10 recognition of his efforts and work in prosecution of the Action, up to \$7,500.00.

11 13. Final Hearing Date. “Final Hearing Date” means the date set by the Court for the
12 hearing on final approval of the Settlement.

13 14. Final Order and Judgment. “Final Order and Judgment” means the proposed order
14 granting final approval of the Settlement and entering judgment, which Plaintiff will submit to the
15 Court with the motion for final approval of the Settlement.

16 15. Gross Settlement Amount. “Gross Settlement Amount” means the total settlement
17 payment Defendant has agreed to make under this Agreement. The Gross Settlement Amount is
18 \$575,000.00.

19 16. Individual Settlement Payment. “Individual Settlement Payment” means the
20 individual settlement payment allocated to each Participating Class Member and/or Aggrieved
21 Employee as set forth in Paragraph 43.e.

22 17. Named Plaintiff. “Named Plaintiff” means Victor Perez.

23 18. Notice Period. “Notice Period” means the time period commencing on the date the
24 Class Notice is mailed to Class Members and ending 60 days thereafter.

25 19. Net Class Settlement Amount. “Net Class Settlement Amount” means the
26 settlement amount to be distributed to Participating Class Members, which is the Gross Settlement
27 Amount less Attorneys’ Fees and Costs, the Enhancement Award, the PAGA Amount, and
28 Settlement Administration Costs.

1 20. PAGA Claims. “PAGA Claims” means those claims that (a) arise from the facts,
2 matters, transactions or occurrences alleged in the Action or that could have been alleged in the
3 Action based on such facts; or (b) arise from the facts, matters, transactions or occurrences alleged,
4 or that could have been alleged, in the letter sent by Class Counsel to the Labor and Workforce
5 Development Agency (“LWDA”) on or about March 23, 2020, asserting that Defendant violated
6 various provisions of the Labor Code. Without limiting the foregoing, and in addition to the
7 foregoing, the PAGA Claims include claims premised on failure to pay the minimum wage; failure
8 to pay regular wages; failure to pay overtime compensation and other premium wages; off-the-
9 clock work; failure to provide and maintain complete and accurate itemized wage statements that
10 included all information required by the California Labor Code; failure to provide meal periods
11 and rest breaks or additional pay in lieu thereof; untimely payment of wages; violations of
12 California Labor Code §§ 201, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.7, 510, 512, 558,
13 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1191, and 2698 *et seq.*; and related
14 violations of the applicable California Wage Orders.

15 21. PAGA Amount. “PAGA Amount” means the amount of \$30,000.00, which
16 represents the portion of the Gross Settlement Amount allocated to the settlement of the PAGA
17 Claims. The PAGA Amount is paid from the Gross Settlement Amount, and will be allocated as
18 set forth in Paragraph 43.d. The Parties agree that 75% of the PAGA Amount (\$22,500.00) will
19 be paid to the LWDA as the “LWDA Payment,” and the remaining 25% (\$7,500.00) will be
20 allocated to the Aggrieved Employees as the “PAGA Payment.”

21 22. PAGA Period. “PAGA Period” means the period from March 26, 2019 to the
22 earlier of: (i) the date the Court enters the Order preliminarily approving the Settlement; or (ii)
23 July 19, 2021.

24 23. Parties. “Parties” means the Defendant and the Named Plaintiff, individually and
25 on behalf of all Class Members and Aggrieved Employees. Each of the Parties may be referred to
26 in the singular as a “Party.”

27 24. Participating Class Member. “Participating Class Member” means each Class
28 Member who has not timely opted out of the Settlement pursuant to Paragraph 48 of the

1 Agreement; “Settlement Class” means a class of all Participating Class Members.

2 25. Preliminary Approval Order. “Preliminary Approval Order” means an order from
3 the Court preliminarily approving this Settlement.

4 26. Released Parties. “Released Parties” means and includes The BIG Company, Inc.
5 dba CAPO Fireside and its past, present, and future predecessors, successors, assigns, affiliates,
6 shareholders, members, owners, officers, directors, investors, employees, managers, managing
7 agents, partners, affiliated companies or entities, parents, subsidiaries, holding companies, agents,
8 attorneys, insurers, and representatives.

9 27. Settled Claims or Released Claims. “Settled Claims” or “Released Claims” means
10 any and all claims, known or unknown, contingent or accrued, against Defendant and the other
11 Released Parties that (a) arise from the facts, matters, transactions or occurrences alleged in the
12 Action or that could have been alleged in the Action based on such facts; or (b) arise from the
13 facts, matters, transactions or occurrences alleged, or that could have been alleged, in the letter
14 sent by Class Counsel to LWDA on or about March 23, 2020, asserting that Defendant violated
15 various provisions of the Labor Code. Without limiting the foregoing, and in addition to the
16 foregoing, the Settled Claims include claims for failure to pay the minimum wage; failure to pay
17 regular wages; failure to pay overtime compensation and other premium wages; off-the-clock
18 work; failure to provide and maintain complete and accurate itemized wage statements that
19 included all information required by the California Labor Code; failure to provide meal periods
20 and rest breaks or additional pay in lieu thereof; untimely payment of wages; violations of
21 California Labor Code §§ 201, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.7, 510, 512, 558,
22 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1191; related violations of the
23 applicable California Wage Orders; violations of all related or corresponding federal laws;
24 violation of California Business and Professions Code Section 17200 *et seq.*; and claims under
25 California Labor Code Section 2698 *et seq.*

26 28. Settlement Administration Costs. “Settlement Administration Costs” means the
27 costs of settlement administration, including costs of notice to Class Members, distributing
28 settlement payments, and any other fees and costs incurred or charged by the Settlement

1 Administrator in connection with the execution of its duties under this Settlement.

2 29. Settlement Administrator. “Settlement Administrator” means Phoenix Settlement
3 Administrators or such other third-party administrator chosen by the Parties and approved by the
4 Court.

5 30. Settlement Hearing. “Settlement Hearing” means the hearing on the Final Hearing
6 Date at which the Court will determine whether to fully and finally approve the fairness and
7 reasonableness of this Agreement.

8 **RECITALS**

9 31. On May 29, 2020, Victor Perez filed a putative class action against defendant The
10 BIG Company, Inc. dba CAPO Fireside in a case styled *Victor Perez v. The BIG Company, Inc.*
11 *dba CAPO Fireside, et al.*, San Bernardino County Superior Court Case No. CIVDS2009691. The
12 Complaint alleges that Defendant violated various wage-and-hour laws, including: (1) failure to
13 pay minimum and regular wages; (2) failure to pay overtime; (3) failure to provide meal periods
14 and pay meal period premiums; (4) failure to authorize and permit rest periods and pay rest period
15 premiums; (5) failure to timely pay wages; (6) failure to provide accurate itemized wage
16 statements; and (7) violation of California Business and Professions Code § 17200 *et seq.* On June
17 24, 2020, the Named Plaintiff filed a First Amended Complaint, adding a cause of action for civil
18 penalties under PAGA.

19 32. Defendant denies that it engaged in any misconduct in connection with the wage-
20 and-hour practices associated with the Class Members (inclusive of the Aggrieved Employees).
21 Defendant further denies that it has any liability of any kind associated with the claims alleged in
22 the Action. Defendant contends that it has complied with both federal and state wage-and-hour
23 laws, and all other laws regulating its relationship with the Class Members, including the Named
24 Plaintiff.

25 33. On May 20, 2021, the Parties participated in mediation with Steve Serratore, Esq.
26 (the “Mediator”), a respected mediator of complex wage and hour actions, and with the assistance
27 of the Mediator’s evaluations, and in response to a proposal made by the Mediator, the Parties
28 reached the settlement that is memorialized in this Agreement.

1 this Agreement and its terms and provisions shall not be offered or received as evidence in any
2 action or proceeding to establish any liability or admission on the part of Defendant or to establish
3 the existence of any condition constituting a violation of, or a non-compliance with, federal, state,
4 local or other applicable law.

5 36. Conditional Nature Of Settlement. For settlement purposes *only*, the Parties agree
6 that (a) a class may be certified in the Action pursuant to California Code of Civil Procedure
7 Section 382, and (b) the Action may proceed as a PAGA representative action.

8 a. The Parties intend their settlement to be contingent upon the preliminary
9 and final approval of each and every term of this Agreement, without material modification. The
10 Parties and their respective counsel shall use their respective best efforts to obtain Court approval
11 and implement this Agreement in accordance with its terms. If the Court does not so approve this
12 Agreement, the Parties agree to meet and confer to address the Court's concerns. If the Parties are
13 unable to agree upon a resolution, the Parties intend this Agreement to become null and void, and
14 unenforceable, in which event the settlement terms set forth in this Agreement, including any
15 modifications made with the consent of the Parties, and any action taken or to be taken in
16 connection with this Agreement shall be terminated and shall become null and void and have no
17 further force or effect, and the class certified for settlement purposes pursuant to this Agreement
18 will be decertified for all purposes.

19 b. In the event the Court does not grant preliminary or final approval of the
20 Parties' settlement, or in the event that this Agreement shall terminate or the settlement embodied
21 in this Agreement does not become effective for any reason, the Agreement and all negotiations,
22 court orders and proceedings relating to the Agreement shall be without prejudice to the rights of
23 the Named Plaintiff, Class Members and Defendant, each of whom shall be restored to their
24 respective positions existing prior to the execution of this Agreement, and evidence relating to the
25 Agreement and all negotiations shall not be discoverable or admissible in the Action or any other
26 litigation. Defendant does not waive, and instead expressly reserves, its rights to challenge the
27 propriety of class certification and/or the Action proceeding on a representative basis for any
28 purpose should the Court not grant preliminary or final approval of the Parties' settlement.

1 37. Participating Class Member Release Of Claims. Upon the funding of the Gross
2 Settlement Amount, the Named Plaintiff and all Participating Class Members hereby do and shall
3 be deemed to have fully, finally, and forever released, settled, compromised, relinquished and
4 discharged any and all of the Released Parties from the Released Claims that arose during the Class
5 Period.

6 a. This release by the Named Plaintiff and each Participating Class Member is
7 intended to settle any and all of the Settled Claims, whether known or unknown, that any of them
8 may have against Defendant or any of the Released Parties during the Class Period. Thus, even if
9 the Named Plaintiff or any Participating Class Member may subsequently discover facts in
10 addition to or different from those they now know or believe to be true with respect to the subject
11 matter of the Released Claims, they shall be deemed to have, and by operation of the Final
12 Judgment shall have fully, finally, and forever settled and released any and all Settled Claims,
13 whether known or unknown, suspected or unsuspected, contingent or non-contingent, whether or
14 not concealed or hidden, which now exist, or have existed upon any theory of law or equity now
15 existing or coming into existence in the future.

16 b. Because it is impossible or impracticable to have each Class Member
17 execute this Agreement, the Class Notice will advise all Class Members of the binding nature of
18 the release and such notice will have the same force and effect as if the Agreement were executed
19 by each Class Member.

20 38. Aggrieved Employees Release of PAGA Claim: In exchange for the PAGA
21 Amount recited in this Agreement, the Named Plaintiff, as the representative for the State of
22 California and all Aggrieved Employees, and on behalf of their current, former, and future heirs,
23 executors, administrators, attorneys, agents, and assigns will forever completely release and
24 discharge Defendant and each of the Released Parties from the PAGA Claims that arose during
25 the PAGA Period. The Aggrieved Employees and the State of California will be deemed by
26 operation of the Final Order and Judgment to have agreed not to sue or otherwise make a claim
27 against Defendant and any of the Released Parties for the PAGA Claims that arose during the
28 PAGA Period.

1 39. Full Release By The Named Plaintiff. As of the occurrence of the Effective Date,
2 the Named Plaintiff fully releases and discharges Defendant and the other Released Parties from
3 the Released Claims and any other claims that the Named Plaintiff now has or claims to have, or
4 has ever had or claimed to have, against the Released Parties through the Effective Date. Without
5 limiting the generality of the foregoing, the Named Plaintiff specifically and expressly releases to
6 the maximum extent permitted by law any claims against Defendants and the Released Parties,
7 arising out of or relating to the Named Plaintiff’s employment or the termination of his
8 employment with Defendant and any other Released Party. This general release by the Named
9 Plaintiff includes a waiver of Named Plaintiff’s rights under Civil Code Section 1542, which
10 provides: “A general release does not extend to claims that the creditor or releasing party does not
11 know or suspect to exist in his or her favor at the time of executing the release and that, if known
12 by him or her, would have materially affected his or her settlement with the debtor or released
13 party.”

14 40. No Prior Assignments. The Named Plaintiff and Class Counsel represent and
15 warrant that they have not directly or indirectly assigned, transferred, encumbered or purported to
16 assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand,
17 action, cause of action, or rights released and discharged by this Agreement.

18 41. Settlement Payments And Calculation Of Claims. Subject to final Court approval
19 and the conditions specified in this Agreement, and in consideration of the mutual covenants and
20 promises set forth in this Agreement, Defendant agrees to pay the Gross Settlement Amount of
21 \$575,000.00. The Gross Settlement Amount includes, but is not limited to, payments to be made
22 to Participating Class Members, Class Counsel’s Attorneys’ Fees and Costs, Enhancement Award
23 to the Named Plaintiff, the PAGA Amount, and Settlement Administration Fees and Costs. For
24 the avoidance of doubt, subject to the conditions set forth in this Agreement, Defendant shall not
25 be required to pay any amount over \$575,000.00 for this Settlement. The following table
26 summarizes the allocation of the Gross Settlement Amount:

27 ///

28 ///

Gross Settlement Amount of \$575,000.00, Allocated As Follows:

- **\$30,000.00** for the PAGA Amount
 - **\$22,500.00** for the LWDA Payment.
 - **\$7,500.00** for payments to Aggrieved Employees on a *pro rata* basis (the PAGA Payment).
- Class Counsel Attorneys' Fees not to exceed **\$191,666.66**
- Class Counsel Costs not to exceed **\$25,000.00**
- Up to **\$7,500.00** for an Enhancement Award for Named Plaintiff
- Settlement Administration Costs, not to exceed **\$7,500**
- Approximately **\$313,333.34** paid to Participating Class Members on a *pro rata* basis (the Net Class Settlement Amount).

42. Settlement Escalator. In preparation for the mediation, Defendant represented that there were approximately 19,711 non-exempt workweeks worked by the Class Members from May 29, 2016 to April 12, 2021. The Parties understood that the workweeks would increase between the date of the mediation and the end of the Class Period and, therefore, considered this during their settlement negotiations. Accordingly, should the actual number of workweeks increase by more than ten percent (10%) through May 20, 2021, the date of the Parties' mediation, (i.e. by more than 1,971 workweeks) Defendant shall increase the Net Class Settlement Amount on a proportional percentage basis equal to the percentage increase in the number of workweeks worked by the Class Members above 10%. For example, if the number of workweeks increases by 11% through May 20, 2021 to 21,879 workweeks, the Net Class Settlement Amount will increase by 1%.

43. Apportionment of Gross Settlement Amount. The Parties agree, subject to Court approval and the conditions specified in this Agreement, that the Gross Settlement Amount shall be apportioned as follows:

a. Class Counsel Attorneys' Fees and Costs: At the final approval hearing, Class Counsel will apply to the Court for an award of Attorneys' Fees of no more than 1/3 (33.33%) of the Gross Settlement Amount, which equals \$191,666.66. Class Counsel will also apply to the Court for an award of actual Costs incurred by Class Counsel not to exceed the amount of \$25,000.00. These fees and costs are included in, and shall come from, the Gross Settlement

1 Amount. Class Counsel will be issued an IRS Form 1099 for any fees and costs awarded by the
2 Court pursuant to this Paragraph 43.a. Except as provided in this Paragraph 43.a, each party will
3 bear his, her, or its own attorneys' fees, costs, and expenses incurred in the prosecution, defense,
4 or settlement of the Action. If the Court awards a lower amount of Attorneys' Fees and Costs than
5 the amount requested, any amount not awarded will be part of the distribution to the Participating
6 Class Members as set forth in this Agreement and shall not be a reason to invalidate/terminate this
7 Agreement.

8 b. Settlement Administrator Costs: At the final approval hearing, Class
9 Counsel will apply to the Court for approval of Settlement Administration costs not to exceed the
10 amount of \$7,500.00. These costs are included in, and shall come from, the Gross Settlement
11 Amount.

12 c. Named Plaintiff Enhancement Award: At the final approval hearing, Class
13 Counsel will apply to the Court for an award of up to \$7,500.00 to be paid to the Named Plaintiff
14 as an Enhancement Award for his services and for assuming the risks associated with this litigation,
15 and as consideration for providing a general release. Defendant will not oppose such application.
16 The Enhancement Award is included in, and shall come from, the Gross Settlement Amount.
17 Named Plaintiff will be issued an IRS Form 1099 for the Enhancement Award approved by the
18 Court pursuant to this Paragraph. The Enhancement Award payable to the Named Plaintiff shall
19 be in addition to any payment he may receive pursuant to Paragraph 43.e, below. If the Court
20 awards less than the amount requested, any amount not awarded will be part of the distribution to
21 the Participating Class Members as set forth in this Agreement and shall not be a reason to
22 invalidate/terminate this Agreement.

23 d. PAGA Amount: At the final approval hearing, Class Counsel will apply to
24 the Court for approval of the PAGA Amount of \$30,000.00 for claims for civil penalties asserted
25 under PAGA. Class Counsel will submit notice of this Settlement to the LWDA, as required by
26 Labor Code § 2699(l)(2). The Parties agree that 75% of the PAGA Amount (\$22,500.00) will be
27 paid to the LWDA as the "LWDA Payment," and the remaining 25% (\$7,500.00) will be allocated
28 to the Aggrieved Employees as the "PAGA Payment." The portion of the PAGA Payment

1 allocated to each of the Aggrieved Employees will be calculated using the same formula as set
2 forth in Paragraph 43.e, but will be limited to weeks worked during the PAGA Period. Any Class
3 Members who worked during the PAGA Period and who opt out of the Settlement will still be
4 considered Aggrieved Employees for purposes of this Paragraph 43.d and, therefore, will
5 (i) receive their portion of the PAGA Payment; and (ii) release all PAGA Claims against the
6 Released Parties.

7 e. Individual Settlement Payments. The Individual Settlement Payments shall
8 consist of: (i) each Participating Class Member's *pro rata* portion of the Net Class Settlement
9 Amount; and (ii) if applicable, each Aggrieved Employee's *pro rata* portion of the PAGA
10 Payment.

11 i) Participating Class Member Payments: After deducting the approved
12 amounts specified in Paragraphs 43.a-43.d above, each Participating Class Member will be entitled
13 to a *pro rata* portion of the remaining amount. Participating Class Member Payments will be
14 calculated from the Net Class Settlement Amount based on the respective number of weeks worked
15 by each Participating Class Member in a non-exempt position during the Class Period, rounded up.
16 Each Participating Class Member's share of the Net Class Settlement Amount will be calculated by
17 dividing the Participating Class Member's weeks worked in a non-exempt position by the total
18 number of weeks worked by all Class Members in a non-exempt position during the Class Period
19 and multiplying this figure by the Net Class Settlement Amount. The Class Notice will include the
20 number of weeks that the Class Member worked during the Class Period and the amount the Class
21 Member is estimated to receive under the terms of the Settlement.

22 Example: Class Member A worked 50 workweeks during the Class Period.
23 All Class Members who worked during the Class Period worked a total of 20,000
24 workweeks. Class Member A's Individual Settlement Payment would be calculated as
25 follows:

- 26 – 50 workweeks worked by Class Member A ÷ 20,000 workweeks for all
27 Class Members = 0.25%.
- 28 – Class Member A would be estimated to be entitled to a Participating

1 Class Member Payment in the amount of \$783.33 (0.25% x
2 \$313,333.34).

3 ii) PAGA Payment: For each Class Member who is also an Aggrieved
4 Employee, the Individual Settlement Payment to the Class Member will also include the Class
5 Member's *pro rata* share of the PAGA Payment, as set forth in Paragraph 43.d.

6 f. The Parties acknowledge and agree that the formula used to calculate the
7 Individual Settlement Payments does not mean that all of the elements of damages, restitutionary
8 relief, and penalties alleged in the Action are not being taken into account. The above formula
9 was devised as a practical and logistical method to simplify the participation process.

10 g. Individual Settlement Payments shall be distributed only to Participating
11 Class Members, with the exception that PAGA Payments will be distributed to all Aggrieved
12 Employees. The portion of the Net Class Settlement Amount allocated to Class Members who opt
13 out of the Settlement will be distributed to Participating Class Members on a *pro rata* basis based
14 on the formula set forth in Paragraph 43.e.

15 h. The Parties agree that, under no circumstances shall Defendant be obligated
16 to pay any amount under this Agreement to any Class Member other than Participating Class
17 Members, with the exception of the PAGA Payments. In addition, the Parties agree that under no
18 circumstances shall Defendant be obligated to pay more than the Gross Settlement Amount in full
19 settlement of the Action.

20 44. No Credit Toward Benefit Plans. The Individual Settlement Payments made to
21 Participating Class Members under this Agreement, including the PAGA Payments made to
22 Aggrieved Employees, will not be utilized to calculate any additional benefits under any benefit
23 plans to which any Participating Class Member or Aggrieved Employees may be eligible
24 including, but not limited to: profit-sharing plans, bonus plans, 401(k) plans, stock purchase plans,
25 vacation plans, sick leave plans, PTO plans, and any other benefit plan. Rather, it is the Parties'
26 intention that this Agreement will not affect any rights, contributions, or amounts to which any
27 Participating Class Member or Aggrieved Employee may be entitled under any benefit plans.

28 45. Taxation Of Settlement Proceeds. All settlement payments paid to Participating

1 Class Members, Aggrieved Employees, and the Named Plaintiff, will be paid in a net amount after
2 applicable state and federal tax withholdings, including payroll taxes, have been deducted.

3 a. The Participating Class Member Payments shall be reported as follows:
4 (i) 10% of the amount distributed to each Participating Class Member will be considered wages,
5 and will be reported as such to each Participating Class Member on a W-2 Form; (ii) 45% of the
6 amount distributed to each Participating Class Member will be considered interest on the unpaid
7 wages, and will be reported as such to each Participating Class Member on an IRS Form 1099;
8 and (iii) 45% of the amount distributed to each Participating Class Member will be considered
9 statutory penalties, and will be reported as such to each Participating Class Member on an IRS
10 Form 1099. The PAGA Payments distributed to each Aggrieved Employee will be considered
11 penalties and will be reported on an IRS Form 1099.

12 b. Prior to mailing the Individual Settlement Payments, the Settlement
13 Administrator will calculate, withhold from the Individual Settlement Payment, and remit to
14 applicable governmental agencies sufficient amounts as may be owed by Participating Class
15 Members or Aggrieved Employees for required withholdings and taxes, including all payroll taxes.
16 The Settlement Administrator will issue appropriate tax forms to each Participating Class Member
17 and Aggrieved Employee consistent with the foregoing breakdown. The Parties understand that
18 the Named Plaintiff, Participating Class Members, and Aggrieved Employees who receive an
19 Individual Settlement Payment pursuant to this Agreement shall be solely responsible for any and
20 all tax obligations associated with such receipt.

21 c. The Parties stipulate that the Settlement Fund (as defined at Paragraph 50)
22 will qualify as a settlement fund pursuant to the requirements of Section 468(B)(g) of the Internal
23 Revenue Code of 1986, as amended, and Section 1.468B-1 *et seq.* of the federal income tax
24 regulations. Furthermore, the Settlement Administrator is designated as the “Administrator” of
25 the qualified settlement funds for purposes of Section 1.468B-2(k) of the income tax regulations.
26 Accordingly, all taxes imposed on the gross income of the Settlement Fund and any tax-related
27 expenses arising from any income tax return or other reporting document that may be required by
28 the Internal Revenue Service or any state or local taxing body will be paid from the Settlement

1 Fund.

2 d. All Parties represent and acknowledge that nothing in this Agreement
3 constitutes tax advice regarding the tax treatment of payments under federal, state, or local law.
4 The Named Plaintiff, Participating Class Members, and Aggrieved Employees will assume any
5 such tax obligations or consequences that may arise from this Agreement and Class Members shall
6 not seek any indemnification from the Parties or any of the Released Parties in this regard. In the
7 event that any taxing body determines that additional taxes are due from any Class Member or
8 Aggrieved Employee, including Named Plaintiff, such Class Member or Aggrieved Employee
9 assumes all responsibility for the payment of such taxes.

10 46. Notice Procedure. Within 14 calendar days after entry of the Preliminary Approval
11 Order, Defendant will provide to the Settlement Administrator a list of Class Members that
12 identifies each Class Member by name, Social Security Number, and last-known address; and
13 specifies the number of weeks worked by each Class Member in a non-exempt position during the
14 Class Period and the PAGA Period (the "Class List"). Defendant will provide the Class List in an
15 Excel file or other format reasonably acceptable to the Settlement Administrator. The Settlement
16 Administrator will keep the list confidential and use it only for the purposes described in this
17 Agreement.

18 a. Upon receipt of the Class List, the Settlement Administrator shall perform
19 a search based upon the National Change of Address Database to update and correct any known
20 or identifiable address changes. The Settlement Administrator shall exercise its best judgment to
21 determine the current mailing address for each Class Member. Within 14 calendar days after
22 receipt of the Class List from Defendant, the Settlement Administrator will send the Class Notice
23 to each Class Member via First Class U.S. Mail. Receipt of the Class Notice shall be presumed as
24 to each and every Class Member whose Class Notice is not returned to the Settlement
25 Administrator as undeliverable within 14 calendar days after mailing.

26 b. The Settlement Administrator will re-mail any notice packet returned by the
27 United States Postal Service with a forwarding address on or before the expiration of the Notice
28 Period. It shall be conclusively presumed that those Class Members whose re-mailed Class Notice

1 is not returned to the Settlement Administrator as undeliverable within 14 calendar days after re-
2 mailing, received the Class Notice.

3 c. The Settlement Administrator will use the appropriate skip tracing and
4 National Change of Address searches to increase the likelihood of delivery of the Class Notice to
5 Class Members, and to re-mail the notice packets returned by the Postal Service without a
6 forwarding address upon locating new or alternate addresses after a reasonable search.

7 d. Class Counsel will provide to the Court, in connection with seeking final
8 approval of the Settlement, a declaration from the Settlement Administrator confirming that the
9 Class Notice was mailed to all Class Members as required by this Agreement, as well as any
10 additional information Class Counsel deems appropriate to provide to the Court.

11 47. Dispute Procedure. The Class Notice will include a procedure by which a Class
12 Member may dispute the number of workweeks allocated to the Class Member by submitting a
13 written dispute sent via U.S. Mail to the Settlement Administrator postmarked no later than the
14 expiration of the Notice Period (“Workweek Dispute”). To be valid, a Workweek Dispute must
15 contain the following: (i) the Class Member’s full name, current address, and signature; (ii) the
16 Action name and case number; (iii) the number of workweeks the Class Member maintains is
17 correct; and (iv) documentary evidence sufficient to prove that Defendant’s calculation of the
18 workweeks for the Class Member is incorrect. Upon receipt of notice of a Workweek Dispute, the
19 Settlement Administrator shall promptly serve Class Counsel and Defendant’s counsel with a copy
20 of the Workweek Dispute and any accompanying papers. No Workweek Dispute shall be effective
21 or considered for any purpose unless it is timely mailed by U.S. mail to and received by the
22 Settlement Administrator as provided above. Defendant shall have the right to respond to the
23 Workweek Dispute by any Class Member. All information and documents relating to any such
24 disputes will be provided to Class Counsel. The Settlement Administrator will resolve the
25 Workweek Dispute and make a final and binding determination without hearing or right of appeal.
26 The Settlement Administrator’s determination will be subject to review by the Court at the time of
27 the Final Approval Hearing so long as the Participating Class Member submits an objection to the
28 Settlement Administrator’s determination at or before the Final Approval Hearing.

1 a. Within 14 calendar days after the close of the Notice Period, the Settlement
2 Administrator will provide Class Counsel and Defendant’s counsel with a report listing the amount
3 of all Individual Settlement Payments, including the *pro rata* portion of the PAGA Payment, to be
4 made to Participating Class Members and Aggrieved Employees. The report to Class Counsel will
5 not include the names or contact information of Participating Class Members and Aggrieved
6 Employees.

7 48. Opt-Out Procedure. Unless a Class Member opts out of the settlement described in
8 this Agreement, the Class Member will be bound by the terms and conditions of this Agreement,
9 including the release of the Released Claims that arose during the Class Period. A Class Member
10 will not be entitled to opt out of the settlement established by this Agreement unless the Class
11 Member submits a valid opt-out request (“Opt-Out Request”). A valid Opt-Out Request must:
12 (i) contain the Class Member’s full name, current address, and signature; (ii) the Action name and
13 case number; (iii) a written request clearly expressing the Class Member’s desire to be excluded
14 from (or opt out of) the Settlement; and (iv) be returned so that it is postmarked on or before the
15 expiration of the Notice Period. Any Class Members who worked during the PAGA Period and
16 who opt out of the Settlement will still be considered Aggrieved Employees for purposes of this
17 Agreement.

18 a. Upon receipt of any Opt-Out Request within the Notice Period, the
19 Settlement Administrator shall review the Opt-Out Request to confirm that it complies with the
20 opt-out requirements of this Agreement.

21 b. Any Class Member who fails to submit a timely, complete, and valid Opt-
22 Out Request will be barred from opting out of this Agreement or the settlement, unless otherwise
23 ordered by the Court. If the Settlement Administrator receives a timely Opt-Out Request that is
24 incomplete, it will make reasonable attempts to contact the class member to cure the defect. The
25 Settlement Administrator will not consider any Opt-Out Request postmarked after the end of the
26 Notice Period, but will report its receipt of any such requests to Class Counsel and counsel for
27 Defendant. It shall be presumed that, if an Opt-Out Request is not postmarked on or before the
28 end of the Notice Period, the Class Member did not make the request in a timely manner. A

1 declaration submitted by any Class Member attesting to the mailing of an Opt-Out Request on or
2 before the expiration of the Notice Period shall be insufficient to overcome the conclusive
3 presumption that the Opt-Out Request was untimely. Under no circumstances shall the Settlement
4 Administrator have the authority to extend the deadline for Class Members to submit a request to
5 opt out of the settlement without Defendant's written consent.

6 c. At the close of the Notice Period, the Settlement Administrator shall report
7 the names of all individuals who opted-out of the Agreement to the parties and include this
8 information in a Declaration regarding the distribution of the notice that will be provided in support
9 of Plaintiff's Motion for Final Approval.

10 d. If either: (i) 5% or more of the Class Members or (ii) Class Members who
11 account for 5% or more of the total workweeks, timely opt out of the settlement, Defendant will
12 have the sole and absolute discretion to withdraw from this Agreement within 14 calendar days
13 after Defendant receives notice of the number of opt outs. Defendant will provide written notice
14 to Class Counsel if it intends to withdraw from this Agreement. In the event that Defendant elects
15 to so withdraw, the withdrawal shall have the same effect as a termination of this Agreement for
16 failure to satisfy a condition of settlement, and the Agreement shall become null and void and have
17 no further force or effect, and the class certified pursuant to this Agreement will be decertified for
18 all purposes. If Defendant chooses to terminate this Settlement Agreement under this provision,
19 it shall be responsible to pay the Settlement Administrator's fees and costs. If the Settlement
20 Agreement is terminated for any other reason, including the Court's failure to grant final approval
21 of the Parties' settlement, then Class Counsel and Defendant will be jointly responsible for the
22 Settlement Administrator's fees and costs.

23 49. Objections To Settlement. Any Class Member may object to the Settlement. Any
24 written objection must be mailed to the Settlement Administrator (who shall promptly provide a
25 copy to Class Counsel and counsel for Defendant) by the close of the Notice Period. Class Counsel
26 will ensure that any written objections get filed with the Court concurrently with the final approval
27 documents. Class Members who have not objected in writing may still appear and be heard at the
28 Settlement Hearing.

1 a. Written objections to the Settlement must contain at least the following:
2 (i) the objecting Class Member’s full name, current address, and signature; (ii) a clear reference to
3 the Action; (iii) a statement of the specific reasons why the objector believes the Settlement is
4 unfair or objects to the Settlement; and (iv) a statement whether the objector intends to appear at
5 the final approval hearing, either in person or through counsel and, if through counsel, a statement
6 identifying that counsel by name, bar number, address and telephone number. All objections shall
7 be signed by the objecting Class Member or the Class Member’s legally authorized representative.

8 b. Class Counsel or Defendant’s counsel may, before the Final Hearing Date,
9 file responses to any written objections submitted to the Court.

10 c. Unless they opt out of the Settlement as specified in Paragraph 48, Class
11 Members who object to the proposed settlement or the Agreement will remain Participating Class
12 Members, and shall be deemed to have voluntarily waived their right to pursue an independent
13 remedy against Defendant and the other Released Parties. To the extent any Participating Class
14 Member objects to the proposed settlement or Agreement and such objection is overruled in whole
15 or in part, such individuals will be bound by the Court’s Final Approval Order.

16 d. In the event that any person objects to or opposes this proposed settlement
17 or the Agreement, or attempts to intervene in or otherwise enter the Action, the Parties and Class
18 Counsel will use their best efforts to defend the Settlement.

19 50. Funding And Distribution Of Settlement.

20 a. Within 14 calendar days of the close of the Notice Period, the Settlement
21 Administrator will provide a draft declaration to Class Counsel and Defendant’s counsel setting
22 forth: the number of Participating Class Members and Aggrieved Employees; the identity of those
23 individuals who opted-out of the Settlement; the total amount payable to all Participating Class
24 Members and Aggrieved Employees; and the total PAGA Amount, Attorneys’ Fees and Costs,
25 Enhancement Award, Settlement Administration Costs, Net Class Settlement Amount, and the
26 appropriate applicable employer’s taxes for any portion of the Individual Settlement Payments
27 designated as wages.

28 b. Within 14 calendar days after the Effective Date, Defendant shall remit to

1 the Settlement Administrator: (i) the Gross Settlement Amount of \$575,000.00 and (ii) the
2 employer's taxes for any portion of the Individual Settlement Payments designated as wages (the
3 "Settlement Fund"). The delivery by Defendant of the Settlement Fund to the Settlement
4 Administrator will constitute the full and complete discharge of the entire obligation of Defendant
5 under this Agreement. No Released Party will have any further obligation or liability to the Named
6 Plaintiff, Participating Class Members, Aggrieved Employees, or Class Counsel under this
7 Agreement, regardless of whether the Named Plaintiff, Participating Class Members, Aggrieved
8 Employees, or Class Counsel receive the payments from the Settlement Administrator set forth in
9 this Agreement.

10 c. The distribution of Individual Settlement Payments to Participating Class
11 Members and Aggrieved Employees will occur no later than 21 calendar days after receipt of the
12 Settlement Fund from Defendant ("Settlement Proceeds Distribution Deadline"). The Settlement
13 Administrator shall be deemed to have timely distributed Individual Settlement Payments if it
14 places in the mail Individual Settlement Payments for all Participating Class Members and
15 Aggrieved Employees by the Settlement Proceeds Distribution Deadline. No person will have any
16 claim against the Settlement Administrator, Defendant, Class Counsel, Defendant's counsel, or
17 any other agent designated by the Named Plaintiff or Class Counsel based upon the distribution of
18 Individual Settlement Payments made substantially in accordance with this Agreement or further
19 orders of the Court.

20 d. The distribution of the LWDA Payment, Attorneys' Fees and Costs, and the
21 Enhancement Award shall occur no later than 21 calendar days after the Settlement Administrator
22 receives the Settlement Fund from Defendant.

23 e. If a Participating Class Member's or Aggrieved Employee's check is
24 returned to the Settlement Administrator, the Settlement Administrator will make reasonable
25 efforts to re-mail it to the Participating Class Member or Aggrieved Employee at the correct
26 address. It is expressly understood and agreed that the checks for the Individual Settlement
27 Payments will become void and no longer available if not cashed within 180 days after mailing.
28 The funds from uncashed and voided checks will be transferred to the State of California's

1 Unclaimed Property Fund in the name of the Participating Class Member/Aggrieved Employee.

2 f. Defendant will not be obligated to make any payments contemplated by this
3 Agreement unless and until the Court enters the Final Order and Judgment, and after the Effective
4 Date of the Agreement.

5 g. Within 60 days of the Settlement Proceeds Distribution Deadline, the
6 Settlement Administrator will provide written certification of completion of settlement
7 administration to Class Counsel and to Defendants' Counsel.

8 51. Binding Effect Of Agreement On Class Members. Subject to final Court approval
9 and the occurrence of the Effective Date, and unless otherwise provided in this Agreement, all
10 Participating Class Members will be bound by this Agreement.

11 52. Binding Effect Of Agreement On Aggrieved Employees and State of California.
12 The Aggrieved Employees and the State of California are deemed by operation of the Final Order
13 and Judgment to have agreed not to sue or otherwise make a claim against Defendant or any of the
14 Released Parties for any of the PAGA Claims.

15 53. Provisional Approval Of Settlement. Named Plaintiff will file a motion in the
16 Action requesting that the Court enter the Preliminary Approval Order within 30 days of the
17 complete execution of this Agreement. Defendant will not oppose Class Counsel's motion for
18 preliminary approval of the settlement so long as the motion and supporting papers are consistent
19 with the terms of this Agreement. Class Counsel will provide Defendant's counsel with a
20 reasonable opportunity to review, and provide comments to, the motion for preliminary approval
21 of the settlement before the motion and supporting papers are filed with the Court.
22 Notwithstanding the foregoing, Defendant may, without opposing the preliminary approval
23 motion, advise the Court if Defendant disagrees with any of the factual statements included by the
24 Named Plaintiff in the motion and supporting papers. Defendant's counsel will meet and confer
25 with Class Counsel regarding any disputed factual statements before notifying the Court of any
26 disputes.

27 54. Non-Interference With Claims Procedure. The Parties and their counsel agree that
28 they will not advise, solicit, or otherwise encourage any Class Members to submit requests for

1 exclusion or objections to the settlement or to appeal from the Final Order or Final Judgment.

2 55. Final Order and Judgment. The Named Plaintiff will request that the Court enter,
3 after the Settlement Hearing finally approving this Agreement, a Final Order and Judgment.
4 Named Plaintiff will request that the Final Order and Judgment certify the Participating Class; find
5 that this Agreement is fair, just, equitable, reasonable, adequate and in the best interests of the
6 Class and the Aggrieved Employees; list the employees (if any) who opted-out of the settlement;
7 order that the Participating Class Members and Aggrieved Employees, and the State of California,
8 release the Released Parties from the Released Claims and PAGA Claims as set forth in this
9 Agreement; and require the Parties to carry out the provisions of this Agreement.

10 56. Automatic Voiding Of Agreement If Settlement Not Finalized. If for any reason
11 the settlement set forth in this Agreement does not become final, the settlement will be null and
12 void and the orders, judgment, and dismissal to be entered pursuant to this Agreement shall be
13 vacated, and the Parties will be returned to the status quo prior to entering this Agreement with
14 respect to the Action, as if the Parties had never entered into this Agreement, and the class certified
15 pursuant to this Agreement will be decertified for all purposes. In addition, in such event, the
16 Agreement and all negotiations, court orders, and proceedings relating to this Agreement shall be
17 without prejudice to the rights of any and all parties to this Agreement, and evidence relating to
18 the Agreement and all negotiations shall not be admissible or discoverable in the Action or
19 otherwise.

20 57. No Double Recovery. No person who has already released, assigned, or otherwise
21 forfeited the claims asserted in the Action will be considered a Class Member or be entitled to
22 recover under this Agreement.

23 58. No Publicity. The Named Plaintiff and Class Counsel agree that they shall not
24 discuss, answer questions about, promote, or publicize the filing of the Action, the Parties'
25 settlement, this Agreement and its terms, or the negotiations leading to this Agreement with anyone
26 other than the Court or those individuals necessary to effectuate the terms of the Agreement. The
27 prohibition set forth in this Paragraph 58 includes, but is not limited to: (i) publication by Named
28 Plaintiff or Class Counsel on any website (including, without limitation, publishing on any Twitter

1 account, Facebook, other social media, or blog, or business website) of the amount or terms of the
2 settlement, with or without identifying information; and (ii) the submission of information to
3 Verdicts & Settlements or any other publication that summarizes the results of jury verdicts and
4 settlements.

5 a. Notwithstanding the foregoing, Class Counsel may respond to questions
6 received from, and discuss any aspect of this Agreement with the Class Members or their legal
7 representatives, the Settlement Administrator, the Court, and representatives of the California
8 Labor and Workforce Development Agency.

9 b. Notwithstanding the forgoing, nothing in this Paragraph shall prohibit or the
10 filing of information with the Court or the LWDA relating to the Settlement that is necessary to
11 effectuate this Agreement, or the online posting of documents relating to the Action by the
12 Settlement Administrator as permitted by this Agreement including the Judgment entered by the
13 Court.

14 c. The Named Plaintiff and Class Counsel agree that all data and information
15 informally produced by Defendant in connection with the settlement of this Action will be
16 maintained in confidence, and will not be shared with any other persons or entities.

17 59. Invalidation Of Agreement For Failure To Satisfy Conditions. If the Court makes
18 material changes to the material terms or conditions of Paragraphs 1 through 58 of this Agreement
19 that are not agreed to by the Parties, either Party shall have the right to terminate this Agreement,
20 in which case Defendant would not be obligated to make any payments to any Class Member, to
21 Class Counsel, or to the Named Plaintiff. The Parties shall meet and confer in good faith before
22 exercising such right.

23 60. Modification In Writing. This Agreement may be altered, amended, modified or
24 waived, in whole or in part, only in a writing signed by all signatories to this Agreement. This
25 Agreement may not be amended, altered, modified or waived, in whole or in part, orally.

26 61. Ongoing Cooperation. The Named Plaintiff and Defendant will execute all
27 documents and perform all acts necessary and proper to effectuate the terms of this Agreement.
28 The execution of such documents must take place prior to the Final Hearing Date. In the event the

1 Parties are unable to reach agreement on the form or content of any document needed to implement
2 the Settlement, or any supplemental provisions that may become necessary to effectuate the terms
3 of the Settlement, the Parties agree to seek the assistance of the Court.

4 62. Notices. All notices, requests, demands, and other communications required or
5 permitted to be given pursuant to this Agreement shall be in writing, and shall be delivered
6 personally or by first class mail to the Settlement Administrator approved by the Court and the
7 undersigned persons at their respective addresses as set forth below:

8 **CLASS COUNSEL**

9 WILSHIRE LAW FIRM
10 Justin F. Marquez, Esq.
11 Nicol E. Hajjar, Esq.
12 Rachel J. Vinson, Esq.
13 3055 Wilshire Blvd., 12th Floor
14 Los Angeles, California 90010
15 Telephone: 213-381-9988

16 **COUNSEL FOR DEFENDANT**

17 RUTAN & TUCKER, LLP
18 Brandon L. Sylvia, Esq.
19 Kimberly A. Nayagam, Esq.
20 18575 Jamboree Road, 9th Floor
21 Irvine, California 92612
22 Telephone: (714) 641-5100

23 63. Binding on Successors. This Agreement will be binding upon and will inure to the
24 benefit of the Parties and their respective successors, assigns, executors, administrators, heirs and
25 legal representatives.

26 64. Entire Agreement. This Agreement constitutes the full, complete, and entire
27 understanding, agreement, and arrangement between the Named Plaintiff, the Class Members, and
28 the Aggrieved Employees, on the one hand, and Defendant, on the other hand, with respect to the
settlement of the Action. This Agreement supersedes any and all prior oral or written
understandings, agreements and arrangements between the Parties with respect to the settlement
of the Action. Except for those set forth expressly in this Agreement, there are no other

1 agreements, covenants, promises, representations or arrangements between the Parties with respect
2 to the settlement of the Action, the PAGA Claims, and the Released Claims against Defendant and
3 the Released Parties. The Parties explicitly recognize California Civil Code § 1625 and California
4 Code of Civil Procedure § 1856(a), which provide that a written agreement is to be construed
5 according to its terms, and may not be varied or contradicted by extrinsic evidence, and agree that
6 no such extrinsic oral or written representations or terms shall modify, vary, or contradict the terms
7 of this Agreement.

8 65. Execution In Counterparts. This Agreement may be signed in one or more
9 counterparts. All executed copies of this Settlement Agreement, and photocopies of the
10 Agreement (including facsimile and e-mail copies of the signature pages), shall have the same
11 force and effect and shall be as legally binding and enforceable as the original.

12 66. Captions. The captions, section numbers, and paragraph numbers, in this
13 Agreement are inserted for the reader's convenience, and in no way define, limit, construe, or
14 describe the scope or intent of the provisions of this Agreement.

15 67. Governing Law. This Agreement shall be interpreted, construed, enforced, and
16 administered in accordance with the laws of the State of California, without regard to conflict of
17 law rules.

18 68. Reservation Of Jurisdiction. Notwithstanding the dismissal of the Action and entry
19 of the Final Order and Judgment, the Court shall retain jurisdiction for purposes of interpreting
20 and enforcing the terms of this Agreement.

21 69. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms
22 and conditions of this Agreement. Accordingly, this Agreement will not be construed more strictly
23 against one Party than another merely by virtue of the fact that it may have been prepared by
24 counsel for one of the Parties, it being recognized that, because of the arms-length negotiations
25 between the Parties, all Parties have contributed to the preparation of this Agreement.

26 70. Representation and Warranties. Class Counsel and the Named Plaintiff represent
27 and warrant to Defendant that they are not aware of any attorneys beyond those named as Class
28 Counsel who have claims for fees arising out of the Action or the Settlement contemplated by this

1 Agreement. To the extent those representations are false or other attorneys do have claims for fees
2 arising out of the Actions or this Settlement, Class Counsel and the Class jointly and severally
3 agree to fully indemnify Defendant for any damages it incurs as a result of those claims, including,
4 but not limited to, all attorneys' fees and costs.

5 71. Authorization to Act. Each Party to this Agreement covenants and warrants that
6 (a) such Party has full power and authority to enter into and consummate all transactions
7 contemplated by this Agreement and have duly authorized the execution, delivery and performance
8 of this Agreement and (b) the person executing this Agreement for such Party has the full right,
9 power and authority to enter into this Agreement on behalf of such Party, and the full right, power
10 and authority to execute any and all necessary instruments in connection with the Settlement, and
11 to fully bind such Party to the terms and obligations of this Agreement.

12 72. Representation By Counsel. The Parties acknowledge that each of them has been
13 represented by their respective counsel throughout all negotiations that preceded the execution of
14 this Agreement, and that this Agreement has been executed with the consent and advice of their
15 respective counsel. Further, the Named Plaintiff and Class Counsel warrant and represent that
16 there are no liens on the Settlement Agreement, and that after entry by the Court of the Final Order
17 and Judgment, the Settlement Administrator may distribute funds to Participating Class Members,
18 Aggrieved Employees, Class Counsel, the LWDA, the Settlement Administrator, and the Named
19 Plaintiff as provided by this Agreement.

20 73. Representation By The Named Plaintiff. The Named Plaintiff agrees not to request
21 to be excluded from the Class and not to object to any terms of this Agreement. Any such request
22 by the Named Plaintiff for exclusion or objection shall be void and of no force or effect.

23 74. Additional Attorneys' Fees and Costs. No Participating Class Member, Aggrieved
24 Employee, or Class Counsel, or any other attorney acting for any Participating Class Member or
25 Aggrieved Employee, may recover or seek to recover any amounts for fees, costs, or disbursements
26 arising from the Action or the Gross Settlement Amount from the Released Parties except as
27 expressly provided in this Agreement.

28 75. No Reliance on Representations. The Parties have made such investigations of the

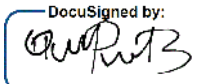
1 facts and the law pertaining to the matters described in this Agreement as they deem necessary,
2 and have not relied, and do not rely, on any statement, promise, or representation of fact or law,
3 made by any other Party, or any of their agents, employees, attorneys, or representatives, with
4 regard to any of their rights or asserted rights, or with regard to the advisability of making and
5 executing this Agreement, or with respect to any such matters. No representations, warranties, or
6 inducements have been made to any Party concerning this Agreement.

7 76. No Collateral Attack. This Agreement will not be subject to collateral attack by
8 any Class Member or any recipient of the Class Notice after the Final Order and Dismissal. Such
9 prohibited collateral attacks shall include but not be limited to claims that the Class Member failed
10 for any reason to receive timely notice of the procedure for disputing the calculation of his or her
11 Individual Settlement Payment, or for opting out of the Settlement.

12 IT IS SO AGREED:

13
14
15
16 Dated: 8/27/2021 _____

PLAINTIFF VICTOR PEREZ

DocuSigned by:

By: _____
0BE211908EF54B9...
Victor Perez
Named Plaintiff

17
18
19 Dated: _____

DEFENDANT THE BIG COMPANY, INC.
DBA CAPO FIRESIDE

20
21 By: _____
22 Title: _____
23
24
25
26
27
28

1 facts and the law pertaining to the matters described in this Agreement as they deem necessary,
2 and have not relied, and do not rely, on any statement, promise, or representation of fact or law,
3 made by any other Party, or any of their agents, employees, attorneys, or representatives, with
4 regard to any of their rights or asserted rights, or with regard to the advisability of making and
5 executing this Agreement, or with respect to any such matters. No representations, warranties, or
6 inducements have been made to any Party concerning this Agreement.

7 76. No Collateral Attack. This Agreement will not be subject to collateral attack by
8 any Class Member or any recipient of the Class Notice after the Final Order and Dismissal. Such
9 prohibited collateral attacks shall include but not be limited to claims that the Class Member failed
10 for any reason to receive timely notice of the procedure for disputing the calculation of his or her
11 Individual Settlement Payment, or for opting out of the Settlement.

12 IT IS SO AGREED:

13
14 PLAINTIFF VICTOR PEREZ

15
16 Dated: _____

17 By: _____

18 Victor Perez
19 Named Plaintiff

20 Dated: 8/21/2021

21 DEFENDANT THE BIG COMPANY, INC.
22 DBA CAPO FIRESIDE

23 By:  _____

24 Title: CEO _____

1 APPROVED AS TO FORM AND CONTENT AND
2 AGREE TO BE BOUND BY PARAGRAPH 58:

3 Dated: August 27, 2021

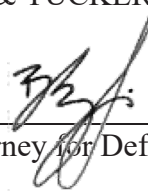
WILSHIRE LAW FIRM

4
5 By: 
6 Attorney for Plaintiff

7 APPROVED AS TO FORM AND CONTENT:

8 Dated: August 30, 2021

RUTAN & TUCKER, LLP

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10 By: 
11 Attorney for Defendant

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EXHIBIT A

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

VICTOR PEREZ, INDIVIDUALLY AND ON
BEHALF OF ALL OTHERS SIMILARLY
SITUATED,

PLAINTIFF,

VS.

THE BIG COMPANY, INC. DBA CAPO FIRESIDE,
A CALIFORNIA CORPORATION, AND DOES 1
THROUGH 10, INCLUSIVE,

DEFENDANTS.

Case No. CIVDS2009691

ASSIGNED FOR ALL PURPOSES TO:
HON. DAVID COHN, DEPT. S26

NOTICE OF PROPOSED CLASS ACTION
SETTLEMENT AND FINAL FAIRNESS
HEARING

YOU MAY BE ENTITLED TO BENEFITS FROM THIS SETTLEMENT. YOUR ESTIMATED SETTLEMENT AMOUNT IS \$ [REDACTED]. PLEASE CONTINUE READING TO LEARN HOW THIS SETTLEMENT AFFECTS YOUR RIGHTS.

Notice is given that a proposed settlement (the "Settlement") has been reached between plaintiff Victor Perez ("Plaintiff") and Defendant The BIG Company Inc. dba CAPO Fireside ("Defendant"). The lawsuit is a class action and representative action lawsuit entitled *Victor Perez v. The BIG Company, Inc. dba CAPO Fireside, et al.*, San Bernardino County Superior Court Case No. CIVDS2009691 (the "Litigation" or "Action").

The Settlement will resolve all Released Claims, as that term is defined in the Settlement Agreement, made against Defendant and other Released Parties on behalf of the Class, *i.e.*, all current and former employees who worked in a non-exempt or hourly-paid position for The BIG Company, Inc. dba CAPO Fireside within the state of California from May 29, 2016 to July 19, 2021 (the "Class Period").

The Settlement will also resolve all PAGA Claims, as that term is defined in the Settlement Agreement, made against Defendant and other Released Parties on behalf of the Aggrieved Employees, *i.e.*, all Class Members who worked from March 26, 2019 to July 19, 2021 (the "PAGA Period"). Any Class Members who worked during the PAGA Period will be considered an Aggrieved Employee and, therefore, regardless of how they respond to this Notice, all Class Members who worked during the PAGA Period will (i) receive their portion of the PAGA Payment; and (ii) release all PAGA Claims against the Released Parties as set forth in the Settlement Agreement.

A. PURPOSE OF THIS NOTICE

The Court has ordered that this Class Notice be sent to you because Defendant's records reflect that you are a potential member of the Class. The purpose of this Notice is to: (a) provide a brief description of the Litigation; (b) inform you of the proposed Settlement; and (c) discuss your rights and options with respect to the Litigation and the Settlement.

B. DESCRIPTION OF THE LITIGATION

The Action was filed by Plaintiff on behalf of all current and former employees who worked in a non-exempt or hourly-paid position for The BIG Company, Inc. dba CAPO Fireside within the state of California during the Class Period (the “Class” or “Class Members”). As alleged in the Lawsuit, Plaintiff claims that Class Members were wrongfully denied wages and overtime compensation, meal and rest breaks, accurate wage statements, and other rights guaranteed under the Labor Code.

The Action alleges class and representative claims against Defendant for (1) failure to pay minimum and regular wages; (2) failure to pay overtime; (3) failure to provide meal periods and pay meal period premiums; (4) failure to authorize and permit rest periods and pay rest period premiums; (5) failure to timely pay wages; (6) failure to provide accurate itemized wage statements; (7) violation of California Business and Professions Code § 17200 *et seq.*; and (8) violation of Labor Code § 2698 *et seq.* Defendant denies each and all of the claims and contentions alleged by Plaintiff.

The Court has made no ruling on the merits of Plaintiff’s class claims or Defendant’s defenses. The Court will decide whether to give final approval to the Settlement at a hearing scheduled for [REDACTED], 2021, at [REDACTED] a.m., in Department S26 of the San Bernardino County Superior Court, located at San Bernardino County Superior Court, 247 West Third Street, San Bernardino, CA 92415.

Attorneys for the Class (“Class Counsel”) in the Litigation are:

CLASS COUNSEL

WILSHIRE LAW FIRM
Justin F. Marquez, Esq.
Nicol E. Hajjar, Esq.
Rachel J. Vinson, Esq.
3055 Wilshire Blvd., 12th Floor
Los Angeles, California 90010
Telephone: 213-381-9988

Counsel For Defendant

RUTAN & TUCKER, LLP
Brandon L. Sylvia, Esq.
Kimberly A. Nayagam, Esq.
18575 Jamboree Road, 9th Floor
Irvine, California 92612
Telephone: (714) 641-5100

C. YOUR OPTIONS

If you fit within the above description of the Class, you have several options. Your rights regarding each option, and the procedure you must follow to select each option, are explained below.

1. OPTION 1: Do Nothing and Remain a Member of the Class and Participate in the Settlement.

If you want to participate in the Class Settlement and receive a Participating Class Member Settlement Payment, **DO NOT TAKE ANY ACTION**. You will automatically be included in the Class Settlement and will receive the Participating Class Member Settlement Payment as detailed below. If you move, make sure you contact the Settlement Administrator at the following address or phone number:

THE BIG COMPANY, INC. SETTLEMENT ADMINISTRATOR

[INSERT ADDRESS AND PHONE NUMBER]

YOUR ESTIMATED PARTICIPATING CLASS MEMBER PAYMENT IS \$_____. This amount is based on the number of workweeks during which you worked during the Class Period, based on the best information available, which is _____ workweeks. The settlement amount is just an estimate of your individual class settlement payment (“Participating Class Member Payment”). The exact Participating Class Member Payment allocated to you will not be determined until the class notice process is completed and the Court grants final approval of the Settlement.

If you believe the number of workweeks stated above is incorrect and you wish to challenge it, you must send the enclosed dispute form to the Settlement Administrator, stating what you believe is the correct number of workweeks, and providing any documents or other back-up you have for what you believe is the correct number. This form must be postmarked no later than [date]. You must also provide your name and telephone number. Defendants will have the right to respond to any challenge by a Class Member. The Settlement Administrator will resolve the challenge and make a final and binding determination without hearing or right of appeal. The Settlement Administrator’s determination will be subject to review by the Court at the time of the final approval hearing. If you want confirmation that your correspondence has been received by the Settlement Administrator, you may send your letter by certified U.S. Mail with a return receipt request.

If you choose to participate in the Class Settlement, you will be bound by all the terms set forth in the Class Settlement, including a full release of claims for the matters being settled in the Action.

2. OPTION 2: Opt Out of the Class and Receive Nothing Under the Class Settlement

If you do not want to receive a payment from the Class Settlement, you can request exclusion from the Class (i.e., “opt out”). You can opt out of the Class by completing the Opt-Out Form included with this notice and sending it to the Settlement Administrator at the above-stated address, such that it is **postmarked** no later than [date]. This Opt-Out Form must be **signed** by you.

If you opt out of the Class, you will no longer be a member of the Class, you will be barred from participating in this Class Settlement, and you will not receive a Participating Class Member Payment. By opting out of the Class, you will retain whatever individual rights or claims you may have, if any, against Defendant, and you will be free to pursue them on an individual basis, if you choose to do so. Notwithstanding, all Aggrieved Employees will be issued payment of their PAGA Aggrieved Employee Payment regardless of whether they opt out of the Class Settlement, in which case you would still be bound by the PAGA portion of the Settlement.

3. OPTION 3: Object to the Settlement

If you are a Class Member who does not opt out of the Class Settlement, you may object to the Class Settlement, personally or through an attorney, by submitting your objection to the Settlement Administrator

([REDACTED]), at the address set forth above. All written objections must be signed and must contain your address, telephone number and a reference to the case name and number. All objections must be sent to the Settlement Administrator at the above-stated address, such that it is **postmarked** no later than [date]. Your written objection should clearly explain why you object to the Class Settlement and must state whether you (or someone on your behalf) intend to appear at the final fairness hearing on [REDACTED]. Your failure to timely submit your objection to the Settlement Administrator may preclude your objection from being heard at the final fairness hearing. If you object to the Class Settlement and if the Court approves the Class Settlement as set forth in the Settlement Agreement, you will be bound by the terms of the Class Settlement in the same way as a Class Member who does not object.

D. SUMMARY OF TERMS OF SETTLEMENT

The principal terms of the Settlement reached between Plaintiff and Defendant are summarized below.

1. Settlement Terms

The Settlement provides that (a) Defendant will pay \$575,000 (the “Gross Settlement Amount”) to resolve all claims asserted in the Action, an enhancement award, settlement administration costs, the PAGA Amount, and Class Counsel’s attorneys’ fees and costs, as described more fully below; and (b) Defendant will stipulate to the certification of the Class for settlement purposes only, conditioned upon the Court granting final approval of the Settlement.

- Attorneys’ Fees and Costs. Class Counsel will apply to the Court for an award of attorneys’ fees of no more than \$191,666.66, which is approximately 33⅓% of the Gross Settlement Amount. In addition, Class Counsel will seek reimbursement of actual costs of no more than \$25,000, as well as settlement administration costs of \$7,500. The attorneys’ fees and costs will be paid out of the Gross Settlement Amount.
- Class Representative Enhancement Award. Plaintiff will request an enhancement award of \$7,500. The enhancement award will be paid out of the Gross Settlement Amount.
- PAGA Payment. Plaintiff will request a payment pursuant to the Private Attorneys General Act (“PAGA”) of \$30,000, of which 75% (or \$22,500) will be paid to the Labor & Development Workforce Agency, and 25% (or \$7,500) will be paid to Aggrieved Employees, as defined by the Settlement Agreement. This PAGA payment will be paid out of the Gross Settlement Amount.
- Payments To Participating Class Members. After the deductions from the Gross Settlement Amount, the remaining amount of approximately \$313,333.34 will remain to be distributed to Participating Class Members on a *pro rata* basis based on each Class Member’s workweeks during which the Class Member worked during the Class Period.
- Payments To Aggrieved Employees. In addition to the *pro rata* portion of the approximately \$313,333.34 payable to Participating Class Members discussed above, Aggrieved Employees will receive a *pro rata* portion of \$7,500 (the “PAGA Payment”), based on the formula set forth above, limited to workweeks worked

during the PAGA Period. The PAGA Payment represents penalties under the Labor Code Private Attorneys General Act. Class Members who opt out of the Settlement and are Aggrieved Employees will still receive their portion of the PAGA Payment.

Settlement Payment To You: Section C of this Notice includes the estimated amount that you are entitled to receive under the Class Settlement. The individual settlement payments to Class Members will vary based on a number of factors, including the number of Class Members who participate. The Settlement Payment will be mailed to you within approximately 90 days of the Court's Order granting final approval of the Class Settlement. If you change your address, please notify the Settlement Administrator.

Taxes: For purposes of this Settlement, Participating Class Member Payments shall be reported as follows: (i) 10% of the amount distributed to each Participating Class Member will be considered wages, and will be reported as such to each Participating Class Member on a W-2 Form; (ii) 45% of the amount distributed to each Participating Class Member will be considered interest on the unpaid wages, and will be reported as such to each Participating Class Member on an IRS Form 1099; and (iii) 45% of the amount distributed to each Participating Class Member will be considered statutory penalties, and will be reported as such to each Participating Class Member on an IRS Form 1099. The PAGA Payments distributed to each Aggrieved Employee will be considered penalties and will be reported on an IRS Form 1099. Prior to mailing your Individual Settlement Payment, the Settlement Administrator will calculate and deduct from your Individual Settlement Payment an amount necessary to pay the required withholdings and taxes, including all payroll taxes. The Settlement Administrator will remit that money to the appropriate governmental agencies. The Settlement Administrator will also issue you appropriate tax forms, including an IRS Form 1099 and W-2 Form. Class Members should consult their tax advisors concerning the tax consequences of the payments they receive under the Settlement.

2. Release

The Settlement provides that each Class Member who does not opt out of the Settlement fully releases and discharges Defendants and the Released Parties (as defined in the Settlement Agreement) from any and all claims, known or unknown, contingent or accrued, against Defendants and the Released Parties that (a) arise from the facts, matters, transactions or occurrences alleged in the Action or that could have been alleged in the Action based on such facts; or (b) arise from the facts, matters, transactions or occurrences alleged, or that could have been alleged, in the letter sent by Class Counsel to LWDA on or about March 23, 2020, asserting that Defendant violated various provisions of the Labor Code. Without limiting the foregoing, and in addition to the foregoing, the Settled Claims include claims for failure to pay the minimum wage; failure to pay regular wages; failure to pay overtime compensation and other premium wages; off-the-clock work; failure to provide and maintain complete and accurate itemized wage statements that included all information required by the California Labor Code; failure to provide meal periods and rest breaks or additional pay in lieu thereof; untimely payment of wages; violations of California Labor Code §§ 201, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1191; related violations of the applicable California Wage Orders; violations of all related or corresponding federal laws; violation of California Business and Professions Code Section 17200 *et seq.*; and claims under California Labor Code Section 2698 *et seq.*

A complete statement of the release of claims is contained in the Settlement Agreement and is binding on all Class Members who do not opt out of the Class Settlement. A copy of the Settlement Agreement may be obtained from the Settlement Administrator.

3. Conditions Of The Settlement

The Settlement is conditioned upon the Court entering an Order at or following the final fairness hearing approving the Settlement as fair, reasonable, and adequate and in the best interests of the Class.

4. No Admission Of Liability

Defendant does not admit any wrongdoing or liability, and specifically denies any liability or wrongdoing. The Settlement reflects a compromise of disputed claims and does not mean that Defendant violated any state wage requirements or is liable for any of the allegations made by Plaintiff.

E. FAIRNESS HEARING ON PROPOSED SETTLEMENT

You are not required to attend the final fairness hearing or file an objection, although you may do both. The final fairness hearing on the fairness and adequacy of the Settlement, the plan of distribution, costs of administration, the enhancement award to Plaintiff, and Class Counsel's request for attorneys' fees and costs will be held on [REDACTED], 2021 at 9:00 a.m., in Department S26 of the San Bernardino County Superior Court, located at San Bernardino County Superior Court, 247 West Third Street, San Bernardino, CA 92415. The final fairness hearing may be continued to another date without further notice. If you plan to attend the final fairness hearing, you may contact Class Counsel to confirm the date and time.

Any Class Member who does not object in the manner provided above shall be deemed to have approved the Settlement and to have waived any objections, and shall be forever foreclosed from objecting to the fairness or adequacy of the proposed Settlement, the plan of distribution, the payment of attorneys' fees and costs, the administration process, the enhancement award to Named Plaintiff, or any other aspect of the Settlement. If the Settlement is not approved, the Action will continue to be prepared for class certification, trial, or other judicial resolution.

F. ADDITIONAL INFORMATION

This Notice only summarizes the Action and the Settlement. For the precise terms and conditions of the settlement, you may review the detailed "Settlement Agreement and Stipulation to Resolve Class Action and PAGA Claims" which is available for viewing online on the following website:

URL: [Insert website provided by Settlement Administrator]

The pleadings and other records in the lawsuit are also available on the website.

For more information, you may also inspect the Court files at the San Bernardino County Superior Court, located at San Bernardino County Superior Court, 247 West Third Street, San Bernardino, CA 92415, from 8:00 a.m. to 4:00 p.m., Monday through Friday or you can view the case records online at the court's website: <https://www.sb-court.org/divisions/civil-general-information/court-case-information-and-document-sales>. Any questions regarding this Class Notice or the Action may be directed to the Settlement Administrator at the above address and telephone number. Alternatively, you may contact your own attorney, at your own expense, to advise you, or you may contact Class Counsel at the address and telephone number set forth above. If your address changes or is different from the address on the envelope enclosing this Notice, please promptly notify the Settlement Administrator.

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

Victor Perez v. The BIG Company, Inc. dba CAPO Fireside
San Bernardino County Superior Court, Case No. CIVDS 2009691

OPT-OUT FORM

MAIL OR FAX TO:
c/o [Administrator]
P.O. Box *****
***** CA *****
Fax: (***) ***-*****

IF YOU WISH TO PARTICIPATE IN THE CLASS SETTLEMENT AND RECEIVE THE CLASS MEMBER PAYMENT SPECIFIED IN THE CLASS NOTICE THAT YOU RECEIVED, **DO NOT** FILL OUT THIS FORM.

COMPLETE THIS FORM **ONLY IF** YOU WISH TO EXCLUDE YOURSELF FROM THE CLASS SETTLEMENT. IF YOU EXCLUDE YOURSELF, YOU **WILL NOT** RECEIVE THE CLASS MEMBER PAYMENT SPECIFIED IN THE CLASS NOTICE.

I request to be excluded from the Class Settlement in the matter of *Victor Perez v. The BIG Company, Inc. dba CAPO Fireside*, San Bernardino County Superior Court, Case No. CIVDS 2009691. I understand that, by submitting this Opt-Out Form, I will no longer be eligible for the Class Member Payment specified in the Class Notice that I received.

Sign your name here

Date

Print your name here

IF YOU WISH TO BE EXCLUDED FROM THE CLASS SETTLEMENT, YOU MUST MAIL OR FAX THIS OPT-OUT FORM BY _____, 2021 TO THE FOLLOWING ADDRESS OR FAX:

c/o [Administrator]
P.O. Box *****
***** CA *****
Fax: (***) ***-*****

[BAR CODE OR CLASS MEMBER ID WILL BE INCLUDED HERE]

Victor Perez v. The BIG Company, Inc. dba CAPO Fireside
San Bernardino County Superior Court, Case No. CIVDS 2009691

DISPUTE FORM

Claim #: CAW-«Claim»-«CD»-«Seq» «MailRec» Name/Address Changes (if any):
«First1» «Last1»
«c/o» First Name Last Name
«Address1» «Address2» Address
«City», «ST» «Zip» «Country» City State Zip

Email address: _____

If your name or address is different from those shown above, print corrections on the lines to the right.

Your estimated Class Member Payment (shown below) is based on your workweeks worked during the Class Period. Your estimated Class Member Payment is a proportion of the total number of workweeks worked by all Class Members.

Class Period: Covered Period Start Date – Covered Period End Date
Workweeks «Workweeks»
Estimated Class Member Payment: «Estimated Amount»

Your actual Class Member Payment may be higher or lower based on the number of Class Members who opt-out, the Court’s rulings related to fees, costs, incentive payment, and other factors. Unless you believe that any information above is inaccurate, you do not need to do anything to receive your settlement amount.

DO NOT fill out the portion below or return this form UNLESS you believe any of the information above is not accurate or your address is incorrect. If you would like to dispute the above information, please sign and date the below, and mail it to the Settlement Administrator along with supporting evidence or information on or before Response Date.

OPTION TO DISPUTE

I wish to dispute the workweeks worked data above. I believe that I worked _____ workweeks for The BIG Company, Inc. dba CAPO Fireside (“CAPO”) as a non-exempt employee in California during the Class Period. I have enclosed documentation substantiating my dispute. I recognize that my dispute will not be reviewed without documentary evidence to support my dispute. I understand that by submitting this dispute, the Settlement Administrator will review CAPO’s records and make a determination based on those records and the records I submit, and that this determinations will be final and binding.

Sign your name here Date
Print your name here Telephone Number

YOU MUST MAIL OR FAX THIS DISPUTE FORM BY _____, 2021 TO THE FOLLOWING ADDRESS OR FAX:

c/o [Administrator]
P.O. Box *****
*****, CA *****
Fax: (***) ***-****

If you want confirmation that your correspondence has been received by the Settlement Administrator, you may send your letter by certified U.S. Mail with a return receipt request.

EXHIBIT 2



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

CASE ASSUMPTIONS

| | |
|-----------------------|------------|
| Class Members | 220 |
| Opt Out Rate | 1% |
| Opt Outs Received | 2 |
| Total Class Claimants | 218 |
| Subtotal Admin Only | \$7,500.00 |

| | |
|------------------------------|-------------------|
| WILL NOT EXCEED | \$7,500.00 |
| For 220 Class Members | |

August 19, 2021

Case: Victor Perez v. The Big Company, Inc., Opt-Out wLanguage

Phoenix Contact: Jodey Lawrence

Contact Number: 949.566.1455

Email: Jodey@phoenixclassaction.com

Requesting Attorney: Justin Marquez

Firm: Wilshire Law Firm, PLC

Contact Number: (213) 381-9988, Ext. 345

Email: justin@wilshirelawfirm.com

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

Estimate is based on 220 Class Members. PSA assumes class data will be sent in Microsoft Excel or other usable format with no or reasonable additional formatting needed. A rate of \$150 per hour will be charged for any additional analysis or programming.

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

| Administrative Tasks: | Rate | Hours/Units | Line Item Estimate |
|------------------------------|----------|-------------|--------------------|
| Programming Manager | \$100.00 | 2 | \$200.00 |
| Programming Database & Setup | \$100.00 | 2 | \$200.00 |
| Toll Free Setup* | \$128.98 | 1 | \$128.98 |
| Call Center & Long Distance | \$2.50 | 22 | \$55.00 |
| NCOA (USPS) | 220 | 0.24 | \$52.80 |
| Total | | | \$636.78 |

* Up to 120 days after disbursement

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

| Project Action | Rate | Hours/Units | Line Item Estimate |
|----------------------------------|------------|-------------|--------------------|
| Notice Packet Formatting | \$100.00 | 2 | \$200.00 |
| Data Merge & Duplication Scrub | \$0.15 | 220 | \$33.00 |
| Notice Packet & Opt-Out Form | \$1.75 | 220 | \$385.00 |
| Estimated Postage (up to 2 oz.)* | \$0.70 | 220 | \$154.00 |
| Language Translation | \$1,000.00 | 1 | \$1,000.00 |
| Website | \$200.00 | 1 | \$200.00 |
| Total | | | \$1,972.00 |

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



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

| Skip Tracing & Remailing Notice Packets / Tracking & Programming Undeliverables | | | |
|--|-------------|--------------------|---------------------------|
| Project Action: | Rate | Hours/Units | Line Item Estimate |
| Case Associate | \$50.00 | 2 | \$100.00 |
| Skip Tracing Undeliverables | \$2.00 | 44 | \$88.00 |
| Remail Notice Packets | \$1.75 | 44 | \$77.00 |
| Estimated Postage | \$0.70 | 44 | \$30.80 |
| Programming Undeliverables | \$50.00 | 2 | \$100.00 |
| | | Total | \$395.80 |

| Database Programming / Processing Opt-Outs, Deficiencies or Disputes | | | |
|---|-------------|--------------------|---------------------------|
| Project Action: | Rate | Hours/Units | Line Item Estimate |
| Programming Claims Database | \$125.00 | 2 | \$250.00 |
| Non Opt-Out Processing | \$175.00 | 1 | \$175.00 |
| Case Associate | \$50.00 | 4 | \$200.00 |
| Opt-Outs/Deficiency/Dispute Letters | \$8.50 | 6 | \$46.75 |
| Case Manager | \$85.00 | 2 | \$170.00 |
| | | Total | \$841.75 |

| Calculation & Disbursement Programming/ Create & Manage QSF/ Mail Checks | | | |
|---|-------------|--------------------|---------------------------|
| Project Action: | Rate | Hours/Units | Line Item Estimate |
| Programming Calculations | \$125.00 | 2 | \$250.00 |
| Disbursement Review | \$125.00 | 2 | \$250.00 |
| Programming Manager | \$95.00 | 2 | \$190.00 |
| QSF Bank Account & EIN | \$40.00 | 3 | \$120.00 |
| Check Run Setup & Printing | \$125.00 | 2 | \$250.00 |
| Mail Class Checks, W2 and 1099 * | \$1.50 | 218 | \$326.70 |
| Estimated Postage Checks, W2 and 1099 | \$0.56 | 218 | \$121.97 |
| | | Total | \$1,508.67 |

* Checks are printed on 8.5 x 11 in. sheets with W2/1099 Tax Filing



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

| Tax Reporting & Reconciliation / Re-Issuance of Checks / Conclusion Reports and Declarations | | | |
|---|-------------|--------------------|---------------------------|
| Project Action: | Rate | Hours/Units | Line Item Estimate |
| Case Supervisor | \$105.00 | 2 | \$210.00 |
| Remail Undeliverable Checks (Postage Included) | \$1.50 | 20 | \$30.00 |
| Case Associate | \$55.00 | 3 | \$165.00 |
| Reconcile Uncashed Checks | \$85.00 | 2 | \$170.00 |
| Conclusion Reports | \$100.00 | 2 | \$200.00 |
| Case Manager Conclusion | \$85.00 | 3 | \$255.00 |
| Final Reporting & Declarations | \$115.00 | 1 | \$115.00 |
| IRS & QSF Annual Tax Reporting * (State Tax Reporting Included) | \$1,000.00 | 1 | \$1,000.00 |
| | | Total | \$2,145.00 |

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

Estimate Total: \$7,500.00



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

TERMS AND CONDITIONS

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

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

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

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

Tax Reporting Requirements

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

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

