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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF STANISLAUS**

11 LETICIA RODRIGUEZ, individually, and on
12 behalf of all others similarly situated,

13 *Plaintiff,*

14 v.

15 MODESTO RESTAURANT GROUP, LLC, a
16 California limited liability corporation; and DOES
1 through 10, inclusive,

17 *Defendants.*

Case No. CV-21-000269

CLASS ACTION

*[Assigned for all purposes to the Honorable
Sonny S. Sandhu, Dept. 24]*

**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: March 8, 2022
Time: 8:30 a.m.
Dept: 24

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. This is a wage and hour class action and PAGA representative action. Plaintiff and
12 putative class members worked in California as hourly-paid, non-exempt employees for
13 Defendant during the class period. Defendant manages Carl’s Jr. fast food locations in Modesto,
14 California and the surrounding area.

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 January 21, 2021, Plaintiff filed a putative wage-and-hour class action
25 complaint against Defendant Modesto Restaurant Group, LLC 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 February 8, 2022, Plaintiff filed a Joint
4 Stipulation and [Proposed] Order for Leave to file First Amended Complaint, and the First
5 Amended Complaint adding a claim for civil penalties under Private Attorneys General Act
6 “PAGA” (Labor Code § 2698 et seq.). The Court has yet to sign the Proposed Order.

7 DISCOVERY AND INVESTIGATION

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

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

19 SETTLEMENT NEGOTIATIONS

20 7. On November 30, 2021, the parties participated in private mediation with
21 experienced class action mediator Kelly Knight. After extensive negotiations and discussions
22 regarding the strengths and weaknesses of Plaintiff’s claims and Defendant’s defenses, Mr.
23 Knight issued a mediator’s proposal that was accepted by all parties, the material terms of which
24 are encompassed within the Settlement. Attached as **Exhibit 1** is a true and correct copy of the
25 Joint Stipulation for Class Action Settlement.

26 8. The settlement includes \$25,000 allocated to Plaintiff’s claims under PAGA, with
27 75% of which (\$18,750) will be paid to the LWDA and 25% (\$6,250) will be paid to eligible
28 members of the PAGA Class. (Settlement, § I(O).) Class Counsel submitted the proposed

1 settlement to the LWDA before filing this Motion for Preliminary Approval.

2 9. The Settlement provides that Defendant will not oppose a fee application of up to
3 33 1/3% (\$200,000) of the Settlement Amount, plus out-of-pocket costs not to exceed \$25,000.
4 (Settlement, § XIII.) At this time, Class Counsel's costs are approximately \$18,433.02. A true
5 and correct copy of Plaintiff's costs to the date is attached to this declaration as **Exhibit 2**.

6 10. I requested several bids from experienced class action settlement administrators to
7 handle the responsibilities of the Settlement Administrator under this settlement. The Parties
8 accepted the bid of Phoenix Class Action Administration Solutions. In its bid, Phoenix agreed to
9 cap its costs at \$11,750 if there are 1,400 class members. The bid also provides that class notice
10 will be provided in English and Spanish. A true and correct copy of the bid is attached hereto as
11 **Exhibit 3**.

12 11. Plaintiff Leticia Rodriguez does not have any interest, financial or otherwise, in
13 the proposed third-party administrator, Phoenix Class Action Administration Solutions.

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

17 13. Wilshire Law Firm, PLC has no fee-splitting agreement with any other counsel in
18 this case.

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

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

26 15. Based on an analysis of the facts and legal contentions in this case, documents and
27 information from Defendant, I evaluated Defendant's maximum exposure. I took into account
28 the risk of not having the claims certified and the risk of not prevailing at trial, even if the claims

1 are certified. After using the data Defendant provided, including a random sample of
2 timekeeping and payroll records, as well as class member demographics (i.e., the number of class
3 members, workweeks, and average total compensation of the class), with the assistance of a
4 statistics expert I created a damages model to evaluate the realistic range of potential recovery
5 for the class. The damages model is based on the following benchmarks:

6 Shifts Analyzed: 225,114

7 Total Workweeks: 56,179

8 Total Class Members: 1,260

9 Terminated Class Members during 3-year statute: 775

10 PAGA Pay Periods: 12,149

11 Avg. Hourly Rate: \$12.39

12 Class period: January 21, 2017 through date the Court grants preliminary approval or April 1,
13 2022, whichever is earlier

14 16. Discovery and investigation revealed that Defendant failed to pay class members
15 minimum wages and overtime for all hours worked, failed to pay for off-the-clock work, failed to
16 record any instances of missed meal period, and failed to have a legally compliant written policy
17 providing meal periods and authorizing and permitting rest periods.

18 17. Plaintiff alleges that Defendants failed to pay for all hours worked, including
19 minimum wages, straight time wages, and overtime wages. My expert analyzed Defendant's
20 timekeeping records and found that Defendant failed to pay minimum wages for all recorded
21 hours worked in the total of \$17,899. Defendants counter that their policies were legally
22 compliant, and contend that certification of Plaintiff's off-the-clock claim is not appropriate
23 because individualized inquiries would be required to determine the amount of unpaid work time,
24 and whether Defendants had knowledge of off-the-clock work occurring. A conservative
25 estimate of unpaid overtime 1 hour per workweek was appropriate given the difficulty of proving
26 an off-the-clock work violation on a class-wide basis. For purposes of calculating Defendants'
27 liability based on a best case scenario for Plaintiff and the Class, I estimate that Defendants'
28 maximum potential exposure is \$1,044,367.61(56,179 weeks *\$18.59 hourly overtime rate * 1

1 hour of unpaid work per week). I discounted these figures by 80% to account for the difficulty of
2 prevailing on a motion for class certification and a trial on the merits, yielding a realistic damage
3 estimate of **\$208,873.52**.¹

4 18. With respect to the meal period claim, Plaintiff alleges that Defendant required
5 him and similarly situated class members to work in lieu of taking meal periods, and Defendant
6 lacked legally compliant policies and practices providing meal periods during the class period.
7 Plaintiff also alleges that Defendants required her and similarly situated class members to sign an
8 illegal blanket meal period waiver for shifts between 5-6 hours long and shift between 10-12
9 hours long that applies prospectively. My expert analyzed Defendant's timekeeping records and
10 found that approximately 31.5% of all meal breaks had violations of short, missed, or no meal
11 periods. Potential liability of the meal period claim, which includes shifts 5-6 hours long, shifts
12 over 6 hours long, and shifts over 10 hours long, is \$814,810, including interest; however, I
13 discounted this figure by 80% to account for the difficulty of certifying and proving meal period
14 claims, and to account for the possibility of class members voluntarily choosing to forego a meal
15 period, yielding a realistic damage estimate of **\$162,962**.

16 19. 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 during the class period. My expert analyzed Defendant's timekeeping records and found
20 that approximately 36.4% of eligible shifts have a rest breaks. Defendant's potential liability for
21 the rest period claim is \$1,120,622; however, I discounted this figure by 80% to account for the
22 difficulty of certifying and proving rest period claims, particularly because rest periods do not
23 have to be recorded, and to account for the possibility of class members voluntarily choosing to
24 forego a rest period, yielding a realistic damage estimate of **\$224,124.40**.

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](http://www.courts.ca.gov/documents/class-action-lit-study.pdf).

1 20. 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 \$2,979,799.61, 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 \$592,959.92.**

5 21. With respect to Plaintiff’s derivative claims for statutory and civil penalties,
6 Plaintiff estimated that Defendant’s realistic potential liability is **\$350,000**. While Defendant’s
7 maximum potential liability for waiting time penalties is \$1,897,421 based on approximately 775
8 terminated class members during the 3-year statute, \$1,184,900 for inaccurate wage statements
9 based on approximately 600 class members who worked 12,149 pay periods within the 1-year
10 statute, and \$1,214,900 for PAGA violations based on the Court assessing a \$100 penalty for
11 initial violations for all 12,149 pay periods within the 1-year statute, I believe that it would be
12 unrealistic to expect the Court to award the full \$4,297,221 in penalties given Defendant’s
13 defenses, the contested nature of Plaintiff’s claims, and the discretionary nature of penalties.
14 Considering that the underlying claims are realistically estimated to be \$592,959.92, such a
15 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 for statutory and civil penalties.

18 22. **Using these estimated figures, Plaintiff predicted that the realistic maximum**
19 **recovery for all claims, including penalties, would be \$942,959.92. This means that the**
20 **\$600,000 settlement figure represents approximately 49.5% of the realistic maximum**
21 **recovery ($\$600,000 / \$942,959.92 = 63.6\%$). Considering the risk and uncertainty of prevailing**
22 **at class certification and at trial, this is an excellent result for the Class. Indeed, because of the**
23 **proposed Settlement, class members will receive timely, guaranteed relief and will avoid the risk**
24 **of an unfavorable judgment.**

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

28 24. This settlement avoids the risks and the accompanying expense of further

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

9 25. The Net Settlement Amount available for Class Member settlement payments is
10 estimated to be \$336,500, for a class of 1,260 persons.² **As a result, each Settlement Class**
11 **Member is eligible to receive an average net benefit of approximately \$280.42.**

12 26. The proposed settlement of \$600,000 therefore represents a substantial recovery
13 when compared to Plaintiff's reasonably forecasted recovery. When considering the risks of
14 litigation, the uncertainties involved in achieving class certification, the burdens of proof
15 necessary to establish liability, the probability of appeal of a favorable judgment, it is clear that
16 the settlement amount of \$600,000 is within the "ballpark" of reasonableness, and preliminary
17 settlement approval is appropriate.

18 ENHANCEMENT AWARD FOR PLAINTIFF IS REASONABLE

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

24 28. Throughout this litigation, Plaintiff, who is a former employee of Defendant, has
25 cooperated immensely with my office and has taken many actions to protect the interests of the
26 _____

27 ² The Net Settlement Amount is: \$600,000 minus \$8,000 for class representative service
28 award, minus \$11,750 in administration costs, minus \$18,750 for PAGA portion sent to the
LWDA, minus \$200,000 for Class Counsel's attorneys' fees, and minus \$25,000 for Class
Counsel's litigation expenses.

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

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

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

22 31. In the final analysis, this class action would not have been possible without the aid
23 of Plaintiff, who put her own time and effort into this litigation, sacrificed the value of his own
24 individual claims, and placed herself at risk for the sake of the class members. The requested
25 enhancement award for Plaintiff for her service as the class representative and for his general
26 release of all individual claims is a relatively small amount of money when the time and effort
27 put into the litigation are considered and in comparison to enhancements granted in other class
28 actions. The requested incentive award is therefore reasonable to compensate Plaintiff for her

1 active participation in this lawsuit. Indeed, in *Karl Adams, III, et al. v. MarketStar Corporation*,
2 et al., No. 2:14-cv-02509-TLN-DB, a wage and hour class action alleging that class members
3 were misclassified as exempt outside salespersons, I was co-lead Class Counsel and helped
4 negotiate a \$2.5 million class action settlement for 339 class members, and the court approved a
5 \$25,000 class representative incentive award for each named plaintiff.

6 THE REQUEST FOR ATTORNEYS' FEES AND COSTS IS REASONABLE

7 32. The Settlement provides for attorney's fees payable to Class Counsel in an amount
8 up to one-third (33 1/3%) of the Settlement Amount, for a maximum fees award of \$200,000,
9 plus actual costs and expenses not to exceed \$25,000. The proposed award of attorneys' fees to
10 Class Counsel in this case can be justified under either method – lodestar or percentage recovery.
11 Class Counsel, however, intend to base the proposed award of fees, costs and expenses on the
12 percentage method as many of the entries in the time records will have to be redacted to preserve
13 attorney-client and attorney work product privileges.

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

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

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

1 *Phi Beta Kappa*. As an undergraduate, I also received a scholarship to study abroad for one year
2 at Tokyo University in Tokyo, Japan. I received my Juris Doctor from Notre Dame Law School
3 in 2008.

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

7 42. I have received numerous awards for my legal work. From 2017 to 2020, Super
8 Lawyers selected me as a “Southern California Rising Star,” and in 2022 I was selected as a
9 “Southern California Super Lawyer.” In 2016 and 2017, the National Trial Lawyers selected me
10 as a “Top 40 Under 40” attorney. I am also rated 10.0 (“Superb”) by Avvo.com.

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

15 44. I am also an active member of the Consumer Attorneys of California (CAOC). In
16 2020, I was selected for a position on CAOC’s Board of Directors. I am also a member of
17 CAOC’s Diversity Committee, and I help assist the CAOC in defeating bills that harm
18 employees. Indeed, I recently helped assist Jacqueline Serna, Esq., Legislative Counsel for
19 CAOC, in defeating AB 443, which proposed legislation that sought to limit the enforceability of
20 California Labor Code § 226.

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

- 27 a. I served as lead or co-lead in negotiating class action settlements worth over \$10
28 million in gross recovery to class members for each year during 2020 and 2021.

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

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 support the predominance requirement for class certification. (*Id.* at p. 310-311.)
2 In 2021, the case settled for \$140 million, making it one of the largest ever wage
3 and hour class action settlements for hourly-paid employees in California.

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

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

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

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

- 1 i. In 2013, I represented a whistleblower that reported that his former employer was
2 defrauding the State of California with the help of bribes to public employees.
3 The case, a false claims (*qui tam*) action, resulted in the arrest and criminal
4 prosecution of State of California employees by the California Attorney General’s
5 Office.
- 6 j. In 2013, I was part of a team of attorneys that obtained conditional certification
7 for over 2,000,000 class members in a federal labor law case for misclassification
8 of independent contractors that did crowdsourced work on the Internet, *Otey v.*
9 *CrowdFlower, Inc.*, N.D. Cal. Case No. 12-cv-05524-JST (MEJ), resulting in the
10 following pro-plaintiff reported decisions:
- 11 1) 2013 U.S. Dist. LEXIS 151846 (N.D. Cal. Oct. 22, 2013) (holding
12 that an unaccepted Rule 68 offer doesn’t moot plaintiff’s claims,
13 and granting plaintiff’s motion to strike defendant’s affirmative
14 defenses based on *Twombly/Iqbal*).
 - 15 2) 2013 U.S. Dist. LEXIS 122007 (N.D. Cal. Aug. 27, 2013) (order
16 granting conditional collective certification).
 - 17 3) 2013 U.S. Dist. LEXIS 95687 (N.D. Cal. July 8, 2013) (affirming
18 the magistrate judge’s discovery ruling which held that “evidence
19 of other sources of income is irrelevant to the question of whether a
20 plaintiff is an employee within the meaning of the FLSA”).
 - 21 4) 2013 U.S. Dist. LEXIS 91771 (N.D. Cal. June 20, 2013) (granting
22 broad discovery because “an FLSA plaintiff is entitled to discovery
23 from locations where he never worked if he can provide some
24 evidence to indicate company-wide violations”).
- 25 k. From 2012 to 2013, I was part of a team of attorneys that obtained class
26 certification for over 60,000 class members for off-the-clock claims, *Linares v.*
27 *Securitas Security Services USA, Inc.*, Los Angeles Superior Court No.
28 BC416555. We also successfully opposed subsequent appeals to the California

1 Court of Appeal and California Supreme Court.

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

21 47. Benjamin H. Haber is a fifth-year Associate Attorney at Wilshire Law Firm. His
22 current hourly rate is \$500. He graduated from the University of California, Los Angeles, with a
23 Bachelor of Arts in Political Science, and received his Juris Doctor from the University of
24 California, Hastings College of the Law in 2016. During law school, he was a member of the
25 executive board for the Hastings Law Journal and student mediator at the San Francisco Superior
26 Court, Small Claims Division. He was admitted to practice law in the State of California in 2017.
27 Since graduating from law school, he has focused his legal work primarily on wage-and-hour
28 litigation and has helped obtain dozens of settlements on behalf of tens of thousands of workers

1 in California.

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

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

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

26 b. On September 9, 2021, the Hon. Peter Wilson of the Orange County Superior
27 Court approved my \$800 hourly rate when he granted final approval of the class
28 action settlement in *Ricardo Campos Hernandez v. Adams Iron Co., Inc.*, No. 30-

1 2019-01066522-CU-OE-CXC.

- 2 c. On August 6, 2021, the Hon. Stanley Blumenfeld, Jr. of the United States District
3 Court granted final approval of the \$1,600,000 class action settlement in *Carlos*
4 *Moreno v. Pretium Packaging, Inc.* (C.D. Cal. Aug. 6, 2021) No. 8:19-cv-02500-
5 SB-DFM, 2021 WL 3673845 in which I served as lead counsel. In doing so, the
6 Court approved my then \$750 hourly rate after finding it was “reasonable, given
7 the qualifications of the attorneys who worked on this matter.” (*Id.* at p. *3.)
- 8 d. On January 19, 2021, the Hon. Elihu M. Berle of the Los Angeles County Superior
9 Court approved my \$750 hourly rate when he granted final approval of the class
10 action settlement in *Faye Zhang v. Richemont North America, Inc.*, No.
11 19STCV32396.
- 12 e. On December 13, 2018, the United States District Court granted final approval of
13 the \$2,500,000 class action settlement in *Mark Brulee, et al. v. DAL Global*
14 *Services, LLC* (C.D. Cal. Dec. 13, 2018) No. CV 17-6433 JVS(JCGx), 2018 WL
15 6616659 in which I served as lead counsel. In doing so, the Court approved my
16 then \$600 hourly rate and found: “Class Counsel’s declarations show that the
17 attorneys are experienced and successful litigators.” (*Id.* at p. *10.)

18 I declare under penalty of perjury under the laws of the State of California and the
19 United States that the foregoing is true and correct.

20 Executed on February 10, 2022, at Los Angeles, California.

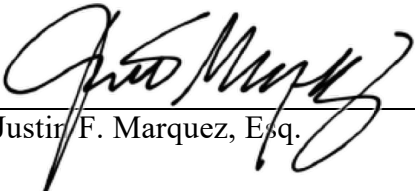
21
22 
23 Justin F. Marquez, Esq.

Exhibit 1

WILSHIRE LAW FIRM, PLC
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1 Justin F. Marquez (SBN 262417)
justin@wilshirelawfirm.com
2 Benjamin H. Haber (SBN 315664)
benjamin@wilshirelawfirm.com
3 Rachel J. Vinson, Esq. (SBN 331434)
rvinson@wilshirelawfirm.com

4 **WILSHIRE LAW FIRM**
3055 Wilshire Blvd., 12th Floor
5 Los Angeles, California 90010
6 Telephone: (213) 381-9988
7 Facsimile: (213) 381-9989
Attorneys for Plaintiff

8 Jacqueline Beaumont, Bar No. 253776
jbeaumont@calljensen.com
9 L. Lisa Sandoval, Bar No. 310380
lsandoval@calljensen.com
10 **CALL & JENSEN**
A Professional Corporation
11 610 Newport Center Drive, Suite 700
Newport Beach, CA 92660
12 Telephone: (949) 717-3000
13 Fax: (949) 717- 3100
Attorneys for Defendant

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **FOR THE COUNTY OF STANISLAUS**

16 LETICIA RODRIGUEZ, individually, and on
17 behalf of all others similarly situated,

18 *Plaintiff,*

19 v.

20 MODESTO RESTAURANT GROUP, LLC, a
California limited liability corporation; and DOES
21 1 through 10, inclusive,

22 *Defendants.*
23
24
25
26
27
28

Case No.: CV-21-000269

*[Assigned for all purposes to the Honorable
Sonny S. Sandhu, Dept. 24]*

STIPULATION OF SETTLEMENT

Complaint filed: January 21, 2021
Trial date: Not set

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1 This Stipulation of Settlement is made by and between the Named Plaintiff, LETICIA
2 RODRIGUEZ (“Plaintiff”), on her own behalf and on behalf of all members of the Settlement
3 Class, as defined below, on the one hand, and Defendant MODESTO RESTAURANT GROUP,
4 LLC, (“Defendant”) on the other hand (collectively the “Parties”), in the lawsuit entitled *Leticia*
5 *Rodriguez v. Modesto Restaurant Group, LLC*, filed in the Stanislaus County Superior Court,
6 Case No. CV-21-0002691. This Stipulation of Settlement resolves all claims that were asserted
7 or could have been asserted against Defendant pertaining to the claims in the Litigation.

8 **I. DEFINITIONS**

9 **A. Administrative Costs.** All administrative costs of settlement, including cost of
10 notice to the Settlement Class, claims administration, and any fees and costs incurred or charged by
11 the Settlement Administrator in connection with the execution of its duties under this Stipulation of
12 Settlement.

13 **B. Agreement.** The terms “Agreement” or “Settlement Agreement” are used
14 synonymously herein to mean this Stipulation of Settlement.

15 **C. Class Counsel.** The term “Class Counsel” as used herein means: WILSHIRE LAW
16 FIRM, PLC and all the lawyers of the firm acting on behalf of Named Plaintiff and the Settlement
17 Class. The term Class Counsel shall be used synonymously with the term Plaintiff’s Counsel.

18 **D. Court.** The term “Court” as used herein means the Superior Court of the State of
19 California for the County of Stanislaus.

20 **E. Final.** The term “Final” means: (1) the date of final affirmation of the Final Approval
21 Order from any appeal, the expiration of the time for, or the denial of, a petition to review the Final
22 Approval Order, or if review is granted, the date of final affirmation of the Final Approval Order
23 following review pursuant to that grant; or (2) the date of final dismissal of any appeal from the Final
24 Approval Order or the final dismissal of any proceeding to review the Final Approval Order,
25 provided that the Final Approval Order is affirmed and/or not reversed in any part; or (3) if no appeal
26 is filed, the expiration date of the time for the filing or noticing of any appeal from the Court’s Final
27 Approval Order, as determined under Rule 8.104(a)(3) of the California Rules of Court.

28 **F. Date of Final Approval.** The terms “Date of Final Approval” or “Final Approval

1 Order” as used herein mean date of issuance of the final formal judgment entered by the Court at the
2 Final Fairness and Approval Hearing in accordance with the terms herein, approving this Agreement.

3 **G. Defendant.** The term “Defendant” as used herein means MODESTO
4 RESTAURANT GROUP, LLC.

5 **H. Employer Taxes.** Employer-funded taxes and contributions imposed on the wage
6 portions of the Settlement Payment under the Federal Insurance Contributions Act, the Federal
7 Unemployment Tax Act, and any similar state taxes and contributions required of employers, such
8 as for unemployment insurance.

9 **I. Litigation.** The term “Litigation” as used herein means the action entitled filed in
10 Stanislaus County Superior Court, Case No. CV-21-0002691.

11 **J. Named Plaintiff.** The term “Named Plaintiff” as used herein means LETICIA
12 RODRIGUEZ.

13 **K. Net Settlement Fund.** The term “Net Settlement Amount” or “Net Settlement Fund”
14 as used herein means the Settlement Amount minus any award of attorneys’ fees and Litigation costs,
15 Administrative Costs, enhancement to the Named Plaintiff, and penalties recoverable pursuant to
16 California’s Private Attorney General Act (“PAGA”) (the “PAGA Settlement”), and as provided in
17 Sections VIII, XIII, XIV, XV, and XVI, respectively.

18 **L. Net Settlement Payments.** The term “Net Settlement Payment(s)” shall include
19 payments made to the Settlement Class as part of the Settlement, including wages, penalties and
20 interest.

21 **M. PAGA Employee.** For settlement purposes only, the Parties agree to the definition of
22 a PAGA Employee as: All persons who worked for Defendant in California as an hourly-paid or
23 non-exempt employee during the PAGA Settlement Period of January 25, 2020 through the date the
24 Court grants preliminary approval of the settlement or April 1, 2022, whichever is earlier (together,
25 collectively referred to as the “PAGA Employees”).

26 **N. PAGA Settlement Period.** January 25, 2020 through the date the Court grants
27 preliminary approval of the settlement or April 1, 2022, whichever is earlier.

28 **O. PAGA Settlement.** In order to settle claims alleged under the Private Attorneys’

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1 General Act, California *Labor Code* section 2698 *et seq.*, the Parties agree to allocate \$25,000.00
2 from the Settlement Amount as penalties authorized by the California Labor Code Private Attorneys
3 General Act of 2004 (PAGA Settlement). Seventy-five percent (75%) of the PAGA Settlement
4 (totaling \$18,750) will be paid to the Labor and Workforce Development Agency and 25% of the
5 PAGA Settlement (totaling \$6,250) will be distributed to participating PAGA Employees.

6 **P. Settlement.** The term “Settlement” as used herein means this Agreement to resolve
7 the Litigation.

8 **Q. Settlement Administrator.** The term “Settlement Administrator” as used herein
9 means Phoenix Settlement Administrators, which will be responsible for the administration of the
10 Settlement Amount, as defined below, and all related matters.

11 **R. Settlement Agreement.** The terms “Settlement Agreement” or “Agreement” are
12 used synonymously herein to mean this Stipulation of Settlement.

13 **S. Settlement Amount.** The term “Settlement Amount” as used herein means the sum
14 of Six Hundred Thousand Dollars and Zero Cents (\$600,000.00), which shall be paid by Defendant,
15 and from which all Net Settlement Payments, Court-approved attorneys’ fees and Litigation costs
16 pursuant to Section XIII, Administrative Costs pursuant to Section VIII, enhancement to Named
17 Plaintiff pursuant to Section XIV, statutory penalties, interest, and PAGA Settlement pursuant to
18 Section XVI shall be paid, except as provided herein. Subject to Section XI(C) below, the Settlement
19 Amount will be increased in the event the final number of workweeks in the Settlement Period is
20 more than 10% higher than the initially agreed upon estimate of 56,179 workweeks.

21 **T. Settlement Class.** For settlement purposes only, the Parties agree to the certification
22 of a class pursuant to California *Code of Civil Procedure* § 382 defined as:

23 All persons who worked for Defendant in California as an hourly-paid or
24 non-exempt employee during the Settlement Period of January 21, 2017
25 through the date the Court grants preliminary approval of the settlement or
26 April 1, 2022, whichever is earlier (together, collectively referred to as the
27 “Class Members”).

28 **U. Settlement Period.** The term “Settlement Period” as used herein means the

1 period from January 21, 2017 through date the Court grants preliminary approval or April 1,
2 2022, whichever is earlier.

3 **II. BACKGROUND**

4 **A.** In the Litigation, the Named Plaintiff alleges, *inter alia*, on behalf of herself and all
5 others similarly situated, that Defendant violated California state wage and hour laws, the California
6 *Business and Professions Code* Section 17200 *et seq.*, and PAGA, as a result of Defendant's
7 California wage and hour policies and practices. Specifically, Plaintiff alleges that Defendant failed
8 to pay its employees at or above the applicable minimum wage rates, failed to provide regular/straight
9 time, overtime, and double time pay, failed to provide meal breaks (including first and second meal
10 breaks), and failed to authorize and permit legally compliant rest breaks each day based on the hours
11 worked by each employee. Plaintiff further alleged that the aforementioned resulted in the
12 employees receiving inaccurate wage statements, and the underpayment of wages to employees upon
13 termination and/or resignation. Finally, the Plaintiff made claims for unfair competition and
14 penalties under California's Private Attorney General Act ("PAGA") arising out of the alleged wage
15 and hour policies and practices.

16 Class Counsel conducted informal discovery concerning the claims and defenses set forth in
17 the Litigation, such as a sample of class member timekeeping and payroll records, Defendant's
18 policies and procedures concerning the payment of wages, the provision of meal and rest breaks,
19 issuance of wage statements, and providing all wages at separation, as well as information regarding
20 the number of putative class members and the mix of current versus former employees, the wage
21 rates in effect, and the amount of meal and rest period premium wages paid to class members.

22 **B.** Named Plaintiff and Class Counsel have engaged in good faith, arms-length
23 negotiations with Defendant concerning possible settlement of the claims asserted in the Litigation.
24 The Parties participated in a full day of mediation before Kelly Knight, Esq., a well-respected wage
25 and hour class action mediator, that resulted in a tentative settlement of the Litigation, subject to the
26 approval of the Court, and finalization of a formal Stipulation of Settlement. The Parties have
27 engaged in extensive negotiations about the terms and conditions of the Settlement at the mediation
28 and subsequent thereto. The Parties have now formalized the Settlement Agreement for submission

1 to the Court for preliminary and Final Approval.

2 C. Class Counsel has conducted an investigation of the law and facts relating to the
3 claims asserted in the Litigation and has concluded, taking into account the sharply contested issues
4 involved, the defenses asserted by Defendant, the expense and time necessary to pursue the Litigation
5 through trial and any appeals, the risks and costs of further prosecution of the Litigation, the risk of
6 an adverse outcome, the uncertainties of complex litigation, and the substantial benefits to be
7 received by the Named Plaintiff and the members of the Settlement Class pursuant to this Agreement,
8 that a settlement with Defendant on the terms and conditions set forth herein is fair, reasonable,
9 adequate, and in the best interests of the Settlement Class. Named Plaintiff, on her own behalf and
10 on behalf of the Settlement Class, has agreed to settle the Litigation with Defendant on the terms set
11 forth herein.

12 D. Defendant has concluded that for reasons including the substantial expense of
13 defending against the Litigation, the length of time necessary to resolve the issues presented herein,
14 the inconvenience involved, and the concomitant disruption to its business operations, it is in
15 Defendant's best interests to accept the terms of this Agreement. Defendant denies each of the
16 allegations and claims asserted against them in the Litigation, and denies that this case could be
17 certified as a class action or proceed on a representative bases, or that a trial would result in any
18 damages. However, without admitting to any liability, Defendant nevertheless desires to settle the
19 Litigation for the purpose of avoiding the burden, expense and uncertainty of continuing litigation
20 and for the purpose of putting to rest the controversies engendered by the Litigation.

21 E. This Agreement is intended to and does effectuate the full, final and complete
22 settlement of all allegations and claims that were asserted, or could have been asserted, in the
23 Litigation by Named Plaintiff and members of the Settlement Class as set forth in Section II.A.

24 **III. JURISDICTION**

25 The Court has jurisdiction over the Parties and the subject matter of this Litigation. The
26 Litigation includes claims that, while Defendant denies them in their entirety, would, if proven,
27 authorize the Court to grant relief pursuant to the applicable statutes. After the Court has granted
28 Final Approval of the Settlement and after the Court has ordered the entry of Judgment, pursuant to

1 California *Code of Civil Procedure* Section 664.6 the Court shall retain jurisdiction of this action
2 solely for the purpose of interpreting, implementing, and enforcing this Settlement consistent with
3 the terms set forth herein.

4 **IV. STIPULATION OF CLASS CERTIFICATION**

5 The Parties stipulate to the certification of this Settlement Class for purposes of Settlement
6 only. This Stipulation is contingent upon the Preliminary and Final approval and certification of the
7 Settlement Class only for purposes of Settlement. Should the Settlement not become final, for
8 whatever reason, the fact that the Parties were willing to stipulate provisionally to class certification
9 as part of the Settlement shall have no bearing on, and shall not be admissible in connection with,
10 the issue of whether a class should be certified in a non-settlement context in the Litigation.
11 Defendant expressly reserves the right to oppose class certification and/or proactively move to deny
12 certification should this Settlement be modified or reversed on appeal or otherwise not become final.

13 **V. MOTION FOR PRELIMINARY APPROVAL**

14 Named Plaintiff will bring a motion before the Court for an order preliminarily approving the
15 Settlement including the Notice of Proposed Class Action Settlement, and Workweek Dispute Form,
16 which are attached hereto as **Exhibits “A”** and **“B,”** respectively, and including certification of the
17 Settlement Class for settlement purposes only.

18 The date that the Court grants Preliminary Approval of this Agreement will be the
19 “Preliminary Approval Date.” Class Counsel will prepare the Motion for Preliminary Approval and
20 will provide Defendant’s counsel the opportunity to review it and provide input before it is filed. On
21 the same date on which it is filed with the Court, Class Counsel shall concurrently submit the Motion
22 for Preliminary Approval to the Labor & Workforce Development Agency in compliance with Labor
23 Code § 2698 *et seq.*, the Private Attorneys General Act.

24 **VI. STATEMENT OF NO ADMISSION**

25 **A.** Defendant denies liability to Named Plaintiff and to the Settlement Class upon any
26 claim or cause of action. This Agreement does not constitute, and is not intended to constitute, an
27 admission by Defendant as to the merits, validity, or accuracy of any of the allegations or claims
28 made against them in the Litigation.

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1 **B.** Nothing in this Agreement, nor any action taken in implementation thereof, nor any
2 statements, discussions or communications, nor any materials prepared, exchanged, issued or used
3 during the course of the negotiations leading to this Agreement or the Settlement, is intended by the
4 Parties to constitute, nor will any of the foregoing constitute, be introduced, be used or be admissible
5 in any way in this case or any other judicial, arbitral, administrative, investigative or other forum or
6 proceeding as evidence of any violation of any federal, state, or local law, statute, ordinance,
7 regulation, rule or executive order, or any obligation or duty at law or in equity. The Parties
8 themselves agree not to introduce, use, or admit this Agreement, directly or indirectly, in this case or
9 any other judicial, arbitral, administrative, investigative, or other forum or proceeding, as purported
10 evidence of any violation of any federal, state, or local law, statute, ordinance, regulation, rule or
11 executive order, or any obligation or duty at law or in equity, or for any other purpose.
12 Notwithstanding the foregoing, this Agreement may be used and filed in any proceeding before the
13 Court that has as its purpose the interpretation, implementation, or enforcement of this Agreement
14 or any orders or judgments of the Court entered in connection with implementation of the Settlement.

15 **C.** None of the documents produced or created by Named Plaintiff or the Settlement
16 Class in connection with the claims procedures or claims settlement procedures constitute, and they
17 are not intended to constitute, an admission by Defendant of any violation of any federal, state, or
18 local law, statute, ordinance, regulation, rule, or executive order, or any obligation or duty at law or
19 in equity.

20 **D.** The Parties agree that class certification pursuant to California *Code of Civil*
21 *Procedure* Section 382 under the terms of this Agreement is for settlement purposes only. Nothing
22 in this Agreement will be construed as an admission or acknowledgement of any kind that any class
23 should be certified or given collective treatment in the Litigation or in any other action or proceeding.
24 Further, neither this Agreement nor the Court’s actions with regard to this Agreement will be
25 admissible in any court or other tribunal regarding the propriety of class certification or collective
26 treatment. In the event that this Agreement is not approved by the Court or any appellate court, is
27 terminated, or otherwise fails to be enforceable, Named Plaintiff will not be deemed to have waived,
28 limited, or affected in any way any claims, rights, or remedies in the Litigation, and Defendant will

1 not be deemed to have waived, limited, or affected in any way any of their objections or defenses in
2 the Litigation.

3 **VII. WAIVER, RELEASE AND CONFIDENTIALITY**

4 **A. Release as to All Settlement Class Members.**

5 Upon the date the Court's Final Approval Order becomes "Final" (as that term is defined in
6 Section I(E) above) and all payments are made by Defendant pursuant to this Agreement, Named
7 Plaintiff and all members of the Settlement Class, except those that make a valid and timely request
8 to be excluded from the Settlement Class and Settlement, waive, release, discharge, and promise
9 never to assert in any forum any and all wage or penalty-related claims, including all claims for
10 damages, attorneys' fees and costs, expenses, penalties, and injunctive relief, that were alleged in the
11 Litigation or which could have been alleged in the Litigation based on the facts asserted in the
12 Litigation arising during the Settlement Period against Defendant Modesto Restaurant Group, and
13 its divisions, affiliates, predecessors, successors, shareholders, officers, directors, employees, agents,
14 trustees, representatives, administrators, fiduciaries, assigns, subrogees, executors, partners, parents,
15 subsidiaries, joint employers, insurers, attorneys, and related corporations, individually and
16 collectively, including but not limited to: 1) all claims, under any legal theory of liability, for the
17 failure to pay overtime or double time wages owed pursuant to California Labor Code §§ 204, 510,
18 1194, and 1198, the IWC Wage Orders or any comparable federal statute under any theory of
19 liability; 2) all claims, under any legal theory of liability, for the failure to pay all wages of any kind,
20 including any minimum wage or straight time wages, owed pursuant to California Labor Code §§
21 204, 510, 1194, 1194.2, and 1198, the IWC Wage Orders, or any comparable federal statute under
22 any theory of liability; 3) all claims, under any legal theory of liability, for failure to provide meal
23 periods pursuant to California Labor Code §§ 226.7 and 512, and the IWC Wage Orders; 4) all
24 claims, under any legal theory of liability, for the failure to authorize and permit rest periods pursuant
25 to California Labor Code § 226.7 and the IWC Wage Orders; 5) all claims, under any legal theory of
26 liability, for the failure to properly calculate any premiums owed and/or paid pursuant to California
27 Labor Code § 226.7(b); 6) all claims, under any legal theory of liability, for violation of Business &
28 Professions Code §§ 17200, *et seq.*; 7) all claims, under any legal theory of liability, for penalties

1 pursuant to PAGA (Labor Code §§ 2698 *et seq.*); 8) all claims, under any legal theory of liability,
2 for any penalties of any kind arising from an alleged failure to pay final wages or other amounts
3 allegedly owed to Class Members pursuant to California Labor Code §§ 201-203; 9) all claims,
4 under any legal theory of liability, for any penalties of any kind arising from any alleged wage
5 statement or recordkeeping violations pursuant to California Labor Code §§ 226, 1174, and 1174.5;
6 and 10) all claims, under any legal theory of liability, for any penalties or any another amounts that
7 could be potentially owed to Class Members arising out of and/or related to the allegations in the
8 Lawsuit arising during the Settlement Period, including penalties owed pursuant to California Labor
9 Code §§ 210, 226.3, 558, and 1197.1.

10 **B. General Release by Named Plaintiff Only.**

11 In addition to the release made in Section VII (A), Named Plaintiff makes the additional
12 following general release of all claims, known or unknown. Named Plaintiff releases Defendant,
13 and its divisions, affiliates, predecessors, successors, shareholders, officers, directors, employees,
14 agents, trustees, representatives, administrators, fiduciaries, assigns, subrogees, executors, partners,
15 parents, subsidiaries, joint employers, insurers, attorneys and related corporations of any of them,
16 from all claims, demands, rights, liabilities, losses, damages, actions, charges, attorneys’ fees and
17 costs, expenses, penalties, injunctive relief, actions, and causes of action of every nature and
18 description whatsoever, known or unknown, asserted or that might have been asserted, whether in
19 tort, contract, common law, or for violation of any state or federal statute, rule or regulation, or local
20 ordinance arising out of, relating to, or in connection with Named Plaintiff’s employment, application
21 for employment, or termination of employment with Defendant as well as any and all acts or
22 omissions by or on the part of Defendant. (The release set forth in this Paragraph B shall be referred
23 to hereinafter as the “General Release.”)

24 With respect to the General Release, Named Plaintiff stipulates and agrees that, upon the
25 Date of Final Approval, Named Plaintiff shall be deemed to have expressly waived and relinquished,
26 to the fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the
27 California Civil Code, or any other similar provision under federal or state law, which provides:
28

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1 **"SECTION 1542. [CERTAIN CLAIMS NOT AFFECTED BY**
2 **GENERAL RELEASE.] A GENERAL RELEASE DOES NOT**
3 **EXTEND TO CLAIMS THAT THE CREDITOR OR**
4 **RELEASING PARTY DOES NOT KNOW OR SUSPECT TO**
5 **EXIST IN HIS OR HER FAVOR AT THE TIME OF**
6 **EXECUTING THE RELEASE AND THAT, IF KNOWN BY**
7 **HIM OR HER WOULD HAVE MATERIALLY AFFECTED**
8 **HIS OR HER SETTLEMENT WITH THE DEBTOR OR**
9 **RELEASED PARTY."**

10 Accordingly, if the facts relating in any manner to this Settlement are found hereafter to be other
11 than or different from the facts now believed to be true, the release of claims contained herein shall
12 be effective as to all unknown claims.

13 **C. PAGA Release.**

14 Upon the date the Court’s Final Approval Order becomes “Final” (as that term is defined in Section
15 I(E) above) and all payments are made by Defendant pursuant to this Agreement, Named Plaintiff
16 and all PAGA Employees waive, release, discharge, and promise never to assert in any forum any
17 and all civil penalties under the Private Attorneys General Act (“PAGA”), California Labor Code
18 section 2698 *et seq.*, and demands for related interest and attorneys’ fees on the penalties, that were
19 asserted in the Litigation and/or letter sent to the Labor and Workforce Development Agency by
20 Plaintiff during the PAGA Settlement Period, or which could have been alleged in the Litigation
21 based on the facts asserted in the Litigation arising during the Settlement Period against Defendant
22 Modesto Restaurant Group, and its divisions, affiliates, predecessors, successors, shareholders,
23 officers, directors, employees, agents, trustees, representatives, administrators, fiduciaries, assigns,
24 subrogees, executors, partners, parents, subsidiaries, joint employers, insurers, attorneys, and
25 related corporations, individually and collectively.

26 **VIII. SETTLEMENT ADMINISTRATOR**

27 Named Plaintiff and Defendant, through their respective counsel, have selected Phoenix
28 Settlement Administrators as the Settlement Administrator to administer the Settlement, which
includes but is not limited to distributing and responding to inquiries about the Notice of Proposed
Class Action Settlement and Workweek Dispute Form, determining the validity of any disputes and
opt-outs, and calculating all amounts to be paid from the Net Settlement Amount. Charges and
expenses of the Settlement Administrator, estimated to be no more \$15,000.00, will be paid from

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1 the Settlement Amount. Any charges and expenses of the Settlement Administrator greater than
2 the allocated \$15,000.00 will come from the Settlement Amount. If the actual Settlement
3 Administrator fees are less than the Parties' estimation, the difference between the actual and
4 estimated Settlement Administrator fees will revert to the participating Settlement Class members.
5 The Parties agree that this Agreement may be provided to the Settlement Administrator to
6 effectuate its implementation of the settlement procedures herein.

7 **IX. NOTICE, OBJECTIONS AND EXCLUSION RIGHTS**

8 **A. Notice.**

9 Named Plaintiff and Defendant, through their respective attorneys, have jointly prepared a
10 Notice of Class Action and Proposed Settlement (the "Notice") and a Workweek Dispute Form,
11 which in substance will be provided to the members of the Settlement Class as follows:

12 As soon as practicable following Preliminary Approval of the Settlement, but no later than
13 thirty (30) calendar days after the Court's Preliminary Approval order, Defendant will provide to the
14 Settlement Administrator the following information about each Settlement Class member ("Class
15 List"): (1) name; (2) last known home address; (3) number of workweeks as a class member during
16 the Settlement Period or the dates of employment for each Settlement Class member; and (4) Social
17 Security number. Defendant further agrees to consult with the Settlement Administrator prior to the
18 production date to ensure that the format will be acceptable to the Settlement Administrator.
19 Plaintiff's Counsel shall also receive a redacted Class List that shall only disclose an identification
20 number attributed to each class member and the number of workweeks each class member worked
21 during the Settlement Period.

22 The Settlement Administrator shall run all the addresses provided through the United States
23 Postal Service NCOA database (which provides updated addresses for any individual who has moved
24 in the previous four years who has notified the U.S. Postal Service of a forwarding address) to obtain
25 current address information, and shall mail the Notice and Workweek Dispute Form to the members
26 of the Settlement Class via first-class regular U.S. Mail using the most current mailing address
27 information available, within ten (10) calendar days of the receipt of the Class List from Defendant.
28 The Notice shall provide the members of the Settlement Class forty-five (45) days' notice of all

1 applicable dates and deadlines.

2 The Notice will also include information regarding the nature of the Litigation; a summary
3 of the terms of the Settlement; the definition of the Settlement Class; a statement that the Court has
4 preliminarily approved the Settlement; the nature and scope of the claims being released; the
5 procedure and time period for objecting to the Settlement, the date and location of the Final Approval
6 hearing; information regarding the opt-out procedure; Defendant's calculation of the number of
7 Eligible Workweeks (defined further below) that each Settlement Class member has worked as an
8 employee in California at any time during the Settlement Period, and the estimated potential recovery
9 for the proposed Settlement Class Member. The Notice shall enclose the Workweek Dispute Form
10 for Settlement Class members.

11 For each Settlement Class member the Workweek Dispute Form will identify the number of
12 Eligible Workweeks that s/he was employed and inform the employee of his or her right to dispute
13 this number by completing and returning the form within forty five (45) days of the postmark date
14 of the Workweek Dispute Form. A Settlement Class member's receipt of his or her share of the Net
15 Settlement Payments is not conditional on the submission of the Workweek Dispute Form. Absent
16 the receipt of a Workweek Dispute Form, the number of workweeks identified in the Workweek
17 Dispute Form shall be deemed accurate. The settlement of any disputes concerning the number of
18 Eligible Workweeks is discussed in Section X, below.

19 If a Notice is returned from the initial notice mailing, the Settlement Administrator will
20 perform a skip trace in an attempt to locate a more current address. If the Settlement Administrator
21 is successful in locating a new address, it will re-mail the Notice to the Settlement Class member.
22 Further, any Notices returned with a forwarding address to the Settlement Administrator, as non-
23 deliverable before the deadline date, shall be sent to the forwarding address affixed thereto.

24 Should any member of the Settlement Class timely submit a Workweek Dispute Form with
25 a deficiency, the Settlement Administrator shall, within five (5) calendar days of receipt by the
26 Settlement Administrator of each timely submitted Workweek Dispute Form, send a deficiency
27 notice. The deficiency notice will provide the member of the Settlement Class no more than fourteen
28 (14) days from the mailing of the deficiency notice to postmark a written response to cure all

1 deficiencies. The failure of a member of Settlement Class to timely submit a Workweek Dispute or
2 timely respond to a notice of deficiency shall invalidate the dispute unless all Parties' counsel agree
3 to allow the dispute.

4 No later than twenty-one (21) days before the Final Approval Hearing, the Settlement
5 Administrator shall provide counsel for Defendant and Class Counsel with a declaration attesting to
6 the completion of the Notice process, including the number of attempts to obtain valid mailing
7 addresses for and re-sending of any returned Notices, as well as the number of valid Workweek
8 Dispute Forms, opt-outs and deficiencies that the Settlement Administrator received.

9 **B. Objections.**

10 In order for any Settlement Class member to object to this Settlement, or any term of it, the
11 person making the objection must not submit a request for exclusion (i.e., must not opt out). To
12 object to the Settlement in writing, a Class Member may send the objection to the Settlement
13 Administrator by forty-five (45) days after Notice of the Proposed Class Action Settlement was
14 initially mailed to the Settlement Class members. A Settlement Class member making an objection
15 may appear at the Final Approval Hearing with or without submitting any written objection. The
16 Settlement Class member may appear personally or through an attorney, at his or her own expense,
17 at the Final Approval hearing to present his or her objection directly to the Court. If a Settlement
18 Class member objects to the Settlement, the Settlement Class member will remain a member of the
19 Settlement Class and if the Court approves this Agreement, the Settlement Class member will be
20 bound by the terms of the Settlement and Final Approval Order in the same way and to the same
21 extent as a Settlement Class member who does not object. The date of mailing of the Notice to the
22 objecting Settlement Class member shall be conclusively determined according to the records of the
23 Settlement Administrator. The Court retains final authority with respect to the consideration and
24 admissibility of any Settlement Class member objections. Any Settlement Class member who
25 submits an objection may also participate in the settlement.

26 Named Plaintiff hereby endorses the Settlement as fair, reasonable and adequate and in the
27 best interests of the Settlement Class.

28 ///

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1 **C. Opportunity to be Excluded and Defendant’s Opt-Out Threshold.**

2 In order for any Settlement Class member to validly exclude himself or herself from the
3 Settlement Class and the Settlement (i.e., to validly opt out), a written request for exclusion (“Request
4 to be Excluded”) must be signed by the Settlement Class member or his or her authorized
5 representative and must be sent to the Settlement Administrator, postmarked by no later than forty
6 five (45) days after the date the Settlement Administrator initially mails the Notice to the Settlement
7 Class members. The Notice shall contain instructions on how to opt out.

8 The date of the initial mailing of the Notice, and the date the signed Request to be Excluded
9 was postmarked, shall be conclusively determined according to the records of the Settlement
10 Administrator. Any Settlement Class member who timely and validly submits a Request to be
11 Excluded from the Settlement Class and the Settlement will not be entitled to any portion of the Net
12 Settlement Payments, will not be bound by the terms and conditions of the Settlement, and will not
13 have any right to object, appeal, or comment thereon.

14 Any member of the Settlement Class who does not timely file and mail a Request to be
15 Excluded from the Settlement Class will be deemed included in the Settlement Class in accordance
16 with this Settlement.

17 In the event that 10% or more of the Class Members exercise their right to exclude themselves
18 and opt out of the Settlement and Settlement Agreement, Defendant retains the exclusive right, but
19 not the obligation, to withdraw from and terminate the Settlement and the Settlement Agreement and
20 return all parties back to their same position before the Settlement was reached and the Settlement
21 Agreement was entered into. In the event that Defendant exercises such rights under this paragraph,
22 the Plaintiff and Defendant shall resume the Litigation through and until there is a final settlement
23 of the Litigation. Defendant must notify Class Counsel and the Court of such a decision to withdraw
24 and terminate the Settlement no later than five (5) days prior to the date of the Final Approval
25 Hearing. In the event of Defendant’s withdrawal, no party may use the fact that the Parties agreed
26 to the Settlement for any reason, and Defendant shall pay all administration expenses incurred
27 through the date of its termination of the Settlement.

28 ///

1 **D. Cooperation**

2 The Parties and their respective counsel agree not to encourage members of the Settlement
3 Class to refrain from participating in the Settlement, to opt out of the Settlement, or to object to the
4 Settlement, directly or indirectly, through any means. However, if a Settlement Class member
5 contacts Class Counsel, Class Counsel may discuss the terms of the Settlement and the Settlement
6 Class member's options.

7 **X. DISPUTES PROCEDURE**

8 Named Plaintiff and Defendant have agreed upon the following payment formula to resolve
9 all disputes submitted by Settlement Class members during the Settlement Period.

10 The Settlement Administrator will calculate the total number of workweeks for all Class
11 Members who were employed by Defendant during the Settlement Class Period ("Total
12 Workweeks"). The value of each Workweek shall be determined by the Settlement Administrator by
13 dividing the Net Settlement Fund by the total number of Workweeks available to the Class Members
14 who do not opt out in accordance with Section IX(C) above during the Settlement Class Period
15 ("Workweek Point Value").

16 An "Individual Settlement Payment" for each Class Member will then be determined by
17 multiplying a Class Member's workweeks worked during the Class Period ("Eligible Workweeks")
18 by the Workweek Point Value. Eligible Workweeks are calculated as the number of days between a
19 Class Member's start date and end date working as an hourly-paid or non-exempt employee for
20 Defendant during the Settlement Period, divided by seven. Where a Class Member has worked
21 multiple eligible stints or tenures during the Settlement Period, the number of Eligible Workweeks
22 in each eligible stint will be added together to produce a total number of Eligible Workweeks for that
23 Class Member. The Individual Settlement Payment will be reduced by any required legal deductions,
24 for each participating Class Member.

25 If a member of the Settlement Class does not dispute the number of Eligible Workweeks set
26 forth in the Workweek Dispute Form, such person need not take further action to participate in the
27 Settlement. If the member of the Settlement Class disputes the number of Eligible Workweeks set
28 forth in the Workweek Dispute Form, such person must follow the directions in the Workweek

1 Dispute Form and in the Notice, including preparing a statement setting forth the number of Eligible
2 Workweeks that such person believes in good faith is correct, and stating that the member of the
3 Settlement Class authorizes the Settlement Administrator to review the Settlement Class member's
4 personnel file and leave management records to determine such information, and attaching any
5 relevant documentation in support thereof. The member of the Settlement Class must mail the signed
6 and completed statement no later than forty-five (45) days after the date of the mailing of the
7 Workweek Dispute Form, or the number of Eligible Workweeks set forth in the Notice and
8 Workweek Dispute Form will govern the Net Settlement Payment to the member of the Settlement
9 Class.

10 Upon timely receipt of any such challenge, the Settlement Administrator, in consultation with
11 Class Counsel and counsel for Defendant, will review the pertinent payroll records showing the dates
12 the Settlement Class member was employed and the pertinent leave(s) taken, which records
13 Defendant agrees to make available to the Settlement Administrator and Class Counsel.

14 After consulting with Class Counsel and counsel for Defendant, the Settlement Administrator
15 shall compute the number of Eligible Workweeks to be used in computing the Settlement Class
16 member's pro rata share of the Net Settlement Amount. In the event there is a disparity between the
17 dates a Settlement Class member claims he or she worked during the Settlement Period and the dates
18 indicated by Defendant's records, Defendant's records will control unless inconsistent with paycheck
19 stub(s) (or bona fide copies thereof) provided by the Settlement Class member, in which case the
20 paycheck stub(s) will control. The Settlement Administrator's decision as to the total number of
21 Eligible Workweeks shall be final and non-appealable. The Settlement Administrator shall send
22 written notice of the decision on any such claim to the Settlement Class member, to Class Counsel,
23 and counsel for Defendant within ten (10) calendar days of receipt of the dispute.

24 **XI. COMPUTATION AND DISTRIBUTION OF PAYMENTS**

25 **A. Distribution Formula.**

26 Members of the Settlement Class not opting out will receive a lump sum payment as good
27 and valuable consideration for the waiver and release of claims set forth in Section VII(A), above,
28 in an amount determined by the Settlement Administrator in accordance with the provisions of this

1 Agreement.

2 The lump sum payment to each member of the Settlement Class not excluding him/ herself
3 will be determined in accordance with the procedure set forth in Section X.

4 **B. Funding of Settlement.**

5 Within thirty (30) calendar days following the date on which the Court grants Final Approval
6 of the Settlement and a determination of the pro-rata share of the settlement amount to which each
7 member of the Settlement Class is entitled, Defendant will deposit the first half of the Settlement
8 Amount (totaling \$300,000.00) and the half of the Employer Taxes into an interest-bearing trust
9 account for the benefit of the participating Settlement Class members and Class Counsel, through
10 the Settlement Administrator.

11 Within 6 months after the first payment described above, Defendant will deposit the second
12 half of the Settlement Amount (totaling \$300,000.00) and the second half of the Employer Taxes
13 into the same trust account. In the event the Settlement Amount is increased pursuant to Section
14 XI(C) below, Defendant will deposit the additional funds within 6 months after the first payment
15 described above. At no time prior to Final Approval of the Settlement shall Defendant be required
16 to escrow any portion of the Settlement Amount.

17 **C. Potential Increase in Funding**

18 Defendant represents that there are approximately 56,179 Workweeks at issue for the
19 Settlement Class Members prior to the date of the parties' mediation on November 30, 2021. In the
20 event the number of Workweeks worked by the Settlement Class Members increases by more than
21 10%, or 5,618 Workweeks by the date of Preliminary Approval or April, 1, 2022, whichever is
22 earlier, then the Settlement Amount shall be increased proportionally by the Workweeks in the
23 Settlement Period in excess of 56,179 multiplied by the Workweek Value. The Workweek Value
24 shall be calculated by dividing the Settlement Amount by 56,179 Workweeks. The Parties agree that
25 the Workweek Value is \$10.68 (\$600,000.00 / 56,179 Workweeks). Thus, for example, should there
26 be 70,000 Workweeks in the Settlement Period, then the Settlement Amount shall be increased by
27 \$147,608.28 ((70,000 Workweeks – 56,179 Workweeks) x (\$10.68/Workweek)). The Settlement
28 Amount will not be reduced due to Defendant's estimate.

1 **D. Time for Distribution.**

2 The Settlement Administrator shall cause the Settlement Amount (inclusive of the Net
3 Settlement Amount, the Court approved attorney's fees and Litigation costs, Court approved
4 enhancement to Named Plaintiff, and PAGA Settlement) and the Employer Taxes to be mailed within
5 twenty-one (21) calendar days following the date of funding the second installment of the Settlement
6 Amount and accompanying Employer Taxes.

7 If a check is returned to the Settlement Administrator as undeliverable, the Settlement
8 Administrator shall promptly attempt to obtain a valid mailing address by performing a skip trace
9 search and, if another address is identified, shall mail the check to the newly identified address. Any
10 settlement checks remaining uncashed after one hundred and eighty (180) days shall be deemed
11 unpaid residue pursuant Code of Civil Procedure Section 384(a). In accordance with Code of Civil
12 Procedure Section 384, the parties shall follow the procedure set for in (1) – (5) below in regard to
13 unpaid residue:

- 14 (1) Unpaid residue (uncashed or returned checks) will be paid, *with interest*, to California
15 Rural Legal Assistance, Inc., 1430 Franklin Street, Suite 103, Oakland, CA 94612, which
16 has been selected by the parties as a nonprofit organization that operates in the counties
17 in which the Settlement Class lives and that supports projects that will benefit the class
18 or similarly situated persons, or that promotes the law consistent with the objectives and
19 purposes of the underlying causes of action, and that provides civil legal services to the
20 indigent.
- 21 (2) The attorneys for the parties shall file, with the Motion for Final Approval, a stand-alone
22 Stipulation to Amend Judgment and Proposed Stipulated Amended Judgment (Section
23 384) memorializing the parties' agreement to amend the judgment to adopt the
24 administrator's determination of amount of unpaid residue, plus interest, if any, from the
25 date of entry of the initial judgment, to be paid to the *cy pres*;
- 26 (3) The parties shall attach to the Stipulation a [Proposed] Stipulated Amended Judgment
27 form with a signature line for the court and blanks for the amount of residue plus interest
28 to be added to the judgment and the total amount of the amended judgment;

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- 1 (4) Along with the Final Report, the administrator shall file, with the court, a photocopy of
- 2 the attorneys’ Stipulation to Amend Judgment along with a [Proposed] Stipulated
- 3 Amended Judgment form with the amount of residue plus interest to be added to the
- 4 judgment and the total amount of the judgment, plus interest, filled in;
- 5 (5) The court signs and enters the Stipulated Amended Judgment;
- 6 (6) In such event, the Class Members and PAGA Employees will nevertheless remain bound
- 7 by this Settlement Agreement, including the release of the Released Claims.

8 **XII. NO CONTRIBUTIONS TO EMPLOYEE BENEFIT PLAN**

9 The amounts paid under this Agreement do not represent a modification of any previously
10 credited hours of service under any employee benefit plan, policy, or bonus program sponsored by
11 Defendant. Such amounts will not form the basis for additional contributions to, benefits under, or
12 any other monetary entitlement under, benefit plans (self-insured or not) sponsored by Defendant,
13 policies or bonus programs. Any payments made under the terms of this Settlement shall not be
14 applied retroactively, currently or on a going forward basis as salary, earnings, wages, or any other
15 form of compensation for the purposes of Defendant’s benefit plan, policy or bonus program.
16 Defendant retains the right to modify the language of their benefit plans, policies and bonus programs
17 to effect this intent and to make clear that any amounts paid pursuant to this Settlement are not for
18 “hours worked,” “hours paid,” “hours of service,” or any similar measuring term as defined by
19 applicable plans, policies and bonus programs for purpose of eligibility, vesting, benefit accrual, or
20 any other purpose, and that additional contributions or benefits are not required by this Settlement.

21 **XIII. CLASS COUNSEL ATTORNEYS’ FEES AND LITIGATION COSTS**

22 Defendant shall not oppose an application by Class Counsel for, and Class Counsel shall not
23 seek or receive an amount in excess of \$200,000.00, which represents 33 1/3% of the Settlement
24 Amount for all past and future attorneys’ fees necessary to prosecute, settle and administer the
25 Litigation and this Settlement. Additionally, Defendant shall not oppose an application by Class
26 Counsel for, and Class Counsel shall not seek or receive an amount in excess of \$25,000.00, which
27 represents all past and future Litigation costs and expenses necessary to prosecute, settle and
28 administer the Litigation and this Settlement. Any attorneys’ fees or Litigation costs awarded to

1 Class Counsel by the Court as part of the Settlement Amount shall be deducted from the Settlement
2 Amount for the purpose of determining the Net Settlement Amount. The “future” aspect of these
3 amounts include, without limitation, all time and expenses expended by Class Counsel in defending
4 the Settlement and securing preliminary and Final Approval (including any appeals therein). There
5 will be no additional charge of any kind to either the members of the Settlement Class or request for
6 additional consideration from Defendant for such work. This amount shall include all attorneys’
7 fees, Litigation costs, and expenses for which Named Plaintiff and Class Counsel could claim under
8 any legal theory whatsoever. Within twenty-one (21) calendar days following the date the settlement
9 is funded pursuant to Section XI(B), the Settlement Administrator shall disburse payment from the
10 Settlement Amount for the amount of attorneys’ fees and Litigation costs approved by the Court to
11 Class Counsel. Should the Court approve a lesser percentage or amount of fees and/or Litigation
12 costs than the amount that Class Counsel ultimately seeks, then any such unapproved portion or
13 portions shall revert into the Net Settlement Amount to be distributed between the participating
14 Settlement Class Members on a pro-rata basis.

15 **XIV. ENHANCEMENT TO NAMED PLAINTIFF**

16 Defendant shall not oppose an application by Named Plaintiff, and Named Plaintiff shall not
17 seek or receive an amount in excess of \$8,000.00 for her participation in and assistance with the
18 Litigation (*i.e.*, Named Plaintiff’s class representative enhancement / service award). Any
19 enhancement awarded to Named Plaintiff by the Court as part of the Settlement Amount shall be
20 deducted from the Settlement Amount for the purpose of determining the Net Settlement Amount,
21 and shall be reported on IRS Form 1099. If the Court approves an enhancement of less than
22 \$8,000.00 to Named Plaintiff, then the unapproved portion or portions shall revert into the Net
23 Settlement Amount to be distributed between the participating Settlement Class Members on a pro-
24 rata basis.

25 **XV. TAXATION AND ALLOCATION**

26 The Parties agree that all employment taxes and other legally required withholdings will be
27 withheld from payments to the members of the Settlement Class and Named Plaintiff based on the
28 Parties stipulated allocation of the Net Settlement Amount as provided for in this Section.

1 In Defendant's sole discretion, and to which Named Plaintiff and Class Counsel do not object,
 2 the amount of federal income tax withholding will be based upon a flat withholding rate for
 3 supplemental wage payments in accordance with Treas. Reg. § 31.3402(g)-1(a)(2) as amended or
 4 supplemented. Income tax withholding will also be made pursuant to applicable state and/or local
 5 withholding codes or regulations.

6 For withholding tax characterization purposes and payment of taxes, the Net Settlement
 7 Amount shall be deemed and is allocated by the Parties as follows ("Net Settlement Allocation"):

- 8 (1) 33 1/3 % as wages; and
- 9 (2) 66 2/3 % as penalties and interest.

10 Forms W-2 and/or Forms 1099 will be distributed at times and in the manner required by the
 11 Internal Revenue Code of 1986 (the "Code") and consistent with this Agreement, by the Settlement
 12 Administrator. If the Code, the regulations promulgated thereunder, or other applicable tax law, is
 13 changed after the date of this Agreement, the processes set forth in this Section may be modified in
 14 a manner to bring Defendant into compliance with any such changes.

15 Finally, any and all Employer Taxes which Defendant normally would be responsible for
 16 paying based on the Net Settlement Payments made to the individual Class Members will be paid by
 17 Defendant in addition to and not as a deduction from the Settlement Amount based on the stipulated
 18 Net Settlement Allocation.

19 **XVI. PRIVATE ATTORNEY GENERAL ACT ALLOCATION**

20 **A. PAGA Payment Amount.**

21 In order to implement the terms of this Settlement and to settle claims alleged under the
 22 Private Attorneys' General Act, California *Labor Code* section 2698 *et seq.*, the Parties agree to
 23 allocate \$25,000.00 from the Settlement Amount as penalties authorized by the California Labor
 24 Code Private Attorneys General Act of 2004 (PAGA Settlement). Seventy-five percent (75%) of the
 25 PAGA Settlement (totaling \$18,750) will be paid to the Labor and Workforce Development Agency
 26 and 25% of the PAGA Settlement (totaling \$6,250) will be distributed to the PAGA Employees,
 27 through the Settlement Administrator and at no additional cost to Defendant. A Request to be
 28 Excluded does not exclude a PAGA Employee from the release of claims under California Labor

1 Code § 2698, *et seq.* under the PAGA Release set forth in this Agreement, and a PAGA Employee
2 will receive his or her Individual PAGA **Settlement** Payment even if he or she submits a valid
3 Request to be Excluded.

4 Within twenty one (21) calendar days following the date the settlement is funded pursuant to
5 Section XI(B), the Settlement Administrator shall disburse the 75% of the PAGA Settlement to the
6 California Labor and Workforce Development Agency (“LWDA”) and Plaintiff’s counsel will
7 provide notice to the LWDA of the fact that the settlement has been approved by the court along with
8 a copy of the settlement agreement and the court order confirming the approval of the settlement
9 through the appropriate LWDA/DIR website.

10 **B. PAGA Distribution Formula.**

11 The Settlement Administrator will calculate the total number of PAGA Pay Periods for all
12 PAGA Employees who were employed by Defendant during the PAGA Settlement Period ("Total
13 PAGA Pay Periods"). The value of each PAGA Pay Period shall be determined by the Settlement
14 Administrator by dividing the employees’ 25% portion of the PAGA Settlement (\$6,250) by the total
15 number of Pay Periods available to PAGA Employees who do not opt out in accordance with Section
16 IX(C) above (“Pay Period Point Value”).

17 An "Individual PAGA Settlement Payment" for each PAGA Employee will then be
18 determined by multiplying a PAGA Employee’s workweeks worked during the PAGA Settlement
19 Period (“Eligible Pay Periods”) by the Pay Period Point Value. Eligible Pay Periods are calculated
20 as the number of days between a PAGA Employee’s start date and end date working as an hourly-
21 paid or non-exempt employee for Defendant during the PAGA Settlement Period, divided by 14.
22 Where a PAGA Employee has worked multiple eligible stints or tenures during the PAGA Settlement
23 Period, the number of Eligible Pay Periods in each eligible stint will be added together to produce a
24 total number of Eligible Pay Periods for that PAGA Employee. The Individual PAGA Settlement
25 Payment will be reduced by any required legal deductions, for each participating PAGA Employee.

26 **C. Taxation and Allocation.**

27 The PAGA Settlement comprises payments for penalties and interest. It shall not be deemed as wages
28 and no contribution regarding taxes are to be paid by Defendant regarding any portion of the PAGA

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1 Settlement. Forms 1099 regarding the PAGA Settlement will be distributed at times and in the
2 manner required by the Internal Revenue Code of 1986 (the “Code”) and consistent with this
3 Agreement, by the Settlement Administrator.

4 **XVII. COURT APPROVAL**

5 This Agreement and the Settlement is contingent upon Final Approval by the Court and the
6 entry of judgment. Named Plaintiff and Defendant agree to take all steps as may be reasonably
7 necessary to secure both Preliminary Approval and Final Approval of the Settlement, to the extent
8 not inconsistent with the terms of this Agreement, and will not take any action adverse to each other
9 in obtaining court approval, and, if necessary, appellate approval, of the Settlement in all respects.
10 Named Plaintiff and Defendant expressly agree that they will not file any objection to the terms of
11 the Settlement or assist or encourage any person or entity to file any such objection.

12 In the event it becomes impossible to secure approval of the Settlement, the Parties shall be
13 restored to their respective positions in the Litigation, as of the date of the hearing on the Motion for
14 Preliminary Approval, except as otherwise provided in Section XVIII, below.

15 **XVIII. MISCELLANEOUS PROVISIONS**

16 **A. Stay of Litigation.**

17 Named Plaintiff and Defendant agree to the stay of all discovery in the Litigation, pending
18 Final Approval of the Settlement by the Court.

19 **B. Interpretation of the Agreement.**

20 This Agreement constitutes the entire agreement between Named Plaintiff and Defendant.
21 Except as expressly provided herein, this Agreement has not been executed in reliance upon any
22 other written or oral representations or terms, and no such extrinsic oral or written representations or
23 terms shall modify, vary or contradict its terms. In entering into this Agreement, the Parties agree
24 that this Agreement is to be construed according to its terms and may not be varied or contradicted
25 by extrinsic evidence. The Agreement will be interpreted and enforced under the laws of the State
26 of California, both in its procedural and substantive aspects, without regard to its conflict of laws
27 provisions. Any claim arising out of or relating to the Agreement, or the subject matter hereof, will
28 be resolved solely and exclusively in the Superior Court of the State of California for the County of

1 Los Angeles, and Named Plaintiff and Defendant hereby consent to the personal jurisdiction of the
2 Court over them solely in connection therewith. Named Plaintiff, on her own behalf and on behalf
3 of the Settlement Class, and Defendant participated in the negotiation and drafting of this Agreement
4 and had available to them the advice and assistance of independent counsel. As such, neither Named
5 Plaintiff nor Defendant may claim that any ambiguity in this Agreement should be construed against
6 the other.

7 The terms and conditions of this Agreement constitute the exclusive and final understanding
8 and expression of all agreements between Named Plaintiff and Defendant with respect to the
9 Settlement of the Litigation. The Agreement may be modified only by a writing signed by the
10 original signatories and approved by the Court.

11 **C. Further Cooperation.**

12 Named Plaintiff and Defendant and their respective attorneys shall proceed diligently to
13 prepare and execute all documents, to seek the necessary approvals from the Court, and to do all
14 things reasonably necessary or convenient to consummate the Agreement as expeditiously as
15 possible.

16 **D. Confidentiality of Documents.**

17 After the expiration of any appeals period, Named Plaintiff, the Settlement Administrator,
18 and Class Counsel shall maintain the confidentiality of all documents, deposition transcripts,
19 declarations and other information obtained in the lawsuit, unless necessary for appeal or such
20 documents are ordered to be disclosed by the Court or by a subpoena. After the expiration of any
21 appeals period, Named Plaintiff and her counsel shall destroy or delete documents or copies or digital
22 records of documents produced by Defendant and its counsel regarding the Settlement Class
23 members such as wage statements and payroll records, other than documents which pertain directly
24 to Named Plaintiff.

25 **E. Counterparts.**

26 The Agreement may be executed in one or more actual or non-original counterparts, all of
27 which will be considered one and the same instrument and all of which will be considered duplicate
28 originals.

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F. Authority.

Each individual signing below warrants that he or she has the authority to execute this Agreement on behalf of the party for whom or which that individual signs.

G. No Third-Party Beneficiaries.

Named Plaintiff, members of the Settlement Class, and Defendant are direct beneficiaries of this Agreement, but there are no third-party beneficiaries.

H. Modification.

This Agreement may not be changed, altered, or modified, except in a writing signed by the Parties, and approved by the Court. Notwithstanding the forgoing, the Parties agree that any dates contained in this Agreement may be modified by agreement of the Parties in writing without Court approval if the Parties agree and cause exists for such modification. This Agreement may not be discharged except by performance in accordance with its terms or by a writing signed by the Parties.

I. Deadlines Falling on Weekends or Holidays.

To the extent that any deadline set forth in this Agreement falls on a Saturday, Sunday, or legal holiday, that deadline shall be continued until the following business day.

J. Severability.

In the event that any one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall in no way effect any other provision if Defendant’s Counsel and Class Counsel, on behalf of the Parties and the Settlement Class, mutually elect in writing to proceed as if such invalid, illegal, or unenforceable provision had never been included in this Agreement.

APPROVED AS TO FORM AND CONTENT:

Date: 2/10/2022, 2022

ON BEHALF OF PLAINTIFF:

By: 
REC36537AE1644E
LETICIA RODRIGUEZ, Plaintiff

1 Date: 2/4, 2022

ON BEHALF OF DEFENDANT:

2 By: Jeff Casaretto
3 Name: Jeff Casaretto
4 Position: Managing Member
5 For MODESTO RESTAURANT GROUP,
6 LLC

7 APPROVED AS TO FORM:

8 Date: February 10, 2022

9 WILSHIRE LAW FIRM

10 By: Justin F. Marquez
11 Justin F. Marquez
12 Benjamin H. Haber
13 Rachel J. Vinson
14 Attorneys for Plaintiff

15 Date: February 7, 2022

16 CALL & JENSEN

17 By: Jacqueline Beaumont
18 Jacqueline Beaumont
19 L. Lisa Sandoval
20 Attorneys for Defendant

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WILSHIRE LAW FIRM, PLC
3055 Wilshire Blvd, 12th Floor
Los Angeles, CA 90010-1137

Exhibit 2

Wilshire Law Firm, PLC
Transaction Detail by Account
All Transactions

2/8/2022
Accrual Basis

<u>Type</u>	<u>Date</u>	<u>Num</u>	<u>Memo</u>	<u>Amount</u>	<u>Balance</u>
COS					
EXPERT FEES					
	6/30/2021	12111491	Expert Fees	159.50	159.50
	7/6/2021	535210	Mediation Fee	5,150.00	5,150.00
	12/14/2021	5318	Expert Fees	<u>8,250.00</u>	<u>8,250.00</u>
Total EXPERT FEES				13,559.50	13,559.50
Legal Expenses					
	1/25/2021	E-439456	Printing Cost	4.00	4.00
	1/26/2021		PAGA Fee	75.00	75.00
	3/22/2021	E-459542	Printing Cost	29.25	29.25
	5/7/2021	E-498860	Printing Cost	1.00	1.00
	5/10/2021		Doc Retrieval	2.35	2.35
	5/10/2021		Court Call	94.00	94.00
	11/24/2021		Doc Retrieval	5.80	5.80
	11/24/2021		Doc Retrieval	7.80	7.80
	11/24/2021		Doc Retrieval	10.20	10.20
	11/24/2021		Doc Retrieval	14.20	14.20
	12/13/2021	845458138	Legal Research	<u>370.16</u>	<u>370.16</u>
Total Legal Expenses				613.76	613.76
Process Service Fees					
	1/28/2021	33808	Attorney Services	1,663.50	1,663.50
	1/29/2021	33987	Attorney Services	139.60	139.60
	2/1/2021	34036	Attorney Services	45.00	45.00
	5/10/2021	36700	Attorney Services	250.00	250.00
	5/27/2021	37211	Attorney Services	85.00	85.00
	11/8/2021	41859	Attorney Services	85.00	85.00
	11/17/2021	41954	Attorney Services	85.00	85.00
	12/7/2021	42692	Attorney Services	<u>85.00</u>	<u>85.00</u>
Total Process Service Fees				2,438.10	2,438.10
Other Costs					
	11/11/2021		Lunch meeting	176.88	176.88
	11/30/2021		Lunch during	140.96	140.96
	12/6/2021		Dinner meeting	<u>38.60</u>	<u>38.60</u>
Total Other Costs				356.44	356.44
TOTAL				<u>16,967.80</u>	<u>16,967.80</u>

Exhibit 3



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

CASE ASSUMPTIONS

Class Members	1400
Opt Out Rate	1%
Opt Outs Received	14
Total Class Claimants	1386
Subtotal Admin Only	\$11,750.00

WILL NOT EXCEED	\$11,750.00
For 1400 Class Members	

January 20, 2022

Case: Rodriguez v. Modesto Restaurant Group 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 1400 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 Call Setup	\$105.14	1	\$105.14
Call Center & Long Distance	\$2.50	140	\$350.00
NCOA (USPS)	\$0.25	1400	\$350.00
Total			\$1,205.14

* 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	1,400	\$210.00
Notice Packet & Opt-Out Form	\$0.95	1,400	\$1,330.00
Estimated Postage (up to 2 oz.)*	\$0.70	1,400	\$980.00
Language Translation	\$750.00	1	\$750.00
Website	\$200.00	1	\$200.00
Total			\$3,670.00

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



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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	\$1.00	280	\$280.00
Remail Notice Packets	\$0.95	280	\$266.00
Estimated Postage	\$0.70	280	\$196.00
Programming Undeliverables	\$50.00	2	\$100.00
		Total	\$942.00

Database Programming / Processing Opt-Outs, Deficiencies or Disputes			
Project Action:	Rate	Hours/Units	Line Item Estimate
Programming Claims Database	\$100.00	2	\$200.00
Non Opt-Out Processing	\$150.00	1	\$150.00
Case Associate	\$50.00	2	\$100.00
Opt-Outs/Deficiency/Dispute Letters	\$4.00	35	\$140.00
Case Manager	\$75.00	2	\$150.00
		Total	\$740.00

Calculation & Disbursement Programming/ Create & Manage QSF/ Mail Checks			
Project Action:	Rate	Hours/Units	Line Item Estimate
Programming Calculations	\$100.00	2	\$200.00
Disbursement Review	\$100.00	2	\$200.00
Programming Manager	\$95.00	2	\$190.00
QSF Bank Account & EIN	\$75.00	3	\$225.00
Check Run Setup & Printing	\$100.00	3	\$300.00
Mail Class Checks, W2 and 1099 *	\$0.95	1,386	\$1,316.70
Estimated Postage Checks, W2 and 1099	\$0.56	1,386	\$776.16
		Total	\$3,207.86

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



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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	\$100.00	2	\$200.00
Remail Undeliverable Checks (Postage Included)	\$1.50	20	\$30.00
Case Associate	\$60.00	2	\$120.00
Reconcile Uncashed Checks	\$85.00	2	\$170.00
Conclusion Reports	\$100.00	2	\$200.00
Case Manager Conclusion	\$75.00	2	\$150.00
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	\$1,985.00

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

Estimate Total: \$11,750.00



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.

