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Attorney for Plaintiff
BRENDA CASTILLO,
on behalf of herself and all others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE**

BRENDA CASTILLO, individually, on behalf
of herself and all others similarly situated,

Plaintiff,

v.

CENTURY GROUP PROFESSIONALS, LLC,
a California limited liability company: and DOES
1 through 100, inclusive,

Defendants.

CASE NO.: 20STCV37259
[Unlimited Jurisdiction]

*Assigned for all purposes to the
Honorable Carolyn B. Kuhl, Dept. 12*

CLASS ACTION

**DECLARATION OF JORES KHARATIAN
IN SUPPORT OF PLAINTIFF'S MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Date: July 27, 2023
Time: 10: 30 a.m.
Dept.: 12

Complaint Filed: September 29, 2020
FAC Filed: October 13, 2020
SAC Filed: May 10, 2023
Trial Date: Not Yet Set

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I, Jores Kharatian, declare as follows:

2. I am the founder of the law firm of Kharatian Law, APC. My business address is 595 E. Colorado Boulevard, Suite 210, Pasadena, California 91105 and my business telephone number is (626) 759-9900. I am counsel for Plaintiff Brenda Castillo.

BACKGROUND

4. On September 29, 2020, Plaintiff filed a putative Class Action inadvertently naming the wrong Defendant and thereafter on October 13, 2020 Plaintiff filed a First Amended Complaint alleging that Defendant: 1) failure to provide meal periods, (2) failure to provide rest periods, (3) failure to pay overtime wages, (4) failure to pay minimum wage, (5) failure to compensate for all hours worked, (6) failure to maintain required records, (7) failure to provide accurate wage statements, (8) violation of Business & Professions Code section 17200, *et seq.*, and (9) waiting time penalties. Once on May 10, 2023 Plaintiff filed a second amended complaint alleging that Defendant: 1) failure to provide meal periods, (2) failure to provide rest periods, (3) failure to pay overtime wages, (4) failure to pay minimum wage, (5) failure to compensate for all hours worked, (6) failure to maintain required records, (7) failure to provide accurate wage statements, (8) violation of Business & Professions Code section 17200, *et seq.*, (9) waiting time penalties, (10) failure to reimburse for necessary business expenses and (11) violation of California Labor Code Sections 2698, *et seq.* (violation of the Private Attorneys General Act). In the Complaint, Plaintiff seeks to represent all non-exempt employees who are or have been employed by Defendant in the State of California during the period beginning four years before the filing of the initial Complaint and ending when the Court grants preliminary approval.

1 5. The Parties have conducted formal informal discovery and investigation of the facts and
2 law. Such discovery and investigation have included, inter alia, the exchange of formal and informal data
3 and discoverable information in preparation for the mediation session. The Parties have analyzed payroll
4 and other data pertaining to Plaintiffs and the Settlement Class during the relevant Settlement Period,
5 including but not limited to the numbers of former and current members of each purported subclass within
6 the Settlement Class, average workweeks, and average rate of hourly pay. In addition, Defendant also
7 provided documents reflecting their wage and hour policies and practices during the Settlement Period
8 and information regarding the total number of current and former employees in the Settlement Class.

9 6. After reviewing documents regarding Defendant's wage and hour policies and practices
10 and other information obtained during the informal exchange of discovery, Class Counsel were able to
11 evaluate the probability of class certification, success on the merits, and the reasonably obtainable
12 maximum monetary exposure for all claims. Class Counsel reviewed these records and prepared a
13 damage analysis prior to mediation. Class Counsel also investigated the applicable law regarding the
14 claims and defenses asserted in the litigation.

15 7. On May 24, 2022, the Parties mediated before Steven Mehta, who is a highly experienced
16 and well-regarded mediator for wage and hour class action litigation. At the mediation, the Parties
17 discussed at length the burdens and risks of continuing with the litigation as well as the merits of the
18 claims and defenses. However, the Parties did not settle at the mediation. (Thereafter On January 23,
19 2023, the Parties mediated before Steve Pearl, who is a highly experienced and well-regarded mediator for
20 wage and hour class action litigation. During the second mediation with the assistance of Mr. Pearl, the
21 Parties agreed to the basic terms of a proposed settlement and ultimately signed a Memorandum of
22 Understanding ("MOU") regarding the substantive terms of a class-wide settlement, pending the Parties'
23 agreement on a long-form class settlement agreement. The Parties then signed a long form settlement
24 agreement (the Agreement).

25 8. Plaintiff and Class Counsel are aware of the burdens of proof necessary to establish
26 liability for the claims asserted in the Action, both generally and in response to Defendant's defenses
27 thereto. Plaintiff and Class Counsel have also taken into account Defendant's agreement to enter into a
28 Settlement that confers substantial relief upon the Class Members.

9. Based on the foregoing, Plaintiff and Class Counsel have determined that the Settlement set forth in this Agreement is a fair, adequate, and reasonable Settlement and is in the best interests of the Class. Solely for the purpose of settling this case, the Parties agree that the requirements for establishing class action certification with respect to this class have been met and are met. If this Settlement is not approved by the Court for any reason, Defendant reserves its rights to contest class certification. This Settlement, if approved by the Court, will result in the termination with prejudice of the litigation through the entry of the Judgment and the release of all Released Claims for all Class Members, including all within the class definition who have not elected to exclude themselves from the Settlement Class.

SUMMARY OF THE SETTLEMENT TERMS

10. Key provisions of the proposed settlement include the following:

- (a) Defendant stipulates to certification of a Settlement Class for purposes of Settlement only;
- (b) Settlement Amount: Defendant will pay a maximum of \$390,000.00, referred to as the Gross Settlement Amount (or GSA herein) (Settlement, Section 3);
- (c) No Claim Form: No claim for is required (Settlement, Section 4);
- (d) Release: The Settlement will release specified wage-and-hour claims for those Settlement Class Members who do not opt out of the Settlement;
- (e) Net Settlement Amount Available to the Class: After deducting Class Counsels' attorneys' fees and costs, enhancement payment to Plaintiff, Administration costs, and the payment to the LWDA, the remainder will be available for distribution to Settlement Class Members who do not opt out, with each Settlement Class Member receiving a share based on the number of workweeks each Settlement Class Member worked for Defendant within the Settlement Class Period. The Net Settlement Amount is estimated to be \$191,600, and each of the approximately 888 Class Members will receive, on average, \$212.76, before any tax withholdings (Settlement, Section 4);
- (f) Tax Allocation: The amounts distributed to Settlement Class Members will be characterized as 15% alleged unpaid wages, and 85% as alleged unpaid penalties

and interest (Settlement, Section 3, ¶ 3.2.4.1);

- (g) Employer's Portion of Payroll Taxes Paid Separately: Defendant's portion of payroll taxes (e.g., FICA, FUTA, etc.) owed on any settlement payments to Settlement Class Members that constitute wages will be paid separate and apart from the GSM (Settlement, Section 4, ¶ 4.3);
- (h) Uncashed checks: Any settlement checks that are mailed to the Settlement Class Members and remain uncashed after 180 days of the date of issuance will be cancelled, and the moneys will be directed to the State Controller's Office Unclaimed Property Division or other recipient as directed by the Court (Settlement, Section 4, ¶ 4.4.3);
- (i) The notice portion of the Settlement will be administered by a third-party Administrator, Phoenix Settlement Administrators, in English as Defendant's hourly workforce is English speaking, and costs of administration are estimated to be no more than \$20,000 (Settlement, Section 7);
- (j) PAGA Allocation: From the GSA, \$2,925.00 will be paid to the California Labor & Workforce Development Agency to resolve and settle claims brought pursuant to the California Private Attorneys General Act, Labor Code § 2699 *et seq.* ("PAGA"), representing 75% of the \$3,900 allocated to resolve claims arising under PAGA (Settlement, Section 3, ¶ 3.2.5);
- (k) Enhancement/Service Awards to Plaintiff: Defendant will not oppose the application for Class Representative Enhancement of up to \$15,000 for Plaintiff, to be paid from the GSA (Settlement, Section 3, ¶ 3.2.1);
- (l) Fees and Costs: Defendant will not oppose Class Counsel's application for fees up to the amount of \$136,500, and actual costs, in an amount not to exceed \$23,000.00, to be paid out of the GSA (Settlement, Section 3, ¶ 3.2.2).
- (m) Defendant stipulates to certification of a Settlement Class for purposes of Settlement only;

11. A true and correct copy of the CLASS ACTION AND PRIVATE ATTORNEYS

1 GENERAL ACT (LABOR CODE § 2698, et seq.) SETTLEMENT AGREEMENT is attached hereto as
2 Exhibit “1.”

3 THE SETTLEMENT IS FAIR, JUST AND REASONABLE

4 12. Plaintiff and counsel have diligently investigated the claims of the Settlement Class
5 Members. Plaintiff and Class Counsel concluded, after taking into account the disputed factual and legal
6 issues involved in this Action, the substantial risks attending further prosecution, including risks related to
7 the outcome of certification and possible summary judgment efforts, and the substantial benefits to be
8 received pursuant to the compromise and settlement of the Action as set forth in the Settlement, that
9 settlement on the terms agreed to are in the best interest of Plaintiff and the putative Class and are fair and
10 reasonable.

11 13. One fundamental purpose of the class action device is to promote efficiency. Resolution
12 at this time will forestall the need for additional expensive and time-consuming litigation that could very
13 well result in an outcome less satisfactory than that proposed under this settlement. The potential for
14 resolution benefits the class members, since they do not have to wait additional years for a similar
15 recovery. The efficiency of this litigation benefits the Court, the parties and their counsel. A class-wide
16 resolution is the most realistic method for addressing the claims raised in this matter.

17 14. We have engaged in the necessary investigation in this case that made it possible for us to
18 exercise informed judgment in those aspects of the settlement process in which we were involved. The
19 exchange of time and wage data, wage and hour policy documents, and data about the composition of the
20 Class, were sufficient to permit us counsel to adequately evaluate the settlement.

21 15. In addition to disputing the merits of Plaintiff’s claims at trial, Defendant intended to
22 aggressively challenge the case at the certification stage. Defendant believes that Plaintiff could not
23 prevail on that certification motion. We believe that the case was viable through to a trial. However,
24 while Plaintiff asserts a belief that this is a viable case for trial, we realize that there are always significant
25 risks associated with certification and trials, and those risks cannot be eliminated in this case. Continued
26 litigation of this lawsuit presented Plaintiff and Defendant with substantial legal risks and costs that were
27 (and continue to be) difficult to assess. The risks associated with this matter include:
28

- the risk that Plaintiff would be unable to establish liability for allegedly unpaid straight time or overtime wages, *see Duran v. US Bank Nat'l Ass'n*, 59 Cal. 4th 1, 39 & fn. 33 (2014) ("*Duran*"), *citing Dilts v. Penske Logistics, LLC* 2014 WL 205039 (S.D. Cal. 2014) (dismissing certified off-the-clock claims based on proof at trial);
- the risk that Defendant's challenged employment policies might not ultimately support class certification or a class-wide liability finding, *see, Duran*, 59 Cal. 4th at 14 & fn. 28 (citing Court of Appeal decisions favorable on class certification issue without expressing opinion as to ultimate viability of proposition);
- the risk that uncertainties pertaining to the ultimate legality of Defendant's policies and practices could preclude class-wide awards of statutory penalties under Labor Code §§ 203 and 226(e);
- the risk that individual differences between Settlement Class Members could be construed as pertaining to liability, and not solely to damages, *see, Duran*, 59 Cal. 4th at 19;
- the risk that any civil penalties award under the PAGA could be reduced by the Court in its discretion, *see* Labor Code § 2699(e)(1); and
- the risk that lengthy trial or appellate litigation could ensue over any of the above issues.

These risks are non-exhaustive. While we remain confident that we possess credible strategies for responding to the legal and factual risks facing them, those risks cannot be disregarded. We carefully considered the risks created by all these uncontrollable factors when evaluating the reasonableness of this proposed settlement. This Settlement provides a benefit to the Class Members that is very reasonable in light of these particular risks.

16. The Settlement is the product of arm's-length negotiations between the Parties occurring throughout the litigation. In light of the uncertainties of protracted litigation and the state of the law regarding the legal positions of the Parties, the settlement amount reflects the best feasible recovery for the Settlement Class Members. The settlement amount is, of course, a compromise figure. By necessity it considered risks related to liability, damages, and all the defenses asserted by the Defendant. Moreover, each Settlement Class Member will be given the opportunity to opt out of the Settlement, allowing those who feel they have claims that are greater than the benefits they can receive under this Settlement, to

1 pursue their own claims. For the approximate 888 members of the Settlement Class, the average gross
2 recovery is roughly \$215.76 per class member. Given that Defendant could challenge certification and
3 liability, this is a significant sum to have achieved in settlement. And a Class Member who worked a
4 greater number of weeks for Defendant will receive a larger share of the Settlement than a Class Member
5 who worked for a shorter amount of time during the relevant period.

6 17. The Class Settlement Amount exceeds the risk adjusted recovery at this stage in the
7 litigation. While Plaintiff would certainly have preferred to recover more (and Defendant would have
8 preferred to pay less), this outcome is in line with a carefully constructed estimate of the current fair value
9 of the case. On that basis, it would be unwise to pass up this settlement opportunity. The maximum
10 damage values are estimates based on average wage rates, numbers of employees, and the amount of time
11 covered by the class period. After analyzing the claims in this matter, Plaintiff has concluded that the
12 value of this Settlement is fair, adequate and reasonable. For example, a reasonably estimated exposure
13 for unpaid wages over the class period was calculated to be approximately \$222,754. However, with the
14 risk factor discounts for certification, and liability proof, the value of that claim is estimated by Plaintiff's
15 counsel to be approximately \$44,580.80, assuming certification probability of 40% and merits success at
16 50%. The reasonably estimated exposure for rest break violations over the class period was calculated at
17 \$645,569, but with lower chances of certification and proof of liability (20% and 40% respectively) for a
18 risk-adjusted exposure of \$51,645.52. Risk-adjusted penalty recoveries for wage statement and Labor
19 Code § 203 penalties were estimated to be approximately \$54,112 and \$18,240, respectively. Risk
20 adjusted exposure for meal period violations was calculated at \$81,401.40 (assuming certification and
21 liability proof risk factors of 30% and 50%, respectively). Performing risk-adjusted valuations for all
22 claims yields a total value in the range of \$250,000 to \$325,000, excluding PAGA.¹ PAGA penalties were
23 calculated as having a maximum exposure of \$644,900, but a risk adjusted value of 64,490, after factoring
24 in risks of reduction in penalties pursuant to Court discretion and the risk of the inability to prove

25 _____
26 ¹In a sense, it is nonsensical to assign specific percentages to future events, but it does provide a
27 specific method for attempting to reduce the concept of "very high risk" or "high risk" to a quantifiable
28 amount. Certification of a claim is typically a binary event. One does not obtain a 20% certification; a
claim is either certified or it is not. But the current expected value is best quantified by applying a risk
reduction.

violations for all aggrieved employees. The claims are discussed in additional detail below:

(a) Unpaid wages

- 1) Plaintiff's claims for unpaid wages included unpaid wages due to small amounts of off-the-clock work. Plaintiff alleges that Defendant is obligated to pay for all hours worked, which is incompatible with off-the-clock labor.
- 2) Defendant contends that all hours of work were fully paid and any off-the-clock time, if any, is so trivial as to preclude measure.
- 3) A reasonably estimated exposure for unpaid wages over the class period was calculated to be approximately \$222,754. However, with the risk factor discounts for certification, and liability proof, the value of that claim is estimated by Plaintiff's counsel to be approximately **\$44,580.80**, assuming certification probability of 40% and merits success at 50%.

(b) Meal Periods

- 1) Plaintiff alleges that Defendant failed to provide meal periods to Class Members in compliance with California law. This includes breaks that were completely missed, or taken late, or interrupted for whatever reasons. Employees are entitled to meal periods of at least 30 minutes before exceeding five hours of work and to second meal periods of not less than 30 minutes before exceeding 10 hours of work. For each meal period missed or taken late an employer must pay the employee an additional one hour of compensation. Labor Code § 226.7. This additional hour of compensation is referred to as "premium pay." To comply with these laws, every employer must keep, for each employee, accurate time records showing when the employee begins and ends each work period and takes his or her meal periods. *See Wage Orders*, at § (7)(A)(3).
- 2) Defendant maintains that its obligation is simply to "provide" meal periods and to "authorize and permit" rest periods, not to "ensure" that they are

1 taken. *Brinker v. Superior Court*, 53 Cal. App. 4th 1004, 1034-41 (2012)
2 (rejecting “ensure” standard). Furthermore, Defendant contends that any
3 failure to take meal periods, or to take late meal periods, was a result of
4 employee choice, not of any policy or practice of Defendant. Finally,
5 Defendant asserts that Plaintiff’s meal period claims would not be
6 amenable to class treatment, since individual inquires would need to be
7 made with respect to each specific shift that each employee missed a meal
8 or rest period, to determine why that specific employee missed that
9 specific meal or rest period on that specific shift.

10 3) Based on the available records, using the average regular rate of pay, the
11 number of shifts where violations occurred, and the calculated violation
12 rates, the total maximum amount of damages for meal period violations is
13 \$542,676. A 70% discount was applied, based on the difficulty of
14 certifying and proving meal period claims, and a 50% discount was applied
15 to account for risk of failing to prove the merits of the claim.² The risk-
16 adjusted value of the meal period claim is **\$81,404.40**.

17 **(c) Rest breaks**

18 1) Employees are entitled to a rest period of at least 10 minutes every four
19 hours worked, or major fraction thereof. For each rest period missed or
20 taken late an employer must pay the employee an additional one hour of
21 compensation. Labor Code § 226.7. This additional hour of compensation
22 is referred to as “premium pay.”

23 2) It would be very difficult for Plaintiff to prove that the class was not given
24 any legally compliant rest periods because rest periods do not have to be

25 _____
26 ²The risk adjustment reflects a combination of risks. Since certification is an uncertain even, as is success
27 on the merits, both risks combine at this stage of the proceedings. For example, if certification is viewed as
28 an event with a 50% chance of success, and prevailing at trial is viewed as a second event with a 50%
chance of success, the current risk is $0.5 \times 0.5 = 0.25$, or a 25% chance of both events resulting in a
favorable outcome.

recorded. This arguably would have made certification more difficult. Plaintiff's expert's analysis reflected approximately 59,775 shifts greater than 3.5 hours in length. Using this number and multiplying by the average regular rate of pay, the total maximum amount of damages for rest period violations is \$645,569. An 80% discount was applied, based on the difficulty of certifying and proving meal period claims, and a 60% discount was applied to account for risk of failing to prove the merits of the claim, to account for the possibility of class members voluntarily choosing to forego a rest period, and to account for Defendant's possible defenses. This would reduce the rest period violation claims to approximately **\$51,645.52**.

(d) Late Pay Penalties Under Labor Code § 203

- 1) Labor Code § 203 provides that if an employer fails to pay an employee all wages due at termination or within 72 hours of resignation, then that employee's wages shall continue as a penalty until paid for a period of up to thirty (30) days from the date they were due. Because class members stopped working for Defendant but again were not paid their full compensation for the reasons discussed above, class members did not receive all wages due upon termination of employment.
- 2) Defendant argues that their good-faith belief in the legality of their employment practices precludes a finding that any withholding of wages was "willful." *See* Cal. Code Regs. § 13520 [good-faith dispute exists to a claim for waiting time penalties "when an employer presents a defense, based in law or fact which, if successful, would preclude any recovery on the part of the employee. The fact that a defense is ultimately unsuccessful will not preclude a finding that a good faith dispute did exist."].) Defendant further contends that Plaintiff's meal and rest period claims cannot support a claim for waiting time penalties under Labor Code § 203

1 after the California Supreme Court's decision in *Kirby v. Immoos Fire*
2 *Protection, Inc.* 53 Cal. 4th 1244 (2012), which held that meal and rest
3 period claims are not actions for the "nonpayment of wages." *See also Ling*
4 *v. P.F. Chang's China Bistro, Inc.*, 245 Cal. App. 4th 1242, 1261 (2016).
5 Defendant further maintains that because it had viable defenses in both law
6 and fact, especially in light of the *Brinker* holding, that waiting-time
7 penalties could not be awarded and, in any case, such penalties were
8 subject to a three-year limitations period under Labor Code § 203(b).

- 9 3) Based on an analysis of the number of employees working within one year
10 of the filing of the action, and assuming 100% violations rates among
11 those employees, Defendant's potential liability is: \$676,412. Since the
12 claim is derivative of the other claims, the risk adjusted exposure is
13 **\$135,284**, assuming the most moderate risk reduction factors of a 40%
14 chance of certification and a 50% chance of success on the merits.

15 **(e) Wage Statement Violations**

- 16 1) Plaintiff also alleged a cause of action under Labor Code § 226(a). That
17 section states that an employer must provide an accurate itemized wage
18 statement twice a month or each time wages are paid, whichever is the
19 more frequent. Failure to do so entitles employees to recover the greater of
20 all actual damages or fifty dollars (\$50) for the initial pay period in which
21 a violation occurs and one hundred dollars (\$100) for each violation in a
22 subsequent pay period, not exceeding an aggregate penalty of four
23 thousand dollars (\$4,000). *See* Labor Code § 226(e).
- 24 2) Defendant contends that Labor Code § 226(e) penalties are not automatic.
25 Rather, the employee must show (1) that he or she "suffered injury" from
26 the employer's failure to provide compliant wage statements, *see Elliot v.*
27 *Spherion Pacific Work, LLC*, 572 F.Supp.2d 1169, 1181 (2008) (applying
28 California law) (holding employee was not entitled to penalties because no

injury was shown), and (2) Defendant's noncompliance was "knowing and intentional." Defendant contends that class members suffered no injury from any failure to issue compliant wage statements and, furthermore, that any noncompliance was not knowing and intentional. Further, because the damages for this cause of action are penalties, the statute of limitations only runs from one year prior to the filing of the original complaint. *See* Code Civ. Proc. § 340. Moreover, Defendant maintained that Plaintiff's derivative claim for wage statement penalties would fail for the same reasons that Plaintiff's underlying claims would fail. The parties discussed these issues, and in light of these and other considerations Class Counsel factored in a reduction of liability and damages for this cause of action.

- 3) Based on an analysis of the number of employees working within one year of the filing of the action, and assuming 100% violation rates among those employees, Defendant's potential liability is: \$228,000. Since the claim is derivative of the other claims, the risk adjusted exposure is **\$45,600**, assuming the most moderate risk reduction factors of a 40% chance of certification and a 50% chance of success on the merits.

(f) Failure to Reimburse Business Expenses

Plaintiff also alleged a cause of action under Labor Code § 2802(a). That section requires an employer to indemnify an employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties. However, because Plaintiff counsel's investigation did not reveal a uniform policy or practice of not indemnifying or reimbursing employees for necessary expenditures and because individualized fact questions would predominate, Plaintiff's counsel did not allocate any monetary value to this claim.

(g) PAGA

- 1) The Labor Code Private Attorneys General Act, Labor Code § 2699 *et*

1 *seq.*, allows Plaintiff to obtain civil penalties on behalf of herself and other
2 class members for Defendant's violation of any provision of the Labor
3 Code enumerated under Labor Code § 2699.5. Where civil penalties are
4 provided in the statute, those civil penalties are recoverable; where no civil
5 penalties are recoverable, Labor Code § 2699(f) establishes civil penalties
6 of one (\$100) for each aggrieved employee per pay period for the initial
7 violation and two hundred dollars (\$200) for each aggrieved employee per
8 pay period for each subsequent violation. Pursuant to Labor Code §
9 2699(i), seventy-five (75) percent of the penalties recovered must be
10 allocated to the Labor and Workforce Development Agency (LWDA),
11 with the remaining twenty-five (25) percent allocated to the affected
12 employees. The limitations period as for all penalties is one year prior to
13 the filing of the complaint.

14 2) The provisions of the Labor Code potentially triggering PAGA penalties in
15 this case include but are not limited to Labor Code §§ 203, 226(a), 226.7,
16 and 510. Defendant asserts that if PAGA penalties were mandatory, an
17 employer's PAGA liability would be huge because of the possibility of
18 collecting multiple civil penalties for a single violation, and thus such
19 penalties would almost always dwarf the damages available under the
20 causes of action proper. However, PAGA penalties are not mandatory but
21 permissive. Labor Code § 2699(e)(2) states that "a court may award a
22 lesser amount than the maximum civil penalty amount specified by this
23 part if, based on the facts and circumstances of the particular case, to do
24 otherwise would result in an award that is unjust, arbitrary and oppressive,
25 or confiscatory." *See also Thurman v. Bayshore Transit Management, Inc.*,
26 203 Cal. App. 4th 1112, 1135 (2012) [affirming reduction of PAGA
27 penalties].) Defendant here maintains that it has a strong argument that it
28 would be unjust to award maximum PAGA penalties.

1 3) Furthermore, PAGA penalties are also completely derivative of each and
2 every other claim. Finally, under *Amaral v. Cintas Corp.*, 163 Cal. App.
3 4th 1157(2008), it can be argued that penalties under PAGA could, at best,
4 be awarded only at the rates obtainable for initial violations under the
5 applicable statutes, because Defendant had never been notified of the
6 alleged violations. *Id.*, at 1208, 1209.

7 4) Class Counsel estimated Defendant's maximum total exposure on the
8 PAGA claim at approximately \$644,900. This number presupposes that
9 each of the underlying claims is proven and that the Court awards the
10 maximum possible penalties for each. Class Counsel then applied
11 discounts in light of the countervailing arguments with regard to the other
12 causes of action, and moreover the Court's power to award "a lesser
13 amount than the maximum civil liability." Accordingly, due to the
14 speculative nature of a valuation for this claim, a discount of
15 approximately 95% was applied to account for the difficulty of prevailing
16 on this claim, and based on Defendant's potential defenses, resulting in a
17 risk-discounted realistic potential exposure of \$32,245.

18 (h) **Summary:** The maximum theoretical recovery is estimated to be approximately
19 \$2,215,410, excluding PAGA. The settlement amount is approximately 18% of
20 that amount. With PAGA, the maximum reasonable exposure is calculated to be
21 approximately \$2,860,310.

22 18. This result here is fully supportable as reasonable. Many risks are eliminated through
23 settlement. First, it is important to recognize the wilfulness finding required for Labor Code §§ 203 and
24 226 is challenging to establish. Second, rest break and meal period claims have been challenging to
25 certify for many years, even after *Brinker*. Third, Certification rates are lower than conventional wisdom
26 holds. *See, Class Certification in California*, February 2010, available at
27 <http://www.courts.ca.gov/documents/classaction-certification.pdf> (finding, at page 5, and in Table 9, at
28 page 15, that only 27% of all class actions were certified either as part of a settlement *or* as part of a

1 contested certification motion). Here, the estimated certification probabilities are *above* the average rate
2 at which cases were certified in California over the study years, based upon data available through the
3 California Courts websites. In sum, well *under* 20% of all cases filed as proposed class actions are
4 ultimately certified by way of a *contested* motion. Since the recovery is roughly 18% of the maximum
5 theoretical recovery (estimated to be approximately \$2,215,410, excluding PAGA), it meets the expected
6 outcome under that metric.³ This Settlement achieves the goals of the litigation.

7 19. To the best of my knowledge, other than this Action, there are no other like claims
8 asserted or filed by Class Members. To the best of my knowledge, no Class Member has refrained from
9 bringing an action with claims similar to those raised in the Action, whether in reliance on the Action or
10 otherwise, and who thus might be prejudiced by dismissal of the Action.

11 THE EXPERIENCE OF CLASS COUNSEL

12 20. I am a founding attorney of Kharatian Law, APC, which is engaged in the practice of
13 employment law and focuses exclusively on representing plaintiffs. The firm's wage and hour practice
14 consist of class action litigation, single plaintiff litigation, and prosecution of PAGA claims in both federal
15 and state courts in California.

16 21. Prior to founding Kharatian Law, APC, I was an associate with the
17 Yarian & Associates, working plaintiff's employment law cases, including single plaintiff and class action
18 wage and hour claims.

19 22. I received a B.A. in Business Administration in 2010 from California State University-
20 Northridge. I received my J.D. from Pepperdine University School of Law in 2014.

21 23. I have been an Active Member of the State Bar of California since December 2015 and in
22
23

24 ³ The exclusion of interest and penalties from the fairness evaluation is proper because, first, PAGA
25 penalties are discretionary (*see* Lab. Code § 2699(e)(2) (the court in its discretion "may award a lesser
26 amount than the maximum civil penalty amount specified by this part...")), and, second, courts evaluate
27 the strength of a proposed settlement without taking potential penalties or interest into consideration. *See*
28 *Rodriguez v. West Publishing Corp.*, 563 F.3d 948, 955 (9th Cir. 2000); *see also Miller v. CEVA Logistics*
U.S.A., Inc., 2015 WL 729638, at *7(E.D. Cal. Feb. 19, 2015)(court utilized calculation of a defendant's
exposure exclusive of interest and penalties to determine whether the settlement fell within the range of
possible approval).

1 good standing continuously since then.

2 24. I have been lead class counsel in multiple wage and hour class action and PAGA cases,
3 negotiating wage-and-hour class action settlements. The following are class actions which I have and/or
4 am prosecuting in addition to the current matter:

5 (a) *Duran, et al. v. Sectran Security, Inc.*, No. 20STCV00515;

6 (b) *Musquiz v. California Credit Union*, No. 22STCV05451;

7 (c) *Paillet v. Peopleready, Inc.*, No. RIC 182 44 64

8 25. My current contingent billing rate is consistent with my practice area, legal market and
9 accepted hourly rates:

10 (a) In the December 8, 2008 article “Billable Hours Aren’t the Only Game in Town
11 Anymore,” *NATIONAL LAW JOURNAL*, the following hourly billing rates were
12 reported by Sheppard Mullin Richter & Hampton, a leading firm in the defense of
13 wage-and-hour class actions that Mr. Zenjiryan and I currently oppose in the
14 above-referenced matter of *Guzman v. Team-One Employment Specialists, LLC*:
15 Partners: \$475-\$795; Associates: 1st Year - \$275, 2nd Year - \$310, 3rd Year -
16 \$335, 4th Year - \$365, 5th Year - \$390, 6th Year - \$415, 7th Year - \$435, 8th Year
17 - \$455.

18 (b) In 2021, the Court in *Lalonde v. Islands Restaurant, LP.*, No. 19STCV01406
19 confirmed an arbitration award granting my request for an hourly rate of \$600.00.

20 (c) I was selected for the Rising Stars edition of Super Lawyers in 2022 and 2023.

21 (d) Based upon my practice area, geographic market, experience, including all of the
22 above information, reputation, and generally accepted hourly rates, my regular
23 hourly billing rate is currently \$675.00.

24 **REASONABLENESS OF THE REQUESTED FEE AWARD**

25 26. When this case was taken on a contingent fee basis, with the firm agreeing to assume
26 responsibility for litigation costs, the ultimate result was far from certain. In the course of this litigation
27 Kharatian Law, APC paid filing and mediation fees, copy charges, and mailing charges. There was never
28 a guarantee that Kharatian Law would recoup those expenditures. The firm took on this case, which

1 necessarily required the firm to forego other opportunities, given finite resources to devote to cases.

2 27. Because of the uncertainty of the outcome in this and other wage and hour litigation
3 undertaken by Kharatian Law, APC, we took this case with the expectation that a risk enhancement, either
4 in the form of a lodestar multiplier or a percentage of the fund award equivalent thereto, would be
5 available if we prevailed.

6 28. Class Counsel's experience in employment class actions was integral in evaluating the
7 strengths and weaknesses of the case against Defendant and the reasonableness of the settlement. Practice
8 in the narrow fields of wage and hour litigation requires skill and knowledge concerning the rapidly
9 evolving substantive law (state and federal), as well as the procedural law of class action litigation.

10 29. Kharatian Law, APC has since settled with the assistance of a mediator on June 1, 2023
11 another hour class actions (*Duran, et al. v. Sectran Security, Inc.*, No. 20STCV00515). Just as the Court
12 in *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66, n.11 (2008) observed, attorney fee awards of one-third
13 of a common settlement fund are the rule, rather than the exception. Here, Class Counsel agrees that they
14 will seek no more than 35% of the settlement amount in fees. This is consistent with common practice,
15 consistent with Ninth Circuit practice, consistent with California law approving the percentage of the fund
16 method to award fees from a common fund, *Laffitte v. Robert Half Intern. Inc.*, 1 Cal. 5th 480, 503
17 (2016), and not inappropriate in light of the many hours expended by attorneys performing work for
18 Plaintiff before and after the filing of this matter. That work includes:

- 19 (a) Numerous interviews with the Plaintiff and review of documents provided by
20 Plaintiff;
 - 21 (b) Legal research and investigation regarding the Defendant's practices at numerous
22 points in the litigation;
 - 23 (c) Preparation of the original and amended class action complaints;
 - 24 (d) Extensive "meet and confer" efforts with Defendant's counsel to obtain relevant
25 documents and information through informal discovery;
 - 26 (e) Attending two Informal Discovery Conferences;
 - 27 (f) Propounding written discovery;
- 28

- (g) Analysis of the audit results and preparation of a damages model with the aid of a statistics expert;
- (h) Research and preparation of two mediation briefs;
- (i) Attendance at two mediation;
- (j) Drafting, negotiating, and reviewing multiple drafts of the Settlement Agreement and attachments; and
- (k) Preparation of the motion for preliminary approval.

30. I anticipate that Class Counsel will spend an additional 50 hours on this matter, appearing at the hearing of preliminary approval, answering class member calls, working with the administrator to finalize documents in mailing format, conferring with counsel over any notice issues, drafting the final approval motion and motion for fees and costs, appearing at the final approval hearing, and resolving any post-approval issues that may arise, and appearing at a final accounting hearing. Class Counsel has also incurred costs in this matter that will be detailed at the time final approval is sought. Class Counsel has agreed to a cap on recoverable costs, and if total incurred costs exceed the cap, Class Counsel will request no more than the agreed-upon cap.

THE CONTRIBUTION OF PLAINTIFF AND THE REASONABLENESS OF THE REQUESTED
INCENTIVE AWARD

31. Here, Plaintiff seek Enhancement Payment of up to \$15,000. This amount is reasonable given the risks undertaken by Plaintiff for her involvement in the Action. Taking the risk of filing a lawsuit against an employer deserves recognition, especially in light of the settlement achieved by Plaintiff. Additionally, Plaintiff was actively involved in the litigation and settlement negotiations of this Action, expending considerable effort in advancing the interests of the Class. Plaintiff provided information to counsel before the filing of this matter; assisted with the settlement process (which included conferring with counsel during the preparation of Plaintiff's mediation brief); and, regularly conferred with counsel regarding the case whenever questions arose. I estimate that Plaintiff contributed more than a dozen of hours of time to the prosecution of this matter.

THE THIRD-PARTY ADMINISTRATOR

32. The parties have agreed that administration will be handled by a third-party administrator.

1 In counsel's experience as class counsel in similar wage-and-hour actions with a similar number of
2 employees, Phoenix Settlement Administrators is fully capable of administering the Settlement at a
3 competitive and reasonable cost and should be approved by the Court to administer the Settlement notice
4 process. Notice is estimated at this time to cost less than \$20,000. The bid by Phoenix was lower than
5 bids from CPT Group, Inc., and ILYM Group, Inc.

6 CLASS CERTIFICATION

7 33. The class is ascertainable by objective criteria. The Settlement Class Members are: "all
8 persons employed by CGP in California as hourly paid, non-exempt employees who worked for CGP
9 during the Class Period, and who did not sign an arbitration agreement with an express class action
10 waiver, including but not limited to, the CA Universal At-Will Employment Dispute and Arbitration
11 Agreement, Century Group Professionals, LLC Arbitration Agreement, Century Group Professionals,
12 LLC Voluntary Arbitration Agreement, and (CA) Century Group Professionals LLC Arbitration
13 Agreement." (Settlement, Section 1 ¶ 1.5.)

14 34. The class is sufficiently numerous. Based upon Defendant's records, there are
15 approximately 888 Settlement Class Members. Plaintiff's counsel believes that the data is reliable.

16 35. Plaintiff is typical of the Settlement Class. Plaintiff is a former employee of Defendant.
17 Plaintiff worked during the class period. Plaintiff's claims are typical of the Settlement Class proposed in
18 this settlement. Like other class members, Plaintiff experienced work under policies and procedures
19 impacting wage and hour compliance. No unique defenses applicable to Plaintiff have been identified that
20 do not also exist as to other Settlement Class members.

21 36. Common issues exist. Here, Class Members have shared a common interest in
22 determining whether Defendant violated wage and hour requirements under state law, including the
23 following issues: i. Whether or not Defendant paid proper wages to the Class; ii. Whether or not
24 Defendant provided meal periods to the Class; iii. Whether or not Defendant provided rest periods to the
25 Class; iv. Whether or not Defendant paid compensation timely upon separation of employment to former
26 Class Members; v. Whether or not Defendant paid compensation timely throughout Class Members'
27 employment; vi. Whether or not Defendant provided accurate itemized wage statements to the Class; vii.
28 Whether or not Defendant failed to indemnify employees for necessary expenditures incurred in discharge

1 of duties; viii. Whether or not waiting-time penalties are available to the Class for violation of California
2 Labor Code § 203; ix. Whether or not Defendant engaged in unlawful or unfair business practices
3 affecting the Class in violation of California Business and Professions Code §§ 17200-17208; and x.
4 Whether or not Plaintiff and the Class are entitled to penalties pursuant to PAGA.

5 37. From our review of the documentation provided, we determined that for purposes of these
6 claims, Defendant's policies and practices are either identical, or sufficiently similar, to raise the same
7 questions of liability, and applied to all Settlement Class Members. Because Settlement Class Members
8 would have to prove the same issues of law and fact to prevail, and because their potential legal remedies
9 are identical, it would be preferable to resolve all Settlement Class Members' claims by means of the
10 Settlement than to require each Settlement Class Member to litigate his or her individual claims.
11 Therefore, common questions predominate over any questions that may be unique to individual
12 Settlement Class Members, and class-wide settlement is superior to any other method of resolution.

13 38. My Declaration, in Paragraphs above, summarizes the firm's experience that establishes
14 its adequacy to represent the settlement Class. Plaintiff's counsel has no known conflicts of interest with
15 absent Settlement Class Members. Plaintiff has demonstrated, through her participation in this action, her
16 willingness to serve as a representative for the Class. Plaintiff has no known conflicts of interest with
17 absent Settlement Class Members and has agreed to place the class' interests above her own. Plaintiff's
18 actions also demonstrate her adequacy.

19 39. By consolidating all of these potential individual actions into one proceeding, this Court's
20 use of the class action device enables it to manage this litigation in a manner that serves the economics of
21 time, effort and expense for the litigants and the judicial system. Absent class treatment, similarly-
22 situated employees with small but potentially meritorious claims for damages would, as a practical matter,
23 have no means of redress because of the time, effort and expense required to prosecute individual actions.
24 Moreover, in the context of settlement, superiority concerns are almost non-existent, since case
25 management is controlled and a methodology for trial need not be identified.

26 EXHIBITS

27 40. As noted above, a true and correct copy of the CLASS ACTION AND PRIVATE
28 ATTORNEYS GENERAL ACT (LABOR CODE § 2698, et seq.) SETTLEMENT AGREEMENT is

1 attached hereto as Exhibit “1.”

2 41. A true and correct copy of service of the CLASS ACTION AND PRIVATE
3 ATTORNEYS GENERAL ACT (LABOR CODE § 2698, *et seq.*) SETTLEMENT AGREEMENT on
4 the LWDA is attached hereto as Exhibit “2.”

5 PAGA SETTLEMENT NOTIFICATION TO DIR

6 42. Plaintiff’s counsel provided notice of the request approval of the PAGA settlement through
7 the online submission portal the day that this Motion was filed.

8 I declare under penalty of perjury, under the laws of the State of California, that the foregoing is
9 true and correct.

10 Executed this 21st day of June 2023, at Pasadena, California.

11
12 
13 Jores Kharatian

EXHIBIT 1

**CLASS ACTION AND PRIVATE ATTORNEYS GENERAL ACT (LABOR
CODE § 2698, et seq.) SETTLEMENT AGREEMENT**

This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and between plaintiff Brenda Castillo (“Plaintiff”) and defendant Century Group Professionals LLC. (“CGP”). The Agreement refers to Plaintiff and CGP collectively as “Parties,” or individually as “Party.”

1. DEFINITIONS.

- 1.1. “Action” means the Plaintiff’s lawsuit alleging wage and hour violations against CGP captioned *Brenda Castillo v. Century Group Professionals, LLC*. (case number 20STCV37259 initiated on September 29, 2020 and pending in Superior Court of the State of California, County of Los Angeles.
- 1.2. “Administrator” means Phoenix Settlement Administrators, the neutral entity the Parties have agreed to appoint to administer the Settlement.
- 1.3. “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with Preliminary Approval of the Settlement.
- 1.4. “Aggrieved Employee” means a person employed by CGP in California as an hourly paid, non-exempt employee during the PAGA Period.
- 1.5. “Class” means all persons employed by CGP in California as hourly paid, non-exempt employees who worked for CGP during the Class Period, and who did not sign an arbitration agreement with an express class action waiver, including but not limited to, the CA Universal At-Will Employment Dispute and Arbitration Agreement, Century Group Professionals, LLC Arbitration Agreement, Century Group Professionals, LLC Voluntary Arbitration Agreement, and (CA) Century Group Professionals LLC Arbitration Agreement .
- 1.6. “Class Counsel” means Kharatian Law, APC.
- 1.7. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Action.
- 1.8. “Class Data” means Class Member identifying information in CGP’s possession including the Class Member’s name, last-known mailing address, Social Security number, and number of Class Period Workweeks and PAGA Pay Periods.
- 1.9. “Class Member” or “Settlement Class Member” means a member of the Class, as either

a Participating Class Member or Non-Participating Class Member (including a Non-Participating Class Member who qualifies as an Aggrieved Employee).

- 1.10. “Class Member Address Search” means the Administrator’s investigation and search for current Class Member mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Class Members.
- 1.11. “Class Notice” means the COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to Class Members in English, with a Spanish translation, in the form, without material variation, attached as Exhibit A and incorporated by reference into this Agreement.
- 1.12. “Class Period” means the period from September 29, 2016 to February 22, 2023, whichever is earlier.
- 1.13. “Class Representative” means the named Plaintiff in the operative complaint in the Action seeking Court approval to serve as a Class Representative.
- 1.14. “Class Representative Service Payment” means the payment to the Class Representative for initiating the Action and providing services in support of the Action.
- 1.15. “Court” means the Superior Court of California, County of Los Angeles.
- 1.16. “CGP” means named Defendant Century Group Professionals, Inc.
- 1.17. “Defense Counsel” means Fisher & Phillips LLP.
- 1.18. “Effective Date” means the date by when both of the following have occurred:
(a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no Participating Class Member objects to the Settlement, the day the Court enters Judgment; (b) if one or more Participating Class Members objects to the Settlement, the day after the deadline for filing a notice of appeal from the Judgment; or if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur.
- 1.19. “Final Approval” means the Court’s order granting final approval of the Settlement.
- 1.20. “Final Approval Hearing” means the Court’s hearing on the Motion for Final Approval of the Settlement.
- 1.21. “Final Judgment” means the Judgment Entered by the Court upon Granting Final

Approval of the Settlement.

- 1.22. “Gross Settlement Amount” means \$390,000.00 which is the total amount CGP agrees to pay under the Settlement except as provided in Paragraph 9 below. The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Expenses, Class Representative Service Payment, and the Administrator’s Expenses.
- 1.23. “Individual Class Payment” means the Participating Class Member’s pro rata share of the Net Settlement Amount calculated according to the number of Workweeks worked during the Class Period.
- 1.24. “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of 25% of the PAGA Penalties calculated according to the number of PAGA Pay Periods worked during the PAGA Period.
- 1.25. “Judgment” means the judgment entered by the Court based upon the Final Approval.
- 1.26. “LWDA” means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).
- 1.27. “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).
- 1.28. “Net Settlement Amount” means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to Participating Class Members as Individual Class Payments.
- 1.29. “Non-Participating Class Member” means any Class Member who opts out of the Settlement by sending the Administrator a valid and timely Request for Exclusion.
- 1.30. “PAGA Pay Period” means any Pay Period during which an Aggrieved Employee worked for CGP for at least one day during the PAGA Period.
- 1.31. “PAGA Period” means the period from September 29, 2019 to February 22, 2023.
- 1.32. “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).
- 1.33. “PAGA Notice” means Plaintiff’s January 24, 2023 letter to CGP and the LWDA, and the amended letter of the same date, providing notice pursuant to Labor Code section 2699.3, subd.(a).
- 1.34. “PAGA Penalties” means the total amount of PAGA civil penalties to be paid

from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees (\$975.00) and the 75% to LWDA (\$2,925.00) in settlement of PAGA claims.

- 1.35. "Participating Class Member" means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement.
- 1.36. "Plaintiff" means Brenda Castillo, the named plaintiff in the Action.
- 1.37. "Preliminary Approval" means the Court's Order Granting Preliminary Approval of the Settlement.
- 1.38. "Preliminary Approval Order" means the proposed Order Granting Preliminary Approval and Approval of PAGA Settlement.
- 1.39. "Released Class Claims" means the claims being released as described in Paragraph 5.2 below.
- 1.40. "Released PAGA Claims" means the claims being released as described in Paragraph 5.3 below.
- 1.41. "Released Parties" means: CGP and each of its former and present directors, officers, shareholders, owners, members, attorneys, insurers, predecessors, successors, assigns, subsidiaries, affiliates, and CGP client companies.
- 1.42. "Request for Exclusion" means a Class Member's submission of a written request to be excluded from the Class Settlement signed by the Class Member.
- 1.43. "Response Deadline" means forty-five (45) days after the Administrator mails Notice to Class Members and Aggrieved Employees, and shall be the last date on which Class Members may: (a) fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax, email, or mail his or her Objection to the Settlement. Class Members to whom Notice Packets are resent after having been returned undeliverable to the Administrator shall have an additional fourteen (14) calendar days beyond the Response Deadline has expired.
- 1.44. "Settlement" means the disposition of the Action effected by this Agreement and the Judgment.
- 1.45. "Workweek" means any week during which a Class Member worked for CGP for at least one day, during the Class Period.

2. RECITALS.

- 2.1. On September 29, 2020, Plaintiff commenced this Action by filing a complaint, and then subsequently on October 13, 2020, Plaintiff filed a First Amended Complaint

naming CGP as the defendant and alleging causes of action against CGP for (1) failure to provide meal periods, (2) failure to provide rest periods, (3) failure to pay overtime wages, (4) failure to pay minimum wage, (5) failure to compensate for all hours worked, (6) failure to maintain required records, (7) failure to provide accurate wage statements, (8) violation of Business & Professions Code section 17200, *et seq.*, and (9) waiting time penalties. On May 10, 2023, Plaintiff filed a Second Amended Complaint alleging causes of action against CGP for (1) failure to provide meal periods, (2) failure to provide rest periods, (3) failure to pay overtime wages, (4) failure to pay minimum wage, (5) failure to compensate for all hours worked, (6) failure to maintain required records, (7) failure to provide accurate wage statements, (8) violation of Business & Professions Code section 17200, *et seq.*, (9) waiting time penalties, (10) failure to reimburse for necessary business expenses and (11) violation of California Labor Code Sections 2698, *et seq.* (violation of the Private Attorneys General Act). The Second Amended Complaint is the operative complaint in the Action (the “Operative Complaint.”) CGP denies the allegations in the Operative Complaint, denies any failure to comply with the laws identified in the Operative Complaint, and denies any and all liability for the causes of action alleged.

- 2.2. Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff gave timely written notice to CGP and the LWDA by sending the PAGA Notice.
- 2.3. On January 23, 2023, the Parties participated in a second all-day mediation presided over by mediator Steve Pearl, Esq., which led to this Agreement to settle the Action.
- 2.4. Prior to mediation, Plaintiff obtained, through formal and informal discovery, documents, information, and demographic data, including a voluminous sample of time and payroll records for Class Members over the Class Period. Plaintiff’s investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 (“*Dunk/Kullar*”).
- 2.5. The Court has not granted class certification, as Parties engaged in mediation prior to Plaintiff filing a motion for class certification.
- 2.6. The Parties, Class Counsel and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

3. MONETARY TERMS.

- 3.1. **Gross Settlement Amount.** Except as otherwise provided by Paragraph 9 below, CGP promises to pay \$390,000.00 and no more as the Gross Settlement Amount and to separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments. CGP has no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in Paragraph 4.1 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or

requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to CGP.

3.2. Payments from the Gross Settlement Amount. The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval:

3.2.1. To Plaintiff: Class Representative Service Payment to the Class Representative of not more than \$15,000.00 (in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representative is entitled to receive as a Participating Class Member). CGP will not oppose Plaintiff's request for a Class Representative Service Payment that does not exceed this amount. As part of the motion for Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiff will seek Court approval for any Class Representative Service Payments no later than sixteen (16) court days prior to the Final Approval Hearing. If the Court approves a Class Representative Service Payment less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay the Class Representative Service Payment using IRS Form 1099. Plaintiff assumes full responsibility and liability for employee taxes owed on the Class Representative Service Payment.

3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than thirty-five percent (35%) of the Gross Settlement Amount, which is currently estimated to be \$136,500.00 and a Class Counsel Litigation Expenses Payment of not more than \$23,000.00. CGP will not oppose requests for these payments provided that they do not exceed these amounts. Plaintiff and/or Class Counsel will file a motion for Class Counsel Fees Payment and Class Litigation Expenses Payment no later than sixteen (16) court days prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to Class Counsel or any other Plaintiff's Counsel arising from any claim to any portion any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds CGP harmless, and indemnifies CGP, from any dispute or controversy regarding any division or sharing of any of these Payments.

3.2.3. To the Administrator: An Administrator Expenses Payment not to exceed \$20,000.00 except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than \$20,000.00, the Administrator will retain the remainder in the Net Settlement Amount.

3.2.4. To Each Participating Class Member: An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks.

3.2.4.1. Tax Allocation of Individual Class Payments. 15% of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. 85% of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for interest and penalties (the "Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment.

3.2.4.2. Effect of Non-Participating Class Members on Calculation of Individual Class Payments. Non-Participating Class Members will not receive any Individual Class Payments. The Administrator will retain amounts equal to their Individual Class Payments in the Net Settlement Amount for distribution to Participating Class Members on a pro rata basis.

3.2.5. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$3,900.00 to be paid from the Gross Settlement Amount, with 75% (\$2,925.00) allocated to the LWDA PAGA Payment and 25% (\$975.00) allocated to the Individual PAGA Payments.

3.2.5.1. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties \$975 by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

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

4. SETTLEMENT FUNDING AND PAYMENTS.

4.1. Class Workweeks and Aggrieved Employee Pay Periods. Based on a review of its records to date, CGP estimates that from September 29, 2016 to February 22, 2023, there are 888 Class Members who collectively worked a total of 17,739 Workweeks, and from September 29, 2019 to February 22, 2023 there are 278 Aggrieved Employees who

worked a total of 5,365 PAGA Pay Periods.

- 4.2. Class Data. Not later than fifteen (15) days after the Court grants Preliminary Approval of the Settlement, CGP will simultaneously deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement. CGP has a continuing duty to immediately notify Class Counsel if it discovers that the Class Data omitted class member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. Without any extension of the deadline by which CGP must send the Class Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.
- 4.3. Funding of Gross Settlement Amount. CGP shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay CGP's share of payroll taxes by transmitting the funds to the Administrator no later than fourteen (14) days after the Effective Date.
- 4.4. Payments from the Gross Settlement Amount. Within fourteen (14) days after CGP funds the Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment. Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment and the Class Representative Service Payment shall not precede disbursement of Individual Class Payments and Individual PAGA Payments.
- 4.4.1. The Administrator will issue checks for the Individual Class Payments and/or Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. The Administrator will send checks for Individual Settlement Payments to all Participating Class Members (including those for whom Class Notice was returned undelivered). The Administrator will send checks for Individual PAGA Payments to all Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved Employees (including those for whom Class Notice was returned undelivered). The Administrator may send Participating Class Members a single check combining the Individual Class Payment and the Individual PAGA Payment. Before mailing any checks, the Settlement Administrator must update the recipients'

mailing addresses using the National Change of Address Database.

4.4.2. The Administrator must conduct a Class Member Address Search for all other Class Members whose checks are returned undelivered without USPS forwarding address. Within seven (7) days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Class Member Address Search. The Administrator need not take further steps to deliver checks to Class Members whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Class Member whose original check was lost or misplaced, requested by the Class Member prior to the void date.

4.4.3. For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b).

4.4.4. The payment of Individual Class Payments and Individual PAGA Payments shall not obligate CGP to confer any additional benefits or make any additional payments to Class Members (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

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

5.1 **Plaintiff's Release.** Plaintiff and his or her respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release and discharge Released Parties from all claims, transactions, or occurrences, under federal, state and/or local law, statute, ordinance, regulation, common law, or other source of law, including but not limited to claims arising from or related to his employment with CGP and his compensation while an employee of CGP, that occurred during the Class Period, including, but not limited to all claims that were, or reasonably could have been, alleged, based on the facts contained, in the Operative Complaint, including, but not limited to, all claims relating to payment of minimum wages, overtime wages, wage statement and paystubs, penalties, waiting time penalties, unreimbursed business expenses, interest, and attorneys' fees; which include all claims arising under the Labor Code (including, but not limited to, §§200, 201, 201.3, 202, 203, 204, 204.1, 204.2, 205, 205.5, 210, 218, 218.5, 218.6, 226, 226.2, 226.3, 226.7, 256, 500, 510, 511, 512, 516, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1197.2, 1197.5, 1198, 1199, 2698 *et seq.*, and

2699 *et seq.*) 2802; all claims arising under: the Wage Orders of the California Industrial Welfare Commission; the California Private Attorneys General Act of 2004 (PAGA); California Business and Professions Code §§17200, *et seq.*; California Civil Code, to include §§3287; 12 CCR §11040; 8 CCR §11060; California Code of Civil Procedure §1021.5; California common law of contract; 29 CFR §778.223; 29 CFR §778.315; federal common law; and the Employee Retirement Income Security Act, 29 U.S.C. §§1001, *et seq.* (ERISA). Plaintiff's Released Claims also include all claims for lost wages and benefits, emotional distress, retaliation, punitive damages, and attorneys' fees and costs arising under federal, state, or local laws for discrimination, harassment, retaliation, and wrongful termination, such as, by way of example only, (as amended) 42 U.S.C. §1981, Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act (ADA), the Age Discrimination in Employment Act (ADEA), and the California Fair Employment and Housing Act (FEHA); and the law of contract and tort. This release excludes the release of claims not permitted by law ("Plaintiff's Release"). Plaintiff's Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time, or based on occurrences outside the Class Period. Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff's discovery of them.

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

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

5.2 Release by Participating Class Members Who Are Not Aggrieved Employees: All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from all claims that were alleged, or reasonably could have been alleged, based on the Class Period facts stated in the Operative Complaint and ascertained in the course of the Action, including, any and all claims involving any alleged failure to pay overtime wages, wages and minimum wages, wages due upon termination, costs of medical or physical examinations, reimbursement for necessary business expenses, failure to provide legally compliant meal breaks and rest periods, wage statement and paystub violations, waiting time penalties, including but not limited to violations of Labor Code sections 200, 201, 202, 203, 204, 215, 218.5, 218.6, 226, 226.3, 226.7, 432, 500, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 2802, 2810.5, Business and Professions Code § 17200, Civil Code § 1021.5, 3287, 3288, Code of Regulations, title 8, § 11040, and applicable IWC Wage Order(s). Except as set forth in Section 6.3 of this

Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.

- 5.3 Release by all Participating and Non-Participating Class Members Who Are Aggrieved Employees: All Participating and Non-Participating Class Members who are Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint and the PAGA Notice, including, any and all claims involving any alleged failure to pay overtime wages, wages and minimum wages, wages due upon termination, costs of medical or physical examinations, reimbursement for necessary business expenses, failure to provide legally compliant meal breaks and rest periods, wage statement and paystub violations, waiting time penalties, including but not limited to violations of Labor Code sections 200, 201, 202, 203, 204, 215, 218.5, 218.6, 226, 226.3, 226.7, 432, 500, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 2802, 2810.5, 2698, 2699, 2699.3, 2699.5 2802, Business and Professions Code § 17200, Civil Code § 1021.5, 3287, 3288, Code of Regulations, title 8, § 11040, and applicable IWC Wage Order(s).

6. **MOTION FOR PRELIMINARY APPROVAL.** The Parties agree to jointly prepare and file a motion for preliminary approval ("Motion for Preliminary Approval").

- 6.1 Plaintiff's Responsibilities. Plaintiff will prepare and deliver to Defense Counsel all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice, and memorandum in support, of the Motion for Preliminary Approval that includes an analysis of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under Labor Code Section 2699, subd. (f)(2)); (ii) a draft proposed Order Granting Preliminary Approval and Approval of PAGA Settlement; (iii) a draft proposed Class Notice; (iv) a signed declaration from the Administrator attaching its "not to exceed" bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Class Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Class Members; and the nature and extent of any financial relationship with Plaintiff, Class Counsel, or Defense Counsel; (v) a signed declaration from Plaintiff confirming willingness and competency to serve, and disclosing all facts relevant to any actual or potential conflicts of interest with Class Members, and/or the Administrator; (vi) a signed declaration from each Class Counsel firm attesting to its competency to represent the Class Members; its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code section 2699, subd. (l)(2)); and (vii) all facts relevant to any actual or potential conflict of interest with Class Members and the Administrator. In their Declarations, Plaintiff and Class Counsel Declaration shall aver that they are not aware of

any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.

6.2 Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the Motion for Preliminary Approval no later than ninety (90) days after the full execution of this Agreement; obtaining a prompt hearing date for the Motion for Preliminary Approval; and for appearing in Court to advocate in favor of the Motion for Preliminary Approval. Class Counsel is responsible for delivering the Court's Preliminary Approval to the Administrator.

6.3 Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for Preliminary Approval and/or the supporting declarations and documents, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant Preliminary Approval or conditions Preliminary Approval on any material change to this Agreement, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court's concerns.

7. SETTLEMENT ADMINISTRATION.

7.1 Selection of Administrator. The Parties have jointly selected Phoenix Settlement Administrators to serve as the Administrator and verified that, as a condition of appointment, Phoenix Settlement Administrators agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.

7.2 Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports state and federal tax authorities.

7.3 Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation section 468B-1.

7.4 Notice to Class Members.

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

7.4.2 Using best efforts to perform as soon as possible, and in no event later than fourteen (14) days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service (“USPS”) mail, the Class Notice with Spanish translation, substantially in the form attached to this Agreement as Exhibit A. The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member, and the number of Workweeks and PAGA Pay Periods (if applicable) used to calculate these amounts. Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database.

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

7.4.4 The deadlines for Class Members’ written objections, Challenges to Workweeks and/or Pay Periods, and Requests for Exclusion will be extended an additional fourteen (14) days beyond the sixty (60) days otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. The Administrator will inform the Class Member of the extended deadline with the re-mailed Class Notice.

7.4.5 If the Administrator, CGP or Class Counsel is contacted by or otherwise discovers any persons who believe they should have been included in the Class Data and should have received Class Notice, the Parties will expeditiously meet and confer in person or by telephone, and in good faith, in an effort to agree on whether to include them as Class Members. If the Parties agree, such persons will be Class Members entitled to the same rights as other Class Members, and the Administrator will send, via email or overnight delivery, a Class Notice requiring them to exercise options under this Agreement not later than fourteen (14) days after receipt of Class Notice, or the deadline dates in the Class Notice, which ever are later.

7.5 Requests for Exclusion (Opt-Outs).

7.5.1 Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later than sixty (60) days after the Administrator mails the Class Notice (plus an additional fourteen (14) days for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Class

Member or his/her representative that reasonably communicates the Class Member's election to be excluded from the Settlement and includes the Class Member's name, address and email address or telephone number. To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline.

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

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

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

7.6 Challenges to Calculation of Workweeks. Each Class Member shall have sixty (60) days after the Administrator mails the Class Notice (plus an additional fourteen (14) days for Class Members whose Class Notice is re-mailed) to challenge the number of Class Workweeks and PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice. The Class Member may challenge the allocation by communicating with the Administrator via fax, email or mail. The Administrator must encourage the challenging Class Member to submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the Workweeks contained in the Class Notice are correct so long as they are consistent with the Class Data. The Administrator's determination of each Class Member's allocation of Workweeks and/or Pay Periods shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall promptly provide copies of all challenges to calculation of Workweeks and/or Pay Periods to Defense Counsel and Class Counsel and the Administrator's determination the challenges.

7.7 Objections to Settlement.

- 7.7.1 Only Participating Class Members may object to the class action components of the Settlement and/or this Agreement, including contesting the fairness of the Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Class Representative Service Payment.
- 7.7.2 Participating Class Members may send written objections to the Administrator, by fax, email, or mail. In the alternative, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A Participating Class Member who elects to send a written objection to the Administrator must do so not later than sixty (60) days after the Administrator's mailing of the Class Notice (plus an additional fourteen (14) days for Class Members whose Class Notice was re-mailed).
- 7.7.3 Non-Participating Class Members have no right to object to any of the class action components of the Settlement.
- 7.8 Administrator Duties. The Administrator has a duty to perform or observe all tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.
- 7.8.1 Website, Email Address and Toll-Free Number. The Administrator will establish and maintain and use an internet website to post information of interest to Class Members including the date, time and location for the Final Approval Hearing and copies of the Settlement Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Class Notice, the Motion for Final Approval, the Motion for Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and Class Representative Service Payment, the Final Approval and the Judgment. The Administrator will also maintain and monitor an email address and a toll-free telephone number to receive Class Member calls, faxes and emails.
- 7.8.2 Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not later than five (5) days after the expiration of the deadline for submitting Requests for Exclusion, the Administrator shall email a list to Class Counsel and Defense Counsel containing (a) the names and other identifying information of Class Members who have timely submitted valid Requests for Exclusion ("Exclusion List"); (b) the names and other identifying information of Class Members who have submitted invalid Requests for Exclusion; (c) copies of all Requests for Exclusion from Settlement submitted (whether valid or invalid).
- 7.8.3 Weekly Reports. The Administrator must, on a weekly basis, provide

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

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

7.8.5 Administrator's Declaration. Not later than fourteen (14) days before the date by which Plaintiff is required to file the Motion for Final Approval of the Settlement, the Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its due diligence and compliance with all of its obligations under this Agreement, including, but not limited to, its mailing of Class Notice, the Class Notices returned as undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the total number of Requests for Exclusion from Settlement it received (both valid or invalid), the number of written objections and attach the Exclusion List. The Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator's declaration(s) in Court.

8. **FINAL REPORT BY SETTLEMENT ADMINISTRATOR.** Within ten (10) days after the Administrator disburses all funds in the Gross Settlement Amount, the Administrator will provide Class Counsel and Defense Counsel with a final report detailing its disbursements by employee identification number only of all payments made under this Agreement. At least fifteen (15) days before any deadline set by the Court, the Administrator will prepare, and submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all payments required under this Agreement. Class Counsel is responsible for filing the Administrator's declaration in Court.
9. **CGP'S RIGHT TO WITHDRAW.** If the number of valid Requests for Exclusion identified in the Exclusion List exceeds 5% of the total of all Class Members, CGP may, but is not obligated, elect to withdraw from the Settlement. The Parties agree that, if CGP withdraws, the Settlement shall be void ab initio, have no force or effect whatsoever, and that neither Party will have any further obligation to perform under this Agreement; provided, however, CGP will remain responsible for paying all Settlement Administration Expenses incurred to that point. CGP must notify Class Counsel and the Court of its election to withdraw not later than seven (7) days after the Administrator sends the final Exclusion List to Defense Counsel; late elections will have no effect.

10. **MOTION FOR FINAL APPROVAL.** Not later than sixteen (16) court days before the calendared Final Approval Hearing, Plaintiff will file in Court, a motion for final approval of the Settlement that includes a request for approval of the PAGA settlement under Labor Code section 2699, subd. (1), a Proposed Final Approval Order and a proposed Judgment (collectively “Motion for Final Approval”). Plaintiff shall provide drafts of these documents to Defense Counsel not later than seven (7) days prior to filing the Motion for Final Approval. Class Counsel and Defense Counsel will expeditiously meet and confer in person or by telephone, and in good faith, to resolve any disagreements concerning the Motion for Final Approval.

10.1 **Response to Objections.** Each Party retains the right to respond to any objection raised by a Participating Class Member, including the right to file responsive documents in Court no later than five (5) court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.

10.2 **Duty to Cooperate.** If the Court does not grant Final Approval or conditions Final Approval on any material change to the Settlement (including, but not limited to, the scope of release to be granted by Class Members), the Parties will expeditiously work together in good faith to address the Court’s concerns by revising the Agreement as necessary to obtain Final Approval. The Court’s decision to award less than the amounts requested for the Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Administrator Expenses Payment shall not constitute a material modification to the Agreement within the meaning of this paragraph.

10.3 **Continuing Jurisdiction of the Court.** The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

10.4 **Waiver of Right to Appeal.** Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment reflected set forth in this Settlement, the Parties, their respective counsel, and all Participating Class Members who did not object to the Settlement as provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the Parties’ obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.

10.5 **Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment.** If the reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a

material modification of this Agreement (including, but not limited to, the scope of release to be granted by Class Members), this Agreement shall be null and void. The Parties shall nevertheless expeditiously work together in good faith to address the appellate court's concerns and to obtain Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional Administration Expenses reasonably incurred after remittitur. An appellate decision to vacate, reverse, or modify the Court's award of the Class Representative Service Payment or any payments to Class Counsel shall not constitute a material modification of the Judgment within the meaning of this paragraph, as long as the Gross Settlement Amount remains unchanged.

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

12. **ADDITIONAL PROVISIONS.**

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

- 12.2 **Confidentiality Prior to Preliminary Approval.** Plaintiff, Class Counsel, CGP and Defense Counsel separately agree that, until the Motion for Preliminary Approval of Settlement is filed, they and each of them will not disclose, disseminate and/or publicize, or cause or permit another person to disclose, disseminate or publicize, any of the terms of the Agreement directly or indirectly, specifically or generally, to any person, corporation, association, government agency, or other entity except: (i) to the Parties' attorneys, accountants, or spouses, all of whom will be instructed to keep this Agreement confidential; (ii) counsel in a related matter; (iii) to the extent necessary to report income to appropriate taxing authorities; (iv) in response to a court order or subpoena; or (v) in response to an inquiry or subpoena issued by a state or federal government agency. Each Party agrees to immediately notify each other Party of any judicial or agency order, inquiry, or subpoena seeking such information. Plaintiff, Class Counsel, CGP and Defense Counsel separately agree not to, directly or indirectly, initiate any conversation or other communication, before the filing of the Motion for Preliminary Approval, any with third party regarding this Agreement or the matters giving rise to this Agreement

except to respond only that “the matter was resolved,” or words to that effect. This paragraph does not restrict Class Counsel’s communications with Class Members in accordance with Class Counsel’s ethical obligations owed to Class Members.

12.3No Solicitation. The Parties separately agree that they and their respective counsel, employees, and/or agents will not solicit any Class Member to opt out of or object to the Settlement, or appeal from the Judgment. Nothing in this paragraph shall be construed to restrict Class Counsel’s ability to communicate with Class Members in accordance with Class Counsel’s ethical obligations owed to Class Members.

12.4Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.

12.5Attorney Authorization. Class Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiff and CGP, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.

12.6Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.

12.7No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.

12.8No Tax Advice. Neither Plaintiff, Class Counsel, CGP nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.

12.9Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.

12.10 Agreement Binding on Successors. This Agreement will be binding upon, and

inure to the benefit of, the successors of each of the Parties.

- 12.11 Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.
- 12.12 Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
- 12.13 Confidentiality. To the extent permitted by law, all agreements made, and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.
- 12.14 Use and Return of Class Data. Information provided to Class Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the Class Data provided to Class Counsel by CGP in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than ninety (90) days after the date when the Court discharges the Administrator's obligation to provide a Declaration confirming the final pay out of all Settlement funds, Plaintiff shall destroy, all paper and electronic versions of Class Data received from CGP unless, prior to the Court's discharge of the Administrator's obligation, CGP makes a written request to Class Counsel for the return, rather than the destruction, of Class Data.
- 12.15 Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
- 12.16 Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.
- 12.17 Notice. All notices, demands or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

To Plaintiff:

Jores Kharatian, Esq.
Kharatian Law, APC
595 E. Colorado Blvd., Suite 210
Pasadena, CA 91101

Telephone: (626) 759-9900

To CGP:

Boris Sorsher, Esq.
Lyle Chan, Esq.
Fisher & Phillips LLP
2050 Main Street, Suite 1000
Irvine, CA 92614
Telephone: (949) 851-2424

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


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

Dated: Jun 6, 2023


Brenda Castillo (Jun 6, 2023 09:54 PDT)
Brenda Castillo, Plaintiff

Dated: 6/6/2023

CENTURY GROUP PROFESSIONALS, LLC



By: Ron Proul, Chief Executive Officer

APPROVED AS TO FORM

KHARATIAN LAW, APC

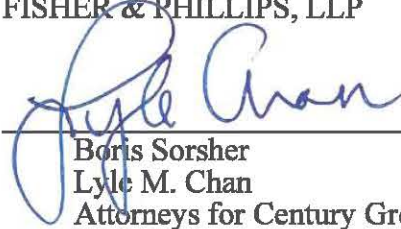
Dated: 6/6/2023



Jores Kharatian
Attorneys for Plaintiff and the Class

FISHER & PHILLIPS, LLP

Dated: 6/6/2023



Boris Sorsher
Lyle M. Chan
Attorneys for Century Group Professionals,
LLC

Long Form Agreement v.1(47103869.1)-Final

Final Audit Report

2023-06-06

Created:	2023-06-06
By:	Jores Kharatian (jores@kharatianlaw.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAAaaO7Wuna2Tu5V4N4ZSIWjkVmM7ymK0ot

"Long Form Agreement v.1(47103869.1)-Final" History

 Document created by Jores Kharatian (jores@kharatianlaw.com)

2023-06-06 - 4:30:37 PM GMT- IP address: 69.234.40.46

 Document emailed to bcastillo82007@gmail.com for signature

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 Signer bcastillo82007@gmail.com entered name at signing as Brenda Castillo

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Signature Date: 2023-06-06 - 4:54:19 PM GMT - Time Source: server- IP address: 63.203.5.165

 Agreement completed.

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EXHIBIT 2

From: [DIR PAGA Unit](#)
To: jores@kharatianlaw.com
Subject: Thank you for your Proposed Settlement Submission
Date: Wednesday, June 21, 2023 10:09:24 AM

06/21/2023 10:08:53 AM

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

Item submitted: Proposed Settlement

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

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

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

STATE OF CALIFORNIA)
) ss
COUNTY OF LOS ANGELES)

**DECLARATION OF JORES KHARATIAN IN SUPPORT OF PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

Boris Sorsher, Bar No.
bsorsher@fisherphillips.com
Lyle M. Chan, Bar No.
lchan@fisherphillips.com
Fisher & Phillips LLP
2050 Main Street, Suite 1000
Attorneys for Defendant, Century Group Professionals, LLC

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

Jores Kharatian
Type or Print Name

/s/ Jores Kharatian
Signature