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the Proposed Class, and the aggrieved employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN MATEO

ANTONIO URRUTIA, an individual, on behalf of himself, others similarly situated,

PLAINTIFF,

v.

BLVD RESIDENTIAL INC., a Delaware Corporation, DEBRA O'TOOLE, an individual, and DOES 2 thru 50, inclusive,

DEFENDANTS.

Case No.: 24-CIV-00086

[Assigned For All Purposes to the Hon. Nicole S. Healy, Dept. 28]

DECLARATION OF DAVID S. WINSTON IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS SETTLEMENT

Date: December 17, 2025
Time: 2:00 pm
Dept: 28

Date Filed: January 1, 2024
FAC Filed: March 12, 2024
Trial Date: None Set

DECLARATION OF DAVID S. WINSTON

I, **DAVID S. WINSTON**, declare as follows:

1. I am an attorney licensed to practice before all of the courts of the State of California. I am the attorney of record for Plaintiff ANTONIO URRUTIA in the above-entitled action. I have personal knowledge of the facts set forth herein, and if called upon as a witness, I could and would testify competently thereto.

2. I graduated from the University of California, Los Angeles School of Law in 2014and graduated *summa cum laude* with a B.A. in Political Science from Vanderbilt University. I am admitted to practice before the following Courts: the United States District Court for the Central District of California, the United States District Court for the Eastern District of California, the United States District Court for the Southern District of California, the United States District Court for the Northern District of California, the Ninth Circuit Court of Appeal, and all California State Courts. I have been practicing law since 2014.

THE EXPERIENCE AND VIEWS OF CLASS COUNSEL

3. Prior to starting the Winston Law Group, P.C. in 2017, I regularly litigated class and representative actions as an Associate at Kingsley & Kingsley and also represented employers in class, representative, and individual actions.

4. I am experienced and qualified to evaluate the Class claims and viability of the defenses. I have extensive experience in prosecuting employment litigation, and have focused my practice primarily on cases regarding wage and hour class actions and representative PAGA actions.

5. Since founding Winston Law Group, P.C. I have also been appointed Class or PAGA Counsel in numerous class action and PAGA cases including:

a. Garner et al. vs. Erickson Framing CA LLC et al, Placer County Superior Court (Case No. S-CV-0046287). This class action and PAGA settlement was approved by the Hon. Trisha Hirashima on July 6, 2023 in the gross amount of $6,300,000.

b. Porras et al. vs. Chipotle Services, LLC, *Stanislaus County Superior Court (Case No. CV-19-000937)*. This PAGA settlement was approved by the Hon. Sonny S. Sadhu on June 16, 2020 in the gross amount of $4,900,000.

c. *Miller et al. vs. Mattress Firm, Inc., Santa Clara County Superior Court (Case No. 17CV313148)*. This PAGA settlement was approved by the Hon. Thomas E. Kunle on December 17, 2018 in the gross amount of $3,750,000.

d. *Smart & Final Wage and Hour Cases*, Sacramento County Superior Court (*JCCP Number 5089*). This PAGA settlement was approved by the Hon. Richard K. Sueyoshi on July 9, 2021 in the gross amount of $3,470,000.

e. *Zirpolo vs. UAG Stevens Creek, Inc. (Penske)*, *Santa Clara County Superior Court (Case No. 17CV313457)*. The matter was finally approved for settlement by the Honorable Brian C. Walsh on July 10, 2018 in the gross amount of $3,275,000.

f. *Espindola et al. vs. Panda Express, LLC et al., San Bernardino County Superior Court (Case No. CIVDS1931455).* This PAGA settlement was approved by the Hon. David Cohn on April 13, 2021 in the gross amount of $3,125,000.

g. *Westbrook vs. Winco Holdings Inc. et al.*, *Riverside County Superior Court (Case No. RIC1710168)*. The matter was finally approved for settlement by the Hon. Raquel A. Marquez on January 15, 2019 in the gross amount of $3,000,000.

h. *Amster et al. vs. Starbucks Corporation*, *San Bernardino County Superior Court (Case No. CIVDS1922016*). This PAGA settlement was approved by the Hon. Donald Alvarez on July 14, 2020 in the gross amount of $3,000,000.

i. *Chavez and Melendez vs. CAM-BAS, INC. et al.*, *Santa Clara County Superior Court (Case No. 20CV372311)*. The matter was finally approved on April 13, 2023 by the Hon. Theodore C. Zayner in the gross amount of $3,000,000.

j. *Antonov et al. vs. GL HHR, LLC (Ken Garff Automotive) et al.*, *San Bernardino County Superior Court (Case No. CIVDS1724725)*. The matter was finally approved for settlement by the Hon. David Cohn on December 11, 2018 in the gross amount of $2,850,000.

k. *De Cruz and Irias vs. Cardenas Markets LLC, Alameda County Superior Court (Case No. 22CV005906)*. This PAGA settlement was approved by the Hon. Jenna Whitman on February 22, 2024 in the gross amount of $2,500,000.

l. Acevedo et al. vs. Deanco Healthcare, LLC, Los Angeles County Superior Court (Case No. 21STCV34724). The matter was finally approved for settlement by the Hon. William F. Highberger on April 11, 2023 in the gross amount of $2,350,000.

m. Scoggins et al. vs. Crossmark, Inc. et al., Ventura County Superior Court (Case No. 56-2017-00492936-CU-OE-VTA). The matter was finally approved for settlement by the Hon. Matthew P Guasco on January 23, 2020 in the gross amount of $2,100,000.

n. Smith et al. vs. Burlington Merchandising Corporation et al., San Bernardino County Superior Court (Case No. CIVIDS1929684). This PAGA settlement was approved by the Hon. David Cohn on October 23, 2020 in the gross amount of $2,000,000.

o. Castaing et al. vs. Hendrick Automotive Group et al., Alameda County Superior Court (Case No. RG17879115). The matter was finally approved for settlement by the Hon. Brad Seligman on June 24, 2019 in the gross amount of $1,850,000.

p. Romero Ramirez and Contreras vs. Yin Management, Inc., Sacramento County Superior Court (Case No. 34-2021-00301530-CU-OE-GDS). The matter was finally approved for settlement by the Hon. Lauri A. Damrell on September 9, 2022 in the gross amount of $1,800,000.

q. Westphal vs. New York Life Insurance Company, *Placer County Superior Court (Case No. S-CV-0040532)*. The matter was finally approved for settlement by the Hon. Michael Jones on September 11, 2018 in the gross amount of $1,701,366.

r. Williams vs. Kaiser Foundation Health Plan, Inc., Alameda County Superior Court (Case No. RG 18917898). The matter was finally approved for settlement by the Hon. Stephen Klaus on August 19, 2020 in the gross amount of $1,250,000.

s. Vega vs. Cen Cal Plastering, Inc., San Joaquin County Superior Court (Case No. STK-CV-UOE-2021-0005440). The PAGA Settlement was approved by the Hon. George J. Abdallah on April 13, 2022 in the gross amount of $1,200,000.

t. Berbano and Centeno vs. Ingram Micro, Inc., *San Bernardino County Superior Court (Case No. CIVDS1826805)*. The matter was finally approved for settlement by the Hon. David Cohn on September 17, 2019 in the gross amount of $1,180,000.

u. Chiefer and Goldenberg vs. WHGM, Inc. (Keyes Motors), *Los Angeles County Superior Court (Case No. LC106505*). The matter was finally approved for settlement by the Hon. Rupert A. Byrdsong on September 21, 2018 in the gross amount of $1,150,000.

v. Hollis vs. Union Pacific Railroad Co., *Central District of California* No. 5:17-Cv-02449-JGB (SHKx)). The matter was finally approved for settlement by the Hon. Jesus G. Bernal on September 19, 2018 in the gross amount of $1,083,965.

w. Myers vs. Mor Furniture for Less, Inc., *San Diego County Superior Court (Case No. 37-2018-00055055-CU-OE-NC)*. The PAGA Settlement was approved by the Hon. Ronald Frazier on November 27, 2018 in the amount of $1,062,000.

x. Grotte vs. Normal Life of California, Inc. et al., *San Luis Obispo County Superior Court (Case No. 18CV-0672)*. The matter was finally approved for settlement by the Hon. Tana L. Coates in the gross amount of $1,050,000 on June 24, 2020.

y. Wilson et al. vs. DGDG 1, LLC et al. (Del Grande Automotive Group), Santa Clara County Superior Court (Case No. 2018-1-CV-331434). The matter was finally approved by the Hon. Thomas E. Kuhnle on January 17, 2020 in the gross amount of $1,024,963.71.

z. Chachavac vs. Kumar Management Corporation, *San Mateo County Superior Court (Case No. 22-CIV-03110)*. The matter was finally approved by the Hon. Nancy L. Fineman on April 16, 2024 in the gross amount of $1,000,000.

aa. Perea vs. Drybar Holdings LLC, Los Angeles County Superior Court (Case No.BC703413). The matter was finally approved for settlement by the Hon. Yolanda Orosco on September 9, 2019 in the amount of $1,000,000.

bb. Ali vs. Auto Nation, Inc. et al., San Diego County Superior Court (Case No. 37-2018-00037616-CU-OE-CTL). The PAGA settlement was approved by the Hon. Ronald Frazier on November 14, 2019 in the gross amount of $851,000.

cc. Qunicho vs. Café Rio, San Bernardino County Superior Court (Case No. CIVDS2011822). The PAGA settlement was approved by the Hon. Janet Frangie on December 14, 2021 in the gross amount of $835,000.

dd. Zamudio vs. Changing Lives Staffing et al, San Bernardino County Superior Court (Case No. CIVSB2120359). The matter was finally approved for Settlement by the Hon. Joseph T. Ortiz on September 13, 2023 in the gross amount of $820,041.32.

ee. Ashe vs. Farmers Insurance Exchange et al., Los Angeles County Superior Court (Case No. 18STCV00453). This Fair Credit Reporting Act class action was finally approved by the Hon. Steven J. Kleifield on August 6, 2020 in the gross amount of $800,000.

ff. Anderson vs. ABC Phones of North Carolina, Inc., Contra Costa County Superior Court (Case No. MSC20-00957). The PAGA settlement was approved by the Hon. Edward G. Weil on August 31, 2021 in the gross amount of $790,000.

gg. Martinez vs. Vieira Agricultural Enterprises, LLC, *Merced County Superior Court (Case No. 19CV-04603)*. The matter was finally approved for settlement by the Hon. Brian McCabe on February 26, 2021 in the gross amount of $775,000.

hh. Pia vs. 5G's Automotive, Inc., *Tulare County Superior Court (Case No. VCU274628)*. The matter was finally approved for settlement by the Hon. Brett Hillman on September 6, 2019 in the gross amount of $750,000.

ii. Herrera vs. Inland Staffing et al., *San Bernardino County Superior Court (Case No. CIVDS2924284).* The matter was finally approved for settlement by the Hon. David S. Cohn on March 10, 2021 in the gross amount of $750,000.

jj. Kennedy vs. 99 Cents Only Stores, LLC, *Los Angeles County Superior Court (Case No. 19STCV09311)*. The PAGA settlement was approved by the Hon. Anthony Mohr on November 19, 2019 in the gross amount of $700,000.

kk. Ramirez vs. Hall Management Corp., San Luis Obispo County Superior Court (Case No. 22CVP-0065). Judgment was entered on the finally approved settlement by the Hon. Craig van Rooyen on September 19, 2024 in the gross amount of $698,734.73.

ll. Sumlin vs. BNSF Railway Company, *San Bernardino County Superior Court (Case No. CIVDS1724126)*. The matter was finally approved for settlement by the Hon. David Cohn on September 5, 2018 in the gross amount of $675,000.

mm. *Brown vs. Saks and Company, LLC*, *Central District of California* (CV 17-04210 SJO (JEM)). This matter was finally approved for settlement by the Hon. S. James Otero on March 22, 2018 in the gross amount of $638,800.

nn. De La Hoya vs. Sierra West Finish, Inc., *San Bernardino County Superior Court (Case No. CIVSB2107351)*. The matter was finally approved for settlement by the Hon. David Cohn on July 13, 2022 in the gross amount of $625,000.

oo. Myers vs. LBC Limited Partnership, *San Bernardino County Superior Court (Case No. CIVDS 1715068)*. The matter was finally approved for settlement by the Hon. Janet Frangie on July 25, 2018 in the gross amount of $600,000.

pp. Bunkley vs. DMSD Foods et al., San Diego County Superior Court (Case No. 37-2020-00017973-CU-OE-CTL). This PAGA settlement was approved on July 9, 2021 by the Hon. Richard E. L. Strauss in the gross amount of $595,000.

qq. Garcia vs. Grower Direct Nut Company, Inc, Stanislaus County Superior Court (Case No. CV-21-005425). This matter was finally approved by the Hon. John D. Freeland on May 19, 2023 in the gross amount of $553,520.

rr. Garcia vs. Optima Tax, Orange County Superior Court (Case No. 30-2019-01082473-CU-OE-CXC). This PAGA settlement was approved on July 31, 2020 by the Hon. William Claster in the gross amount of $550,000.

6. I also have experience with contested class certifications having successfully overseen the class certification in *Amaro v. Gerawan Farming, Inc.*, No. 1:14-CV-00147-DAD-SAB (E.D. Cal. May 19, 2016). I personally drafted the motion for class certification, the reply in support of class certification, and the opposition to the defendant's motion for reconsideration as well as the supporting documents.

7. Based upon my experience and after factoring in the risks, I believe that this Settlement is fair and reasonable in light of the risks associated with the claims and that this Settlement should be approved. In making this determination, I weighed the benefits and risks, Defendant's potential defenses and determined the amount offered in settlement was fair and reasonable considering the risks

and the likelihood of success on the merits and BLVD Residential's financial condition. After a review of these facts, it is my opinion that the proposed settlement is in the best interest of the Class.

PROCEDURAL AND FACTUAL HISTORY

8. On January 4, 2024, Plaintiff filed a PAGA Notice with the California Labor and Workforce Development Agency. Attached hereto as **Exhibit 1** is a true and correct copy of Plaintiff's January 4, 2024 PAGA Notice.

9. On January 4, 2024, Plaintiff filed a Class Action Complaint in San Mateo County Superior Court.

10. In the January 4, 2024 Class Action Complaint, Plaintiff alleged on behalf of the Class that BLVD Residential: 1) failed to pay minimum wages for all hours worked; 2) failed to pay overtime wages and/or at the proper rate; 3) failed to provide meal periods and/or pay meal period premiums at the correct rate; 4) failed to provide rest periods and/or pay rest period premiums at the correct rate; 5) failed to provide accurate itemized wage statements; 6) failed to timely pay all wages owed upon separation including both derivative and non-derivative claims as well as based upon the alleged failure to calculate sick pay at the correct rate; and 7) engaged in unfair competition in violation of Bus. & Prof. Code § 17200; and also sought PAGA penalties for BLVD Residential's alleged violations of Labor Code §§ 201, 202, 203, 204, 210, 226, 226.2, 226.3, 510, 558, 1174, 1174.5, 1194, 1197, 1197.1, and 1198 as well as IWC Wage Order No. 5-2001 and/or other applicable wage orders. Among other claims, Plaintiff alleged that Defendants failed to include housing allowances provided to Plaintiff and the other employees when calculating and paying meal/rest period premiums, calculating and paying sick pay, failed to relieve employees of all duties during meal/rest periods including refusing to allow them to smoke during their breaks, failed to timely pay all wages during and after employment, and failed to provide accurate itemized wage statements.

11. Plaintiff filed the First Amended Complaint on March 12, 2024 adding the PAGA claims.

12. The Parties mediated the matter with third-party mediator Mark Peters on October 21, 2024.

13. The Parties were unable to reach a settlement at the Mediation and proceeded with the

litigation.

14. After negotiations following the first Mediation concluded without a resolution, Plaintiff propounded formal written discovery on November 19, 2024 including Special Interrogatories, Requests for Production, Requests for Admission, and General Form Interrogatories.

15. Following the receipt of BLVD Residential's initial discovery responses, Plaintiff added individual Defendant Debra O'Toole to this Action via a Doe Amendment on January 2, 2025.

16. Unfortunately, BLVD Residential's financial challenges caused it to have to restructure its payment plan in a prior class action called *Tavera vs. BLVD Residential Inc*., Sacramento County Superior Court Case No. 34-2022-00327501, and rendered it difficult to conduct meaningful settlement discussions.

17. Eventually BLVD Residential and the Parties in the prior *Tavera* case, whose class and PAGA period predate this settlement, agreed to a restructured payment plan allowing the Parties in this Action to engage more meaningfully in settlement discussions.

18. Following resolution of the *Tavera* payment plan issues, the Parties continued to discuss the possibility of settlement and agreed to attend a second mediation and were ultimately able to resolve this matter through direct negotiations in advance of the scheduled second mediation. Attached hereto as **Exhibit 2** is a true and correct copy of the Parties' Joint Stipulation of Class Action and PAGA Settlement.

19. BLVD Residential provided informal discovery in advance of the first mediation, responded to some of Plaintiff's formal discovery requests, and supplemented the information it provided to Plaintiff in preparation for the second mediation.

20. Plaintiff hired a damages expert to analyze the time and pay records produced by Defendants in advance of the first Mediation in order to ascertain the violation rates and the value of the claims. Since the proposed release period extends beyond the date of the first mediation, Plaintiff reengaged the third-party expert to perform a supplemental analysis in advance of preliminary approval.

21. Since the proposed release period extends beyond the date of the first mediation, Plaintiff reengaged the third-party expert to perform a supplemental analysis in advance of

preliminary approval.

22. I participated in the drafting of the February 3, 2025 Joint Case Management Statement in this Case. Attached hereto as **Exhibit 3** is a true and correct copy of the February 3, 2025 Joint Case Management Statement.

23. The Parties structured the payment plan in this Action in an effort to minimize the risk of a default, avoid complications from *Tavera*—whose payment plan concludes before the commencement of the payment plan in this Action—to provide the Class with additional financial security beyond that typically available in a class action settlement, and afford the Class some protections in the event of a bankruptcy.

24. I reviewed and considered BLVD Residential's 2023 tax return, BLVD Residential's 2023 Profit & Loss Statement, BLVD Residential's 2023, Balance Sheet BLVD Residential's 2024 Profit & Loss Statement, and BLVD Residential's 2024 Balance Sheet.

THE PROPOSED SETTLEMENT

25. The Settlement provides for Defendants to pay a Gross Settlement Amount of $300,000.00. Pursuant to the Settlement Agreement, Class Counsel proposes the following allocation of the Settlement to determine the Net Settlement Amount:

Gross Settlement Amount:	$300,000.00
Attorneys' Fees (1/3):	up to $100,000.00
Estimated Litigation Costs:	up to $22,000.00
Estimated Service Award:	up to $5,000.00
Estimated Cost of Administration:	up to $12,000.00
PAGA Payment To the LWDA ($30,000 total in PAGA Penalties):	$22,500.00
Estimated Net Settlement Amount Including Employees' $7,500 Share of PAGA Penalties	**$138,500.00**

26. The estimated average net settlement award each Class Member is expected to receive when including the aggrieved employee's $7,500 share of PAGA penalties is approximately $330.55 ($138,500.00/419 Class Members), the maximum estimated net settlement award is estimated to be approximately $603.99 ((84 workweeks[1] during the class period/19,262 total workweeks) x $138,500.00), and the minimum estimated settlement award is estimated to be approximately $7.19 ((1 workweek worked during the class period/19,262 total workweeks) x $138,500.00). The average estimated net settlement amount when excluding the employee's share of PAGA penalties is estimated to be approximately $312.65 ($131,000.00/419 Class Members).

27. In my opinion, the proposed method of allocation is fair and reasonable.

THE NOTICE PROCESS

28. The Parties have agreed to use a reputable third-party claims administrator ILYM Group, Inc. ("ILYM") to administer the Settlement.

29. Defendants must provide ILYM Group, Inc. with the Class List and Notice data within fourteen (14) days of the Preliminary Approval Order.

30. I participated in the drafting of the Class Notice. Attached hereto as **Exhibit 4** is a true and correct copy of the Parties' agreed upon proposed Class Notice.

31. With respect to those Class Members whose Notice of Settlement is returned to the Settlement Administrator as undeliverable, the Settlement Administrator shall resend the class notice to any available forwarding address and run a skip-trace in an effort to attempt to ascertain the current address of the Class Member.

32. The LWDA was also provided with a copy of the proposed Settlement as required by PAGA. Attached hereto as **Exhibit 5** is a true and correct copy of the email confirmation received from the LWDA following the submission of the Settlement Agreement.

THE PROPOSED SETTLEMENT IS FAIR AND SHOULD BE APPROVED

33. In my opinion, the Proposed Settlement represents a favorable resolution of the Class claims based upon the unique facts of this case.

[1] There are approximately 84 workweeks between Friday, August 11, 2023 and Saturday, March 22, 2025.

34. In my opinion, the proposed settlement offers meaningful relief for Class Members despite Defendant BLVD Residential's financial challenges.

THE STRENGTH OF PLAINTIFFS' CASE

35. Plaintiff alleged that Defendants required and/or suffered and permitted or expected Plaintiff and the Class to perform off-the-clock work and interrupted Plaintiff and the other employees' meal periods. In addition, Plaintiff alleged that residents of the buildings managed by BLVD Residential would frequently disturb Plaintiff and the Class while they were off-the-clock (including during meal periods) and Defendants both required and/or suffered and permitted Plaintiff and the other employees to perform off-the-clock work. Plaintiff also alleged that Defendants regularly and consistently failed to pay Plaintiff and the Class for all hours worked, including, but not limited to, due to its policy and practice of not paying the employees for required and/or expected pre-shift activities, not paying employees for required and/or expected post-shift activities, impermissibly rounding employees' time entries (including start times, time entries associated with meal periods, and stop times), failing to pay minimum wages in accordance with the local municipal wage ordinances in effect for their job assignments, automatically deducting the time associated with meal periods regardless of whether or not the employee received a meal period, for the time associated with filling up gas and/or replacing gas consumed in the discharge of the employee's job duties, picking up supplies, and the time associated with off-the-clock due to Defendant's communications (whether by phone call, email, text message, or other method).

36. In my opinion, significant risk existed that the Court might find that the claims were not certifiable or that a common method of proof did not exist as even the plaintiff's failed to certify the claims in *Troester* on remand.

37. I have reviewed the Order Granting Defendant's Motion for Partial Summary Judgment and Denying Plaintiff's Motion for Class Certification. Attached hereto as **Exhibit 6** is the Order Granting Defendant's Motion for Partial Summary Judgment and Denying Plaintiff's Motion for Class Certification from *Troester vs. Starbucks Corporation*, U.S.C.D. Case No. CV 12-07677-CJC(PJWx).

38. Plaintiff's data and damages expert determined the maximum value of the minimum wage claim to be $178,957.00 when including interest.

39. I determined the reasonable risk adjusted settlement value of the minimum wage claim to be $7,158.28 calculated as follows: $178,957.00 x .5 (50% chance that Plaintiff would certify this class) x .5 (50% chance that Plaintiff would prevail on the merits) x .4 (60% chance that Defendants would decertify the claims if they were certified given the off-the-clock nature of the claims) x .4 (60% chance that the continued litigation could deplete Defendants' financial resources potentially leading to no recovery).

40. Plaintiff alleged that Defendants violated California's overtime laws for the same reasons as with their minimum wage claims and also that Defendant sometimes failed to include the housing allowances when calculating and paying overtime wages.

41. In my opinion, as with the minimum wage claims, considerable risk existed that the Court might find that this claim was not certifiable or that a common method of proof did not exist as even the plaintiff's failed to certify the claims in *Troester* on remand.

42. In my opinion, less risk existed with respect to the issues related to the alleged occasional failure to include housing allowances when calculating and paying overtime wages.

43. Plaintiff's data expert calculated the non-risk adjusted value of the overtime claim to be $140,571.00.

44. I determined the reasonable risk adjusted settlement value of the overtime claims to be $22,491.36 calculated as follows: $140,571.00 x .5 (50% chance that Plaintiff would certify this class) x .8 (80% chance that Plaintiff would prevail on the merits) x .4 (60% chance that the continued litigation could deplete Defendants' financial resources potentially leading to no recovery).

45. Plaintiff alleged that BLVD Residential failed to authorize and permit Plaintiff and the Class to receive lawful meal periods and failed to include the housing allowances when calculating and paying meal period premiums. BLVD Residential maintained two meal period policies, neither of which advised the Class of their right to take a meal period within the first five hours of their shift or that they were entitled to a second meal period if they worked a shift in excess of ten (10) hours.

46. Defendant BLVD vehemently disputed that its meal period policy violated California law; however, BLVD Residential stated in its formal discovery responses that it failed to correctly calculate the amount of meal period premiums and overtime wages, but alleged that the issue was

limited to a combined 1,103 pay periods when also taking into account the alleged sick pay underpayments and that there was at least some payment made at the employee's lower hourly base rate such that the damages were minimal.

47. Plaintiff's data expert determined that there were approximately 12,354 first meal periods that started after the 5th hour and that there were 1,524 shifts where employees worked a shift of more than 10 hours without receiving a second meal period.

48. Based upon the data expert's analysis, the formal and informal discovery showed that Defendant BLVD made some efforts to comply with California's meal period laws including by paying approximately $272,787.31 in meal period premiums. Plaintiff's data expert determined the maximum value of the meal period claim when including offsets for the meal period premiums already paid to the Class Members and excluding facially short meal periods that were likely not viable on a class basis due to the recent decision in *Allison v. Dignity Health*, 112 Cal. App. 5th 192 (2025) to be $155,052.00.

49. I determined the reasonable risk adjusted settlement value of this claim to be $35,723.98 calculated as follows: $155,052.00 x .8 (80% chance that Plaintiff would certify this class) x .8 (80% chance that Plaintiff would prevail on the merits) x .9 (10% chance that Defendants would decertify the claims if they were certified) x .4 (60% chance that the continued litigation could deplete Defendants financial resources potentially leading to no recovery).

50. Plaintiff alleged that BLVD Residential failed to provide Plaintiff and the Class with rest periods of not less than ten (10) minutes for every major fraction of four (4) hours worked. Instead, Plaintiff alleged that BLVD Residential regularly and consistently required them to forgo rest periods and/or required them to remain on the premises and failed to relieve them of all duties. This includes, but is not limited to, failing to advise Plaintiff and the other Class Members of their right to take a second rest period when they worked shifts in excess of six (6) hours, but less than eight (8) hours and of their right to a third rest period when they worked more than ten (10) hours. Plaintiff further alleged that BLVD Residential failed to relieve Plaintiff and the other Class Members of all of their duties because it prohibited them from smoking anywhere on the premises including during their breaks and while off-the-clock. Plaintiff even received a write-up for not smoking near the street area.

51. During the pendency of this Action, the California Supreme Court issued its decision in *Huerta v. CSI Electrical Contractors*, 15 Cal. 5th 908, 915 (2024) addressing when an employee's time spent on an employer's premises may be considered compensable time. The Court specifically addressed similar restrictions on smoking on the employer's premises while off-the-clock and determined that such restrictions were not sufficient to establish sufficient control to deem the time compensable. *Huerta*, 15 Cal. 5th at 928-929 ("warehouse employee who drives onto the employer's grounds may be subject to speed limits, parking rules, and restrictions on noise, smoking, littering, paths of travel, or other conduct…"). As such, in my opinion, a reasonable chance existed following the decision in *Huerta* that Defendants would prevail on at least some of the rest period-related claims. While I still believed that Plaintiff might potentially be able to certify the fractional rest period claims where employees worked shifts in excess of six hours, but less than eight hours, and the third rest period claim for shifts worked in excess of ten hours, in my opinion, considerable risk existed that such claims would not be certifiable due to the absence of records showing whether or not employees received rest periods.

52. In my opinion, it was also possible that the Court could find that individualized issues existed or that no common method of proof existed as an appellate court did in *Cacho v. Eurostar, Inc.*, 43 Cal.App.5th 885 (2019). While the California Supreme Court depublished *Cacho*, it did not grant review of the decision meaning that at least a modest degree of risk existed that another court might reach the same factual conclusions as the *Cacho* trial court even if *Cacho* itself is not good law. And, as discussed below, at least to some extent a similar risk was recently realized in *Allison*, 112 Cal. App. 5th at 206.

53. In my opinion, significant risk existed that the rest period claims might not be certified by the Court and/or that Defendants might prevail on the merits of the rest period claims based upon the unique facts of this case.

54. Plaintiff's third-party data expert calculated the non-risk adjusted value of the rest period claim to be $2,381,662.00.

55. I determined the reasonable risk adjusted settlement value of the rest period claims to be $30,485.28 calculated as follows: $2,381,662.00 x .4 (40% chance that Plaintiff would certify this

class) x .2 (80% chance that the Court might decertify the rest period claims based upon *Allison*) x .4 (40% chance that Plaintiff would prevail on the merits after *Huerta*) x .4 (60% chance that the continued litigation could deplete Defendants' financial resources potentially leading to no recovery).

56. Plaintiff alleged both derivative and non-derivative wage statement claims. The non-derivative wage statement claims stem from Defendants' alleged practice of including categories of pay that require information about the hours and rate for which there is none. For example, for the pay period of October 22, 2023 to November 4, 2023, Plaintiff alleges that he received a wage statement that listed his MealPen Prem at $1.00, but included no rate, hours, or amounts. With respect to the derivative wage statements claims, if Plaintiff prevailed on his minimum wage or overtime claims, Plaintiff was confident that the Class would certify and prevail on the derivative wage statement claims.

57. Although I believed less risk existed that the Court might find that Defendants acted in good faith since Defendant BLVD faced the same claims in the prior *Tavera* action, some risk still existed that the Court might find that Defendants acted in good faith.

58. Plaintiff's data expert determined the non-risk adjusted value of this claim was $942,750.00.

59. I determined the reasonable risk adjusted settlement value of the wage statement claim as of the time of settlement to be $179,122.50 calculated as follows: $942,750.00 x .95 (95% chance that Plaintiff would certify at least one of the other Classes and/or this class on the non-derivative wage statement claim) x .5 (50% chance that Plaintiff would prevail on the merits) x .4 (60% chance that the continued litigation could deplete Defendants' financial resources potentially leading to no recovery).

60. Plaintiff also alleged that Defendants violated Labor Code §§ 201-202 with respect to those Class Members whose employment ended because they left their employment without receiving all minimum wages, overtime wages, meal period premiums, rest period premiums, and sick pay wages owed. Since these claims were derivative in nature, Defendants possessed the same defenses to these claims as with the underlying claims.

61. Plaintiff's data expert determined without taking into account the risks associated with the claim that the maximum value of the waiting time penalty claim was $1,173,146.00

62. I determined the reasonable risk adjusted settlement value of the waiting time penalty claim to be $211,752.86 calculated as follows: $1,173,146.00 x .95 (95% chance that Plaintiff would certify this class based upon at least one of the alleged violations) x .95 (95% chance that Plaintiff would prevail on the merits of at least one of the underlying claims giving rise to this derivative claim) x .5 (50% chance that merely offering a defense will be found to be good faith consistent with *Naranjo*) x .4 (60% chance that the continued litigation could deplete Defendants' financial resources potentially leading to no recovery).

63. Claims under Bus. & Prof. Code § 17200 are historically brought to allow the Class to go back an additional year beyond the three years directly permitted by Labor Code §§ 226.7, 510, and 1194. However, due to the prior judgment in *Tavera*, the Class cannot go back beyond the three year statutory period such that this claim has negligible monetary value, but did afford the Class the opportunity to obtain injunctive relief that has largely already been functionally achieved. In addition to the monetary relief sought, Plaintiff also sought to catalyze Defendant BLVD Residential to modify its meal/rest period and sick pay payment policies, which Plaintiff understands occurred during the pendency of this case. BLVD has represented that the alleged issues regarding the failure to include the housing allowances when calculating and paying overtime wages, meal period premiums, and sick pay have all been corrected.

64. In addition to the derivative minimum wage, overtime, meal period, rest period, wage statement, and waiting time penalty claims discussed above, Plaintiff also alleged derivative PAGA claims contending that Defendants failed to timely pay wages during employment, failed to maintain accurate time records, and failed to pay all sick pay wages owed. The same defenses existed with respect to these derivative claims as with the underlying claims.

65. As with any PAGA case, significant risk also exists with respect to the amount of PAGA penalties that a Court may award given their discretionary nature.

66. I believed that it was unlikely that the Court would award a significant amount of PAGA penalties based upon the unique facts of this case, Defendants' financial challenges, and the Class Settlement.

67. Plaintiff's data expert determined that the maximum value of the PAGA claims, assuming that Plaintiff achieved a complete and total victory and the Court declined to exercise any discretion when awarding PAGA penalties is $6,173,600.00. It is also important to note that although theoretically this is the maximum potential recovery in this action if Plaintiff achieved complete and total victory based purely upon PAGA's mathematical formulas, Plaintiff and PAGA Counsel did not believe that this constituted a remotely plausible approximation of the actual expected recovery given BLVD's significant defenses to several of the claims, the significantly lower actual violation rates, the Court's ability to decline to award stacked PAGA penalties and/or exercise its discretion to reduce the amount of PAGA penalties awarded, and Defendants' financial condition.

68. I am aware of and also considered the California Labor Commissioner's Amicus Curiae Brief in *Price v. Uber Technologies*, *Inc.*, Case No. BC554512 (Los Angeles County Superior Court). Attached hereto as **Exhibit 7** is a true and correct copy of the Labor Commissioner's Brief from *Price v. Uber Technologies*, *Inc.*, Case No. BC554512 (Los Angeles County Superior Court).

THE RISK, EXPENSE, COMPLEXITY, AND LIKELY DURATION OF FURTHER LITIGATION

69. There are also always risks attendant to wage and hour cases given the evolving nature of such claims.

70. Given the ever-evolving landscape of wage and hour law, there are always risks that a new case will come out that will clarify and/or potentially limit employees' claims. For example, although generally it was well-established that employees could recover both wage statement and waiting time penalties based upon an employer's failure to provide lawful meal/rest periods, the California Court of Appeal decided in 2019 that held that such penalties are not recoverable before it was later overturned by the California Supreme Court and then led to another additional decision within the same case clarifying its ruling before the California Supreme Court. Similarly, in another decision the California Court of Appeal held that employers could pay employees meal/rest period premiums at the employee's hourly base rate instead of at their regular rate before that decision was also overturned

by the California Supreme Court. *Ferra v. Loews Hollywood Hotel, LLC*, 40 Cal. App. 5th 1239 (2019) rev'd, 11 Cal. 5th 858 (2021). While Plaintiff was confident that he would prevail on his claims based upon present law, the plaintiffs in *Ferra* and *Naranjo* likely believed they would have as well prior to the California Court of Appeal's rulings and before each matter was eventually reversed by the California Supreme Court. While Plaintiff acknowledges that the California Supreme Court reversed in both cases, each nevertheless are emblematic of the inherent risk associated with litigating wage and hour cases and the fact that a new appellate decision can dramatically alter the strength of the employees' claims at any time. Indeed, *Naranjo* was appealed a second time to the California Supreme Court during the pendency of this Action where the Court ruled in the employer's favor. *Naranjo v. Spectrum Sec. Servs., Inc*., 15 Cal. 5th 1056, 1064 (2024). PAGA itself was also amended during the pendency of this Action. And, the California Supreme Court also issued its decision in *Huerta v. CSI Electrical Contractors*, 15 Cal. 5th 908, 915 (2024) during the pendency of this Action, which directly impacted the strength of some of the rest period claims at issue. Further as the Court knows, considerable risk also existed due to Defendants' financial condition that led to the restricting of the prior *Tavera* settlement.

THE RISK OF MAINTAINING CLASS ACTION STATUS THROUGH TRIAL

71. This case has not been certified to be tried as a class action. While there is evidence to support certification, certification is always hard fought and subject to judicial discretion. Moreover, in class actions, decertification is always a possibility.

72. In attempting to certify a class, the Parties would need to conduct deposition of the named Plaintiff and of the person most knowledgeable regarding Defendants' policies and practices related to the claims and expert surveys. There is a risk for both sides as to what these depositions will reveal and whether they will support class certification.

THE AMOUNT OFFERED IN SETTLEMENT

73. Based upon the work performed by his third-party data expert, I determined the maximum exposure on the claims to be $11,145,738.00. However, I did not believe that this presented a remotely realistic outcome given Defendants' significant defenses and the Court's discretion with respect to the PAGA penalties. Further, while the reasonable risk adjusted settlement value of the

claims at first glance is higher on a purely mathematical approach than the proposed settlement ($300,000.00 Gross Settlement Amount/ $486,734.26 risk adjusted value), this does not take into account the additional risks that exist independent of the value of the claims due to Defendants' financial condition.

74. In evaluating the reasonableness of the settlement offers, I considered both my own experience with wage and hour litigation as well as similar settlements obtained by other firms and the unique issues applicable to this case. In the instant action, Plaintiff and I negotiated a monetary gross settlement of approximately $715.99 per employee ($300,000.00/419 Class Members) and an estimated average net settlement amount of approximately $330.55 per employee ($138,500.00/419 Class Members).

75. After weighing the other benefits and risks associated with each of the claims in light of the factual challenges as well as Defendants' potential defenses and Defendants' financial condition, I determined that the amount offered in settlement was fair and reasonable considering the risks and the likelihood of success on the merits.

THE EXPERIENCE AND VIEWS OF COUNSEL

76. I have extensive experience with litigating class and representative wage-and-hour cases and have served as Class and/or PAGA Counsel in numerous wage and hour class actions.

77. I weighed the strengths and risks of the claims, and believe that this is a fair and reasonable settlement in light of the nature of the claims, the realistic risk adjusted value of damages, the complexities of the case, the state of the law, and the uncertainties of class certification and litigation.

78. After factoring in the risks explained herein, I believe that the proposed Settlement is fair and reasonable.

THE PROPOSED PLAN OF ALLOCATION IS FAIR AND REASONABLE

79. Plans of allocation are subject to the same standard of review as class action settlements; they must be "fair, adequate and reasonable." *See e.g., Officers for Justice v. Civil Service Comm'n*, 688 F.2d 615, 624–625, 629–630 (9th Cir. 1982).

80. Here, the Net Settlement Amount shall be allocated among Settlement Class members

on a pro rata basis based upon the number of workweeks worked during the Class Period. The proposed method of allocation is fair and reasonable and reflects the strength and value of the claims at issue in this Action as well as the length of time each Class Member worked during the Class Period and suffered the alleged Labor Code violations. In my opinion, the proposed method of allocation is fair and reasonable.

81. The tax treatment of the Settlement was a matter of negotiation between the Parties. The tax allocation within the Settlement Agreement reflects a compromise of the Parties' differing views as to the values of each claim and the strength of the claims as opposed to merely Plaintiff or Class Counsel's opinion.

82. The proposed PAGA allocation reflects the meaningful monetary relief recovered through the Proposed Settlement.

THE PROPOSED NOTICE FAIRLY APPRISES THE CLASS MEMBERS OF THE TERMS OF THE SETTLEMENT AND OF THE CLASS MEMBERS' RIGHTS UNDER THE SETTLEMENT

83. The standard for determining the adequacy of notice is whether the notice has "a reasonable chance of reaching a substantial percentage of the class members." *Cartt v. Sup. Ct.*, 50 Cal. App. 3d 960, 974 (1975). With respect to the contents of the Notice of Settlement, the "notice given to the class must fairly apprise the class members of the terms of the proposed compromise and of the options open to dissenting class members." *Trotsky v. L.A. Fed. Sav. & Loan Ass'n*, 48 Cal.App.3d 134, 151–52 (1975).

84. Class Members will receive a detailed notice that provides class members with sufficient information to decide whether they should accept the benefits offered, opt out and pursue their own remedies, or object to the Settlement.

85. The proposed notice will be distributed in English and Spanish.

86. In my opinion, the Court should approve the proposed Notice of Settlement because it describes the proposed Settlement with enough specificity to allow Class Members to make an informed choice regarding whether to participate.

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THE PROPOSED SETTLEMENT CLASS SHOULD BE CERTIFIED FOR SETTLEMENT PURPOSES

87. Plaintiff contends that that the proposed Class Members suffered the same injuries in the same manner. In addition, during formal discovery, Defendant represented that every proposed class member received a common document titled "Employment Agreement" that contained Defendants' minimum wage, overtime, meal period, and rest period policies.

88. In the case at hand, Plaintiff contends that there are clear and common questions of law and fact that can be decided with one stroke:

a. Whether Defendants failed to pay minimum wages for all hours worked;

b. Whether Defendants failed to pay wages and/or overtime compensation and at the correct rate as required by Labor Code § 510;

c. Whether Defendants violated Labor Code §§ 226.7 and 512 as well as IWC Wage Order No. 5-2001, by failing to authorize and permit the Class to take lawful meal periods and/or to pay meal period premiums (including at the correct rate);

d. Whether Defendants violated Labor Code § 226.7 and IWC No. 5-2001 by failing to authorize and permit the Class to take lawful rest periods and/or to pay rest period premiums (including at the correct rate);

e. Whether Defendants violated Labor Code § 226(a) and (e) by failing to provide accurate itemized wage statements that accurately indicate the gross wages earned, total hours worked, the net wages earned, as well as all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee;

f. Whether Defendants violated §§ 201-203 of the Labor Code by failing to pay compensation due and owing at the time that Class Members' employment with Defendants concluded;

g. Whether Defendants violated § 17200 et seq. of the Business & Professions Code by engaging in the acts previously alleged against the Class;

89. Plaintiff contends that the proposed Class Members suffered the same injuries, in the same manner: they were not paid minimum wages for all hours worked, they were not paid all overtime

wages owed, they were not provided with lawful meal periods or lawful rest periods or paid meal/rest period premiums at the correct rate, were not provided with accurate itemized wage statements, and were not paid all wages owed at the end of their employment.

90. In my opinion, class certification is appropriate because the proposed Class Members worked in the same capacity for the same employer and were subject to the same employment policies and practices. Plaintiff also contends that the questions of fact and claims are the same for each member of the class. In this case, I believe that the methods of proof to be used will be similar across the class. As such, in my opinion, a class action will avoid duplication of legal and judicial resources that would result if the class is not certified. For instance, I believe that Plaintiff can establish that common questions of law and fact predominate including through the common policies found in the "Employment Agreements."

ATTORNEYS FEES' AND COSTS

91. I am familiar with the contingent fee market throughout California, particularly as it pertains to complex employment, wage and hour, and class action litigation. During this litigation, my firm litigated this case without receiving any payment for my services or reimbursement of my firm's costs incurred for the benefit of the Class, the state of California, and the aggrieved employees.

92. Winston Law Group, P.C. has never been paid any money for attorneys' fees in this case and has advanced costs.

93. There are always risks attendant to billing cases on a contingency basis. It is not a foregone conclusion that every case taken on a contingency fee basis will result in a recovery or that the attorneys' fees recovered will actually compensate my firm for the amount of time expended in an action. Moreover, even when successful, a class action contingency law firm may only receive a small percentage of the amount of attorneys' fees incurred during the prosecution of a case. Where plaintiffs' counsel does succeed, therefore, it is appropriate to compensate the firm for the risks the firm regularly undertakes. There is also always the possibility that the Plaintiff will not prevail and Class Counsel will not receive any compensation for its services and/or that the Defendant will declare bankruptcy or lack the assets necessary to satisfy any judgment obtained against it.

94. When awarding attorneys' fees, courts have discretion to choose among two different methods for calculating a reasonable attorney's fees award: 1) the common fund approach; or 2) the lodestar approach *See Laffitte v. Robert Half Int'l Inc.*, 1 Cal.5th 480, 504, (2016) ("The choice of a fee calculation method is generally one within the discretion of the trial court, the goal under either the percentage or lodestar approach being the award of a reasonable fee to compensate counsel for their efforts.") In *Laffitte*, the California Supreme Court held that "[t]he recognized advantages of the percentage method – including relative ease of calculation, alignment of incentives between counsel and the class, a better approximation of market conditions in a contingency case, and the encouragement it provides counsel ***to seek an early settlement and avoid unnecessarily prolonging litigation*** – convince us the percentage method is a valuable tool that should not be denied by our trial courts." *Id.* (emphasis added). Similarly, the Ninth Circuit has found that counsel should not "receive a lesser fee for settling a case quickly." *Vizcaino v. Microsoft Corp*., 290 F.3d 1043 (9th Cir. 2002).

95. California Courts have consistently found that "fee awards in class actions average around one-third of the recovery'" regardless of "'whether the percentage method or the lodestar method is used.'" *Anaheim Arena Mgmt., LLC*, 69 Cal. App. 5th 521, 545 (2021)("'[F]ee awards in class actions average around one-third of the recovery'" regardless of "'whether the percentage method or the lodestar method is used.'") (*quoting Chavez v. Netflix, Inc*., 162 Cal.App.4th 43, 66, fn. 11 (2008); *McCrary v. Elations Co., LLC*, No. EDCV 13-0242 JGB (SPx), 2016 U.S. Dist. LEXIS 24050, at *2 (C.D. Cal. Feb. 25, 2016) ("most fee awards based on either a lodestar or percentage calculation are 33%."); *McClellan v. Chase Home Fin. LLC*, No. SACV 12-1331-JGB (JEMx) 2015 U.S. Dist. LEXIS 118005, at *20 (C.D.Cal. Aug. 31, 2015) (explaining that while the attorneys' fee award that approximated 32% of all sums paid under the Settlement Agreement was reasonable after citing numerous other cases finding that an award of 33% of the common fund was common in class actions.). In reaching its decision in *McClellan*, the court recognized that "California district courts routinely award attorneys' fees in the range of 30-40% in class actions that result in the recovery of a common fund under $10 million." *McClellan*, *LLC*, No. SACV 12-1331-JGB (JEMx) 2015 U.S.Dist. LEXIS 118005, at *20 (*quoting Miller v. CEVA Logistics USA, Inc.*, No. 2:13-CV-01321-TLN, 2015 U.S. Dist. LEXIS 104704, 2015 WL 4730176, at *8 (E.D. Cal. Aug. 10, 2015) and *citing In re Mego*

Fin. Corp. Sec. Litig., 213 F.3d 454, 463 (9th Cir. 2000); *Romero v. Producers Dairy Foods, Inc.*, No. 05-0484, 2007 U.S. Dist. LEXIS 86270, 2007 WL 3492841, at *4 (E.D. Cal. Nov. 14, 2007) (awarding 33% of the settlement fund in a wage-and-hour case involving allegations of unpaid wages after explaining that "fee awards in class actions average around one-third of the recovery."); *Stuart v. RadioShack Corp*., No. C-07-4499 EMC, 2010 WL 3155645 (N.D. Cal. Aug. 9, 2010) (noting that a fee award of 1/3 of the settlement was "well within the range of percentages which courts have upheld as reasonable in other class action lawsuits."); *Singer v. Becton Dickinson and Co*., No. 08-cv-821-IEG (BLM), 2010 WL 2196104, at * 8 (S.D. Cal. June 1, 2010) (approving fee award of 33.33% of the common fund); *Boyd v. Bank of Am. Corp.*, No. SACV 13-0561-DOC (JPRx), 2014 U.S. Dist. LEXIS 162880 (C.D. Cal. Nov. 18, 2014) (awarding a 33.34% fee on a $5,800,000 settlement).

96. Based upon my experience, I believe that a common fund award is appropriate due to my firm's efficient, diligent, and skilled litigation of this Action.

PLAINTIFF'S REQUESTED SERVICE AWARD IS REASONABLE

97. Plaintiff is requesting a service award in an amount of $5,000 in recognition of the broader general release he entered into with Defendants, his time and efforts on behalf of the Class, the fact that his name could become known and it was possible that his involvement in the matter could make it more difficult for him to obtain employment in the future.

98. In my opinion, the requested service award falls well within the range of incentive payments typically awarded to Class Representatives in similar class actions. My opinion is based not only upon my experience, but also my knowledge of other cases including, but not limited to *Bond v. Ferguson Enterprises, Inc*., No. 1:09–cv–1662 OWW MJS, 2011 WL 2648879 (E.D. Cal. June 30, 2011) (approving $11,250 service award to each of the two class representatives wage and hour class action) and *Vasquez v. Coast Valley Roofing, Inc*., 266 F.R.D. 482, 493 (E.D. Cal. 2010) (approving service awards in the amount of $10,000 each from a $300,000 settlement fund in a wage/hour class action).

99. Consistent with Section 11 of the January 16, 2024 Case Management Order No. 1, the Parties met and conferred before the filing of this Motion. During the meet and confer conference, the Parties agreed that neither opposed Plaintiff's Motion for Preliminary Approval of Class Settlement.

Attached hereto as **Exhibit 8** is a true and correct copy of emails between Plaintiff and Defendants' Counsel confirming that neither Party oppose the Motion and that Defendants have agreed not to oppose Plaintiff's Motion for Preliminary Approval of Class Settlement.

100. Code of Civ. Proc. § 384 requires that any funds associated with uncashed voided checks issued as part of this settlement be paid to "nonprofit organizations or foundations to support projects that will benefit the class or similarly situated persons, or that promote the law consistent with the objectives and purposes of the underlying cause of action, to child advocacy programs, or to nonprofit organizations providing civil legal services to the indigent." In accordance with Code of Civ. Proc. § 384, the Parties propose to designate CASA of San Mateo County as the proposed *cy pres* beneficiary. Neither I nor my firm have any interest and/or involvement with the governance of CASA of San Mateo County.

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

Executed this 10th day of September 2025, in Los Angeles, California.

DAVID S. WINSTON

Exhibit 1

WINSTON LAW GROUP, P.C.

1880 CENTURY PARK EAST SUITE 511 • LOS ANGELES, CA 90067 • (424) 288-4568

Attorneys
David Winston
Lior Barkodar*

*Indicates Of Counsel

January 4, 2024

Via Online Filing with the LWDA & by Certified Mail to Defendant

BLVD Residential Inc.
4080 Campbell Avenue
Menlo Park, CA 94025

Re: Antonio Urrutia vs. BLVD Residential Inc. and/or other dbas of the above identified entities and/or other names by which these entities and/or businesses are known as BLVD Residential Inc. - California Labor Code §2699 Penalties

Gentlepersons:

This firm represents Antonio Urrutia ("Plaintiff" or "Mr. Urrutia") and a proposed group of current and former employees working for Defendant BLVD Residential Inc. and/or other dbas of the above identified entities and/or other names by which these entities and/or businesses are known as BLVD Residential Inc. ("Defendant") in California for violations of California Labor Code §§ 200, 201, 202, 203, 204, 206.5, 210, 226, 226.3, 226.7, 246-248, 256, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2802, and IWC Wage Order No. 5-2001 and/or other applicable wage order.

(1) all non-exempt employees who were employed by BLVD Residential Inc. or its predecessor, merged or related entities in California at any point from August 11, 2023 and continuing into the present. ("BLVD Non-Exempt Aggrieved Employees");

(2) all non-exempt, hourly employees who were employed by BLVD Residential Inc. or its predecessor, merged or related entities in California at any point from August 11, 2023 and continuing into the present. ("Houry Non-Exempt Aggrieved Employees");

(3) all individuals who were employed by BLVD Residential Inc. or its predecessor, merged or related entities in California as a non-exempt, hourly employee or other similar position and who worked a shift of more than eight (8) hours in a day and/or forty (40) hours in a week during a pay period from August 11, 2023 and continuing into the present. ("General Overtime Aggrieved Employees");

(4) all individuals who were employed by BLVD Residential Inc. or its predecessor, merged or related entities in California as a non-exempt, hourly employee or other

similar position and who worked a shift of more than twelve (12) hours in a day and/or forty (40) hours in a week during a pay period from August 11, 2023 and continuing into the present. ("Doubletime Overtime Aggrieved Employees");

(5) all individuals who were employed by BLVD Residential Inc. or its predecessor, merged or related entities for one or more pay periods in California as a non-exempt, hourly employee and who worked a shift of more than eight (8) hours in a day and/or forty (40) hours in a week during a period where they also received a housing allowance, non-discretionary bonus, incentive payment/pay, shift differential, hazard pay, piece rate compensation, flat sum production bonus, non-discretionary production bonus, attendance bonus, any other form of non-discretionary bonus and/or incentive payment and/or a payment under the pay codes "Housing Allow" from August 11, 2023 and continuing into the present. ("Regular Rate Overtime Aggrieved Employees");

(6) all individuals who were employed by BLVD Residential Inc. or its predecessor, merged or related entities for one or more pay periods in California as a non-exempt, hourly employee and who worked a shift of more than twelve (12) hours in a week during a period where they also received a housing allowance, non-discretionary bonus, incentive payment/pay, shift differential, hazard pay, piece rate compensation, flat sum production bonus, non-discretionary production bonus, attendance bonus, any other form of non-discretionary bonus and/or incentive payment and/or a payment under the pay codes "Housing Allow" from August 11, 2023 and continuing into the present. ("Regular Rate Doubletime Aggrieved Employees");

Collectively, aggrieved employee groups three (3), four (4), five (5), and six (6) may be referred to as the "Overtime Aggrieved Employees."

(7) all individuals who were employed by BLVD Residential Inc. or its predecessor, merged or related entities in California who worked one or more shifts of more than six (6) hours as a non-exempt, hourly employee or other similar position from August 11, 2023 and continuing into the present. ("General Meal Period Aggrieved Employees");

(8) all individuals who were employed by BLVD Residential Inc. or its predecessor, merged or related entities in California who were paid a meal and/or rest period premium within the same week that they also received a housing allowance non-discretionary bonus, incentive payment/pay, shift differential, hazard pay, piece rate compensation, flat sum production bonus, non-discretionary production bonus, attendance bonus, any other form of non-discretionary bonus and/or incentive payment and/or a payment under the pay codes "Housing Allow" from August 11, 2023 and continuing into the present. ("Meal/Rest Period Premium Aggrieved Employees");

Collectively, aggrieved employee groups seven (7) and eight (8) may be referred to as the "Meal Period Aggrieved Employees."

(9) all individuals who were employed by BLVD Residential Inc. or its predecessor, merged or related entities in California as a non-exempt hourly employee, or other similar position, who worked one or more shifts of more than four (4) hours in length or major fraction thereof from August 11, 2023 and continuing into the present. ("General Rest Period Aggrieved Employee");

Collectively, aggrieved employee groups eight (8) and nine (9) may be referred to as the "Rest Period Aggrieved Employees."

(10) all individuals who were employed by BLVD Residential Inc. or its predecessor, merged or related entities for one or more pay periods in California as a non-exempt, hourly employee and whose employment concluded at any time between August 11, 2023 and continuing into the present. ("General Late Payment Aggrieved Employees");

(11) all individuals who were employed by BLVD Residential Inc. or its predecessor, merged or related entities for one or more pay periods in California, who received sick pay, and whose employment concluded at any time between August 11, 2023 and continuing into the present; ("Sick Pay Late Payment Aggrieved Employee");

(12) all individuals who were employed by BLVD Residential Inc. or its predecessor, merged or related entities for one or more pay periods in California, who received sick pay, and whose employment concluded at any time and also received a housing allowance, non-discretionary bonus, incentive payment/pay, shift differential, hazard pay, piece rate compensation, flat sum production bonus, non-discretionary production bonus, attendance bonus, any other form of non-discretionary bonus and/or incentive payment and/or a payment under the pay codes "Housing Allow" between August 11, 2023 and continuing into the present; ("Sick Pay Incentive Pay Late Payment Aggrieved Employee");

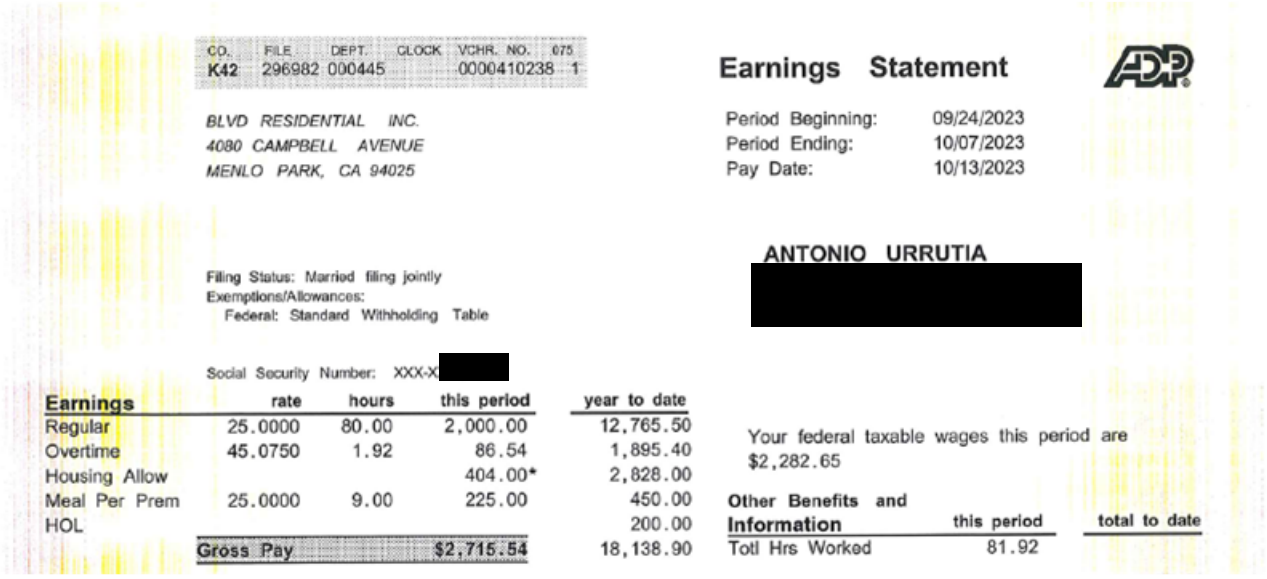
Collectively, aggrieved employee groups ten (10), eleven (11), and twelve (12) may be referred to as the "Late Payment Aggrieved Employees."

These groups may all collectively be referred to herein as aggrieved employees and/or all aggrieved employees where appropriate. The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698 *et seq.* We herein set forth some of the facts and theories of California Labor Code violations which we allege Defendant

engaged in with respect to our client and all aggrieved employees.[1] For all sections of the Labor Code referenced, Plaintiff alleges to cover and is hereby providing notice that this notice covers all theories under which claims under PAGA may be pursued, including but not limited to, as set forth in California's primary rights doctrine with respect to all such claims.

"PAGA allows an 'aggrieved employee'—a person affected by ***at least one*** Labor Code violation committed by an employer—to pursue penalties for ***all*** the Labor Code violations committed by that employer" regardless of whether or not that employee personally experienced all of the alleged violations. *Huff v. Securitas Sec. Servs. USA, Inc.*, 23 Cal. App. 5th 745, 751, 754, 761 (2018) (emphasis added).

Among other issues, Plaintiff alleges that Defendant failed to include his and the other aggrieved employees housing allowances when calculating and paying sick pay and meal/rest period premiums and instead improperly paid such amounts at the employee's hourly base rate. This occurred several times to Plaintiff during the PAGA period. For instance, for the pay period of September 24, 2023 to October 7, 2023, Defendant improperly paid Plaintiff's meal period premiums at his hourly base rate of $25.00 instead of his regular rate that included his housing allowance:



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BLVD RESIDENTIAL INC.
4080 CAMPBELL AVENUE
MENLO PARK, CA 94025

Earnings Statement

Period Beginning: 09/24/2023
Period Ending: 10/07/2023
Pay Date: 10/13/2023

ANTONIO URRUTIA
[redacted]

Filing Status: Married filing jointly
Exemptions/Allowances:
Federal: Standard Withholding Table

Social Security Number: XXX-X[redacted]

Earnings	rate	hours	this period	year to date
Regular	25.0000	80.00	2,000.00	12,765.50
Overtime	45.0750	1.92	86.54	1,895.40
Housing Allow			404.00*	2,828.00
Meal Per Prem	25.0000	9.00	225.00	450.00
HOL				200.00
Gross Pay			$2,715.54	18,138.90

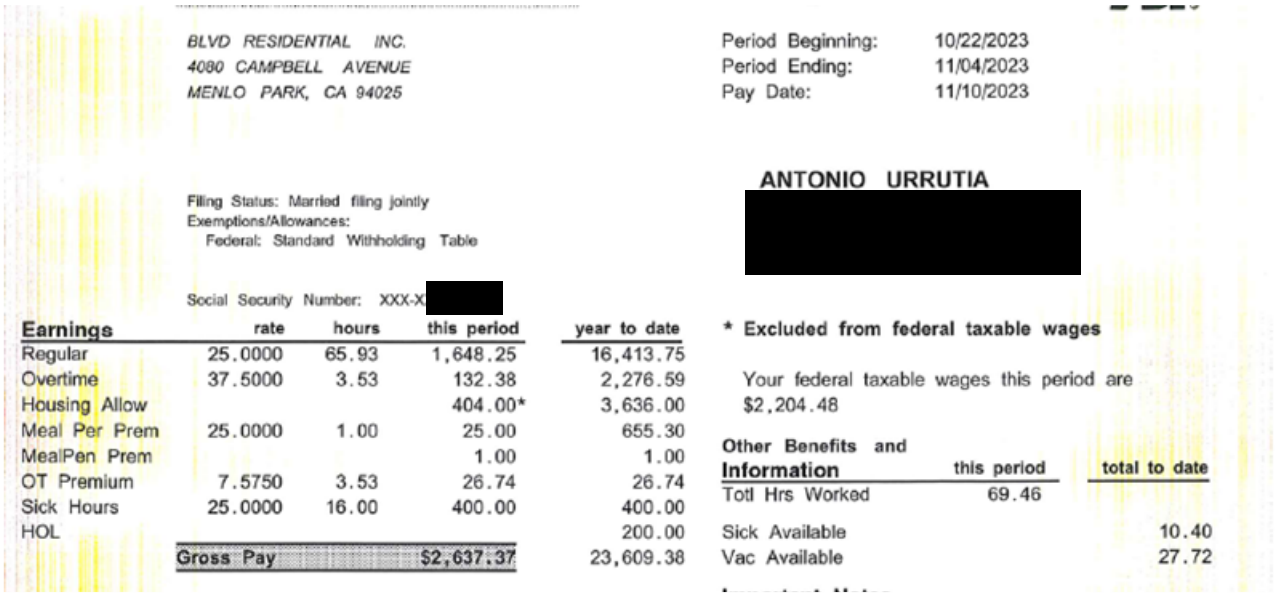
Your federal taxable wages this period are $2,282.65

Other Benefits and Information	this period	total to date
Totl Hrs Worked	81.92	

For the pay period of October 22, 2023 to November 4, 2023, Defendant improperly paid Plaintiff's meal period premiums at his hourly base rate of $25.00 instead of his regular rate that

1 See *Cardenas v. McLane FoodServices, Inc.* (C.D. Cal. Jul. 8, 2011) 796 F. Supp. 2d 1246, 1261; *Moua v. Int'l Bus. Machines Corp.* (N.D. Cal. Jan. 31, 2012) No. 5:10-CV-01070 EJD, 2012 WL 370570, at *5; *York v. Starbucks Corp.*, (C.D. Cal. Nov. 1, 2012) No. CV 08-07919 GAF PJWX, 2012 WL 10890355, at *4.

included his housing allowance despite making an adjustment to his overtime wages to include the housing allowance within this regular rate and also appears not to have calculated the overtime rates correctly either:



BLVD RESIDENTIAL INC.
4080 CAMPBELL AVENUE
MENLO PARK, CA 94025

Period Beginning: 10/22/2023
Period Ending: 11/04/2023
Pay Date: 11/10/2023

ANTONIO URRUTIA
[redacted]

Filing Status: Married filing jointly
Exemptions/Allowances:
Federal: Standard Withholding Table

Social Security Number: XXX-X[redacted]

Earnings	rate	hours	this period	year to date
Regular	25.0000	65.93	1,648.25	16,413.75
Overtime	37.5000	3.53	132.38	2,276.59
Housing Allow			404.00*	3,636.00
Meal Per Prem	25.0000	1.00	25.00	655.30
MealPen Prem			1.00	1.00
OT Premium	7.5750	3.53	26.74	26.74
Sick Hours	25.0000	16.00	400.00	400.00
HOL				200.00
Gross Pay			$2,637.37	23,609.38

* Excluded from federal taxable wages

Your federal taxable wages this period are $2,204.48

Other Benefits and Information	this period	total to date
Totl Hrs Worked	69.46	
Sick Available		10.40
Vac Available		27.72

Defendant also failed to relieve Plaintiff and the other aggrieved employees from all control during their meal and rest periods and included to exercise control over them by prohibiting them from smoking among other issues including frequent meal/rest period violations.

DEFENDANT VIOLATED AND CONTINUES TO VIOLATE LABOR CODE §§ 1194, 1197, 1197.1, 1198 AND IWC WAGE ORDER NO. 5-2001 OR OTHER APPLICABLE WAGE ORDERS

Labor Code § 1197 states the California requirement that employees must be paid at least the minimum wage fixed by the Commission or by any applicable state or local law, and any payment of less than the minimum wage is unlawful. Similarly, Labor Code § 1194 entitles "any employee receiving less than the legal minimum wage…to recover in a civil action the unpaid balance of the full amount of this minimum wage." IWC Wage Order No. 5-2001 and other applicable wage orders obligate employers to pay each employee minimum wages for all hours worked.

These minimum wage standards apply to each hour employees worked for which they were not paid. Therefore, an employer's failure to pay for any particular hour of time worked by an employee is unlawful, even if averaging an employee's total pay over all hours worked, paid or not, results in an average hourly wage above minimum wage. *Armenta*, 135 Cal.App.4th at 324.

In addition, Labor Code § 1198 provides that "the maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard

conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful."

Here, Defendant regularly and consistently required Plaintiff and the other aggrieved employees to perform off-the-clock work and interrupted Plaintiff and the other aggrieved employee's meal periods. Residences of Defendant's buildings would frequently disturb Plaintiff and the other aggrieved employees while they were off-the-clock and Defendant both required and/or suffered and permitted Plaintiff and the other aggrieved employees to perform off-the-clock work. Defendant was on notice of this off-the-clock work as Plaintiff's prior manager would frequently adjust Plaintiff's time to incorporate this off-the-clock work, but Plaintiff's new manager and based upon information and belief, Defendant's new policies and inaccurate method of timekeeping led Plaintiff and the other aggrieved employees not to receive pay for all hours worked.

Plaintiff also alleges that Defendant regularly and consistently failed to pay Plaintiff and the aggrieved employees for all hours worked, including, but not limited to, due to its policy and practice of not paying the aggrieved employees for required and/or expected pre-shift activities, not paying employees for required and/or expected post-shift activities, impermissibly rounding employees' time entries (including start times, time entries associated with meal periods, and stop times), failing to pay minimum wages in accordance with the local municipal wage ordinances in effect for their job assignments, automatically deducting the time associated with meal periods regardless of whether or not the aggrieved employee received a meal period, failing to compensate the aggrieved employees for security checks, for the time associated with bag checks, for the time associated with temperature/wellness checks, for the time associated with uniform maintenance, for the time associated with filling up gas and/or replacing gas consumed in the discharge of the employee's job duties, picking up supplies, performing bank runs/deposits, due to Defendant's communications with employees (whether by phone call, email, text message, or other method) while off-the-clock, failing to record all hours worked, for uncompensated time spent donning and doffing uniforms, and for the time spent working during interrupted meal and/or rest periods. *Barrett Business Services, Inc*., 29 Cal. App. 5th 778, 808 (2018) (affirming the award of PAGA penalties for violations of Labor Code § 512 where employees meal periods were interrupted and remanding to the trial court the amount of PAGA penalties that should be awarded based upon the minimum wage violations associated with the same interrupted meal periods under Labor Code section 1194.). As such, Defendant failed to pay Plaintiff and all aggrieved employees for all hours worked in violation of Labor Code §§ 1194, 1197, 1197.1, 1198 and IWC Wage Order No. 5-2001. Thus, Plaintiff is an aggrieved employee pursuant to PAGA.

Defendant is also legally responsible for ensuring the accuracy of its time records and cannot rely upon time records that it knew were false and/or statements by employees as the California Supreme Court explained. *Donohue v. Amn Servs*., 11 Cal.5th 58, 81 (2021) ("It is the employer's duty to maintain accurate time records" and that the employer could not rely upon

certifications from employees where the information provided to the employees was inaccurate and/or incomplete); *accord Feaver v. Kaiser Found. Health Plan, Inc.*, No. 15-cv-00890-EMC, 2016 U.S. Dist. LEXIS 9778, at *8 (N.D. Cal. Jan. 27, 2016) (conditionally certifying a class under the Fair Labor Standards Act where the employees could show that they received and/or sent emails off-the-clock despite the fact that the employer had a policy requiring all time to be recorded.); *Troester v. Starbucks Corp.*, 5 Cal.5th 829 (2018). As such, Defendant was obligated to maintain accurate time records of all hours worked and their failure to do so resulted in the underpayment of Plaintiff and the aggrieved employees.

Labor Code § 1197.1 authorizes employees who are paid less than the minimum fixed by an applicable state or local law, or by an order of the commission a civil penalty, restitution of wages, and liquidate damages as follows: (1) for any initial violation that is intentionally committed, one hundred dollars ($100) for each underpaid employee for each pay period for which the employee is underpaid….[and] (2) [f]or each subsequent violation for the same specific offense, two hundred fifty dollars ($250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed. As set forth above, Defendant failed to compensate Plaintiff and all aggrieved employees for all minimum wages. Accordingly, through PAGA and to the extent permitted by law Plaintiff and all aggrieved employees are entitled to recover civil penalties for violations of Labor Code § 1197.1.

DEFENDANT VIOLATED AND CONTINUES TO VIOLATE LABOR CODE §§ 510, 558, 1197, 1197.1, AND 1198 AS WELL AS WAGE ORDER NO. 5-2001 AND OTHER APPLICABLE WAGE ORDERS

Labor Code § 510 requires an employer to compensate an employee who works more than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight (8) hours worked on the seventh consecutive day no less than one and one-half times the regular rate of pay for an employee. Further, Labor Code § 510 obligates employers to compensate employees at no less than twice the regular rate of pay when an employee works more than twelve (12) hours in a day or more than eight (8) hours on the seventh consecutive day of work. In accordance with Labor Code § 1194, Plaintiff and the other aggrieved employees could not agree to work for a lesser wage.

In addition, Labor Code § 1197 states the California requirement that employees must be paid at least the minimum wage fixed by the Commission or by any applicable state or local law, and any payment of less than the minimum wage is unlawful.

Similarly, Labor Code § 1198 provides that "the maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful."

As discussed in detail above, Defendant regularly and consistently required Plaintiff and the other aggrieved employees to perform off-the-clock work and interrupted Plaintiff and the other aggrieved employee's meal periods. Residences of Defendant's buildings would frequently disturb Plaintiff and the other aggrieved employees while they were off-the-clock and Defendant both required and/or suffered and permitted Plaintiff and the other aggrieved employees to perform off-the-clock work. Defendant was on notice of this off-the-clock work as Plaintiff's prior manager would frequently adjust Plaintiff's time to incorporate this off-the-clock work, but Plaintiff's new manager and based upon information and belief, Defendant's new policies and inaccurate method of timekeeping led Plaintiff and the other aggrieved employees not to receive pay for all hours worked.

Defendant also engaged in a common policy and practice of not paying the aggrieved employees for required and/or expected pre-shift activities, not paying employees for required and/or expected post-shift activities, impermissibly rounding employees' time entries (including start times, time entries associated with meal periods, and stop times and in a non-neutral manner that favored the employer), failing to pay minimum wages in accordance with the local municipal wage ordinances in effect for their job assignments, automatically deducting the time associated with meal periods regardless of whether or not an employee received a meal period, failing to compensate the aggrieved employees for security checks, for the time associated with bag checks, for the time associated with temperature/wellness checks, for the time associated with uniform maintenance, for the time associated with filling up gas and/or replacing gas consumed in the discharge of the employee's job duties, picking up supplies, performing bank runs/deposits, due to Defendant's communications with employees (whether by phone call, email, text message, or other method) while off-the-clock, failing to record all hours worked, for uncompensated time spent donning and doffing uniforms, and for the time spent working during interrupted meal and/or rest periods. As a result, Defendant often misclassified overtime hours as regular hours resulting in the underpayment of overtime wages and also failed to provide at least some of the aggrieved employees with any compensation for overtime hours whatsoever. For the same reasons as explained in detail above, Defendant also improperly failed to provide compensation for and/or misclassified doubletime hours as overtime hours or regular hours when the aggrieved employees worked more than twelve (12) hours in a day and/or more than eight (8) hours on the seventh day of work. Defendant also had a common policy and practice of only paying overtime hours when an employee works more than forty (40) hours in a week rather than eight (8) hours in a day. Defendant also engaged in a pattern and practice of sometimes only paying the aggrieved employees for overtime hours worked that were authorized in advance, but failed to pay for overtime hours unless the hours worked were authorized in advance. The above-described conduct violated Labor Code §§ 510, 558, 1197, 1197.1, and 1198.

Separate and independent of the foregoing, when calculating an employee's regular rate, California and federal courts, with limited exceptions, look to the federal Fair Labor Standards Act

("FLSA"). *Huntington Mem'l Hosp. v. Sup. Ct.*, 131 Cal. App. 4th 893, 902 (2005). Under the FLSA, the regular rate of pay includes all forms of remuneration. *See* 29 U.S.C. § 207(e); *Huntington Mem'l*, 131 Cal. App. 4th at 90 (holding that shift differential must be included in the regular rate when calculating and paying overtime).

Here, Defendant paid Plaintiff and at least some of the aggrieved employees a housing allowance, non-discretionary bonus, incentive payment/pay, shift differential, hazard pay, piece rate compensation, flat sum production bonus, non-discretionary production bonus, attendance bonus, any other form of non-discretionary bonus and/or incentive payment and/or a payment under the pay codes "Housing Allow," but failed to include such compensation when calculating and paying overtime wages.

Instead of including all required compensation when calculating and paying overtime wages (including double time wages when the aggrieved employees worked shifts in excess of 12 hours), Defendant instead improperly paid overtime wages only at one and one-half times Plaintiff and the aggrieved employees' regular hourly base rate instead of at one and one-half time their regular rate of pay and/or at a lower rate than required. In other words, Defendant improperly failed to include the housing allowance, non-discretionary bonus, incentive payment/pay, shift differential, hazard pay, piece rate compensation, flat sum production bonus, non-discretionary production bonus, attendance bonus, any other form of non-discretionary bonus and/or incentive payment and/or a payment under the pay codes "Housing Allow" when calculating and paying overtime wages.

Based upon the foregoing, Defendant violated Labor Code § 510 with respect to Plaintiff and all aggrieved employees. The aggrieved employees who experienced a violation of Labor Code § 510 may pursue PAGA penalties under Labor Code § 558. Labor Code § 558 imposes a penalty upon employers "who violates, or causes to be violated…any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars ($50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages; (2) For each subsequent violation, one hundred dollars ($100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages; and (3) Wages recovered pursuant to this section shall be paid to the affected employee." For purposes of Labor Code § 558, Plaintiff and the aggrieved employees seek only the penalties assessed as civil penalties pursuant to *ZB, N.A. v. Sup. Ct.* 8 Cal.5th 175 (2019) and not any underpaid wages.

Labor Code § 1197.1 authorizes employees who are paid less than the minimum fixed by an applicable state or local law, or by an order of the commission a civil penalty, restitution of wages, and liquidate damages as follows: (1) for any initial violation that is intentionally committed, one hundred dollars ($100) for each underpaid employee for each pay period for which the employee is

underpaid….[and] (2) [f]or each subsequent violation for the same specific offense, two hundred fifty dollars ($250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed. As set forth above, Defendant failed to compensate Plaintiff and all aggrieved employees for all overtime wages at the proper rates. Accordingly, through PAGA and to the extent permitted by law, Plaintiff and all aggrieved employees are entitled to recover civil penalties for violations of Labor Code § 1197.1.

DEFENDANT VIOLATED AND CONTINUE TO VIOLATE LABOR CODE §§ 226.7, 512, 558, AND 1198 AS WELL AS IWC WAGE ORDER NO. 5-2001 AND OTHER APPLICABLE WAGE ORDERS

Labor Code § 512 requires employers to provide employees with a thirty (30) minute uninterrupted and duty-free meal period ***within*** the first five (5) hours of work. Moreover, an employee who works more than ten (10) hours per day is entitled to receive a second thirty (30) minute uninterrupted and duty-free meal period. Pursuant to Labor Code § 512, an employer may not employ an employee for a work period of more than ten (10) hours, without providing the employee with a second meal period of not less than thirty (30) minutes. Moreover, the second meal period may not be waived if the total hours worked is more than twelve (12) hours.

Here, Defendant failed to authorize and permit Plaintiff and the other aggrieved employees to receive lawful meal periods, failed to advise them of their right to such meal periods, failed to authorize and permit them to take timely and uninterrupted first meal periods, and failed to authorize and permit employees to take 30-minute meal periods on occasion. Defendant's meal period policies and practices also disincentivized and discouraged Plaintiff and the other aggrieved employees from taking timely first meal periods within the first five (5) hours of their shift.

Defendant also failed to authorize and permit Plaintiff and the other aggrieved employees to receive lawful second meal periods when they worked more shifts in excess of ten (10) hours per day. This includes, but is not limited to, failing to advise Plaintiff and the other aggrieved employees of their right to take a second thirty (30) meal period on such shifts and/or that they could not waive their second meal period if they worked a shift in excess of (12) hours.

Defendant's meal period policies and practices disincentivized and discouraged Plaintiff and the other aggrieved employees from taking lawful meal periods due to issues related to understaffing, customer demands, and job assignments. As a result of Defendant's understaffing practices and policies, it was often not possible for Plaintiff and the other aggrieved employees to take meal periods and/or timely meal periods within the first five (5) hours of their shift. This includes, but is not limited to, graveyard shifts. Notably, although Defendant's meal period policies and practices are not compliant, it also pressured and coerced employees to forgo meal periods and made it difficult for employees to take lawful duty-free meal periods. Defendant's understaffing policies and practices also pressured, coerced, and forced employees to take untimely first meal

periods and/or forced to forgo first and/or second meal periods (including, but not limited to on shifts worked in excess of 12 hours).

Defendant further violated Labor Code § 512 by failing to authorize timely meal periods within the first (5) hours of an employees' shift. Defendant's maintained a policy and practice of requiring Plaintiff and the aggrieved employees to waive first meal periods when working shifts of less than six (6) hours. In doing so, Defendant pressured and disincentivized employees from taking meal periods within the first five (5) hours of their shift. As employees did not know in advance whether or not they would work more than six (6) hours and were not permitted to take meal periods and/or discouraged from taking meal periods on shifts of less than six hours, Plaintiff and the Meal Period Aggrieved Employees were not offered the opportunity to take a meal period within the first five (5) hours of their shift. *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504, 528 (2018). Neither Plaintiff nor the aggrieved employees were given the opportunity to take a timely first meal period because they were not scheduled to be eligible to receive a meal period and did not know they were eligible for a timely period until after working more than six (6) hours at which point it was not possible for them to take a meal period within the first five (5) hours. Simply put, it's not possible for an employee to decide whether or not to take a timely first meal period when Defendant schedules them for a shift of six (6) hours or less such that they wouldn't have even known they were eligible for a meal period at the 5th hour.

Moreover, Defendant also actively interfered with Plaintiff and the other aggrieved employees' right to receive lawful meal periods including, but not limited to, their policy and practice of failing to allow aggrieved employees to smoke during meal breaks. The aggrieved employees' meal periods were also interrupted by their supervisors and other managers, customers, and/or by people asking them questions and by Defendant and its supervisory/managerial employees requiring and/or suffering or permitting them to perform work while they were supposed to be on their meal period (including when they were clocked-out).

Defendant also failed to provide uninterrupted meal periods of at least thirty (30) minutes in length, including but not limited due to its policy and practice of rounding the time entries associated with meal periods, understaffing conditions, and the job demands of aggrieved employees. Such practices sometimes made it impossible for the aggrieved employees to take thirty (30) minute uninterrupted meal periods. Defendant also engaged in a common pattern and practice of rounding meal period punches in violation of Labor Code sections 1194, 510, 512, and 226.7. As the California Supreme Court held in *Donohue v. Amn Servs*., 11 Cal.5th 58, 81 (2021) employers cannot engage in the practice of rounding time punches—that is, adjusting the hours that an employee has actually worked to the nearest present time increment—in the meal period context. Here, as in *Donohue*, Defendant engaged in a common policy and practice of rounding Plaintiff and the other aggrieved employees time punches such that they did not receive minimum wages for all hours worked, overtime wages for the improperly rounded time punches, did not receive meal

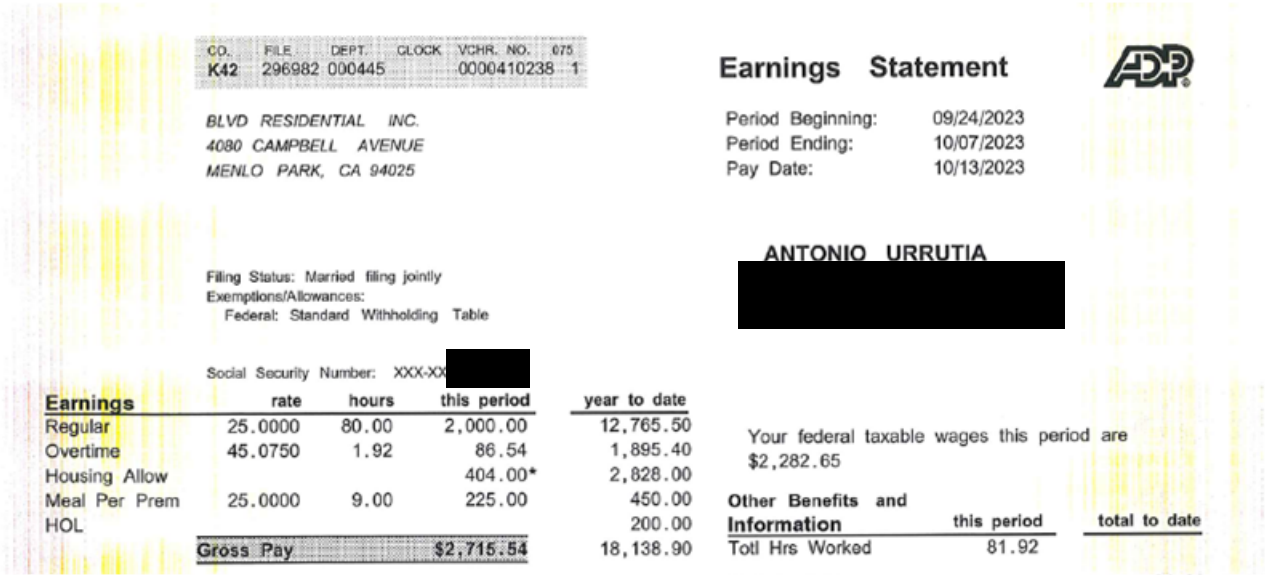
period premiums for rounded time punches, and/or proper and lengthy meal periods. As such, Plaintiff alleges that Defendant violated Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198, and IWC Wage Order No. 5-2001 when it engaged in such policies and practices.

Defendant also adopted an automatic deduction policy and practice whereby it automatically deducted thirty (30) minutes' worth of an employee's pay regardless of whether or not the employee took a meal period and/or the full amount of their meal period. As a result of Defendant's policy and practice of automatically deducting thirty (30) minutes' worth of pay regardless of whether or not the aggrieved employee took a meal period and/or the length of the meal period, Defendant regularly failed to pay Plaintiff and all aggrieved employees for all hours worked in violation of Labor Code § 1194 and 1197 including hours that qualified as overtime hours pursuant to IWC Wage Order No. 5-2001 and Labor Code § 510. Defendant's rounded time entries for Plaintiff and the other aggrieved employees were also unlawful and non-neutral because Defendant failed to provide compensation for all hours worked well beyond 15 minutes and failed to round up in the employee's favor due, including, but not limited to, its off-the-clock policies even though such rounding is impermissible. As such, Defendant failed to pay Plaintiff wages for all hours worked (including overtime hours) and misclassified hours worked as regular hours as a result of its auto-deduction and unlawful time recording policies and procedures as discussed herein.

Defendant also failed to pay Plaintiff and the other aggrieved employees meal period premiums for each workday that the employees did not receive a compliant meal period and/or at the proper rate. Labor Code § 226.7 provides "an employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission ("IWC")."

Similarly, IWC Wage Order No. 5-2001 and other applicable wage orders prohibit an employer from "employ[ing] any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes." IWC Wage Order No. 5-2001 and other applicable wage orders further obligate employers to provide an employee to "pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided." Accordingly, for each day that Plaintiff and all aggrieved employees did not receive compliant meal periods, they are entitled to receive meal period premiums pursuant to Labor Code § 226.7 and IWC Wage Order No. 5-2001 and other applicable wage orders. Unfortunately, Plaintiff and the other aggrieved employees were not compensated with one (1) hours' worth of pay at their regular rate of compensation when they were not provided with a compliant meal period in violation of Labor Code § 226.7 and IWC Wage Order No. 5-2001 and other applicable wage orders.

Further, when Defendant paid meal period premiums to the aggrieved employees, Defendant improperly paid the premium at the employee's hourly base rate instead of at their regular rate resulting in the underpayment of meal period premium and/or failed to include housing allowances when calculating and paying meal/rest period premiums. This occurred several times to Plaintiff during the PAGA period. For instance, for the pay period of September 24, 2023 to October 7, 2023, Defendant improperly paid Plaintiff's meal period premiums at his hourly base rate of $25.00 instead of his regular rate that included his housing allowance:



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BLVD RESIDENTIAL INC.
4080 CAMPBELL AVENUE
MENLO PARK, CA 94025

Earnings Statement

Period Beginning: 09/24/2023
Period Ending: 10/07/2023
Pay Date: 10/13/2023

ANTONIO URRUTIA
[redacted]

Filing Status: Married filing jointly
Exemptions/Allowances:
Federal: Standard Withholding Table

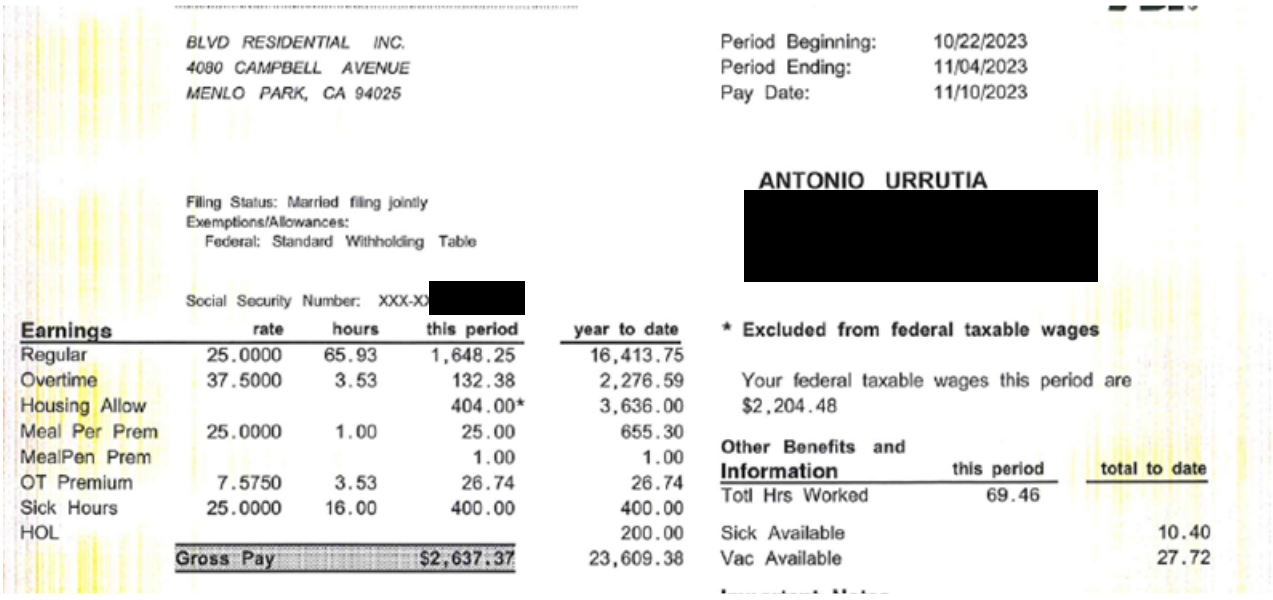
Social Security Number: XXX-XX[redacted]

Earnings	rate	hours	this period	year to date
Regular	25.0000	80.00	2,000.00	12,765.50
Overtime	45.0750	1.92	86.54	1,895.40
Housing Allow			404.00*	2,828.00
Meal Per Prem	25.0000	9.00	225.00	450.00
HOL				200.00
Gross Pay			$2,715.54	18,138.90

Your federal taxable wages this period are $2,282.65

Other Benefits and Information	this period	total to date
Totl Hrs Worked	81.92	

For the pay period of October 22, 2023 to November 4, 2023, Defendant improperly paid Plaintiff's meal period premiums at his hourly base rate of $25.00 instead of his regular rate that included his housing allowance despite making an adjustment to his overtime wages to include the housing allowance within this regular rate and also appears not to have calculated the overtime rates correctly either:



BLVD RESIDENTIAL INC.
4080 CAMPBELL AVENUE
MENLO PARK, CA 94025

Period Beginning: 10/22/2023
Period Ending: 11/04/2023
Pay Date: 11/10/2023

ANTONIO URRUTIA
[redacted]

Filing Status: Married filing jointly
Exemptions/Allowances:
Federal: Standard Withholding Table

Social Security Number: XXX-XX[redacted]

Earnings	rate	hours	this period	year to date
Regular	25.0000	65.93	1,648.25	16,413.75
Overtime	37.5000	3.53	132.38	2,276.59
Housing Allow			404.00*	3,636.00
Meal Per Prem	25.0000	1.00	25.00	655.30
MealPen Prem			1.00	1.00
OT Premium	7.5750	3.53	26.74	26.74
Sick Hours	25.0000	16.00	400.00	400.00
HOL				200.00
Gross Pay			$2,637.37	23,609.38

* Excluded from federal taxable wages

Your federal taxable wages this period are $2,204.48

Other Benefits and Information	this period	total to date
Totl Hrs Worked	69.46	
Sick Available		10.40
Vac Available		27.72

Based upon the foregoing, Defendants violated Labor Code §§ 226.7, 512, 558, 117, 1174.5, and 1198 as well as IWC Wage Order No. 5-2001 and other applicable wage orders with respect to Plaintiff and the aggrieved employees. As such, Plaintiff and the aggrieved employees are entitled to penalties under Labor Code § 558. Labor Code § 558 imposes a penalty upon employers "who violates, or causes to be violated…any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars ($50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages; (2) For each subsequent violation, one hundred dollars ($100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages; and (3) Wages recovered pursuant to this section shall be paid to the affected employee." For purposes of Labor Code § 558, Plaintiff and the aggrieved employees seek only the penalties assessed as civil penalties pursuant to *ZB, N.A. v. Sup. Ct.* 8 Cal.5th 175 (2019) and not any underpaid wages.

DEFENDANT VIOLATED AND CONTINUES TO VIOLATE LABOR CODE § 226.7 AND IWC WAGE ORDER NO. 5-2001 AND OTHER APPLICABLE WAGE ORDERS

Labor Code § 226.7 provides "an employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission ("IWC"). Under IWC Wage Order No. 5-2001, an employer must authorize and permit all employees to take ten (10) minute duty free rest periods for every major fraction of four hours worked. *See Augustus v. ABM Security Services, Inc.* (2016) 2 Cal. 5th 257, 269 (concluding that "during rest periods employers must relieve employees of all duties and relinquish control over how employees spend their time.").

The *Brinker* Court explained in the context of rest breaks that employer liability attaches from adopting an unlawful policy:

> An employer is required to authorize and permit the amount of rest break time called for under the wage order for its industry. If it does not—if, for example, it adopts a uniform policy authorizing and permitting only one rest break for employees working a seven-hour shift when two are required—***it has violated the wage order and is liable.***

Brinker Rest. Corp. v. Sup. Ct., 53 Cal.4th 1004, 1033 (2012) (emphasis added).

Pursuant to Labor Code § 226.7 and IWC Wage Order No. 5-2001 and other applicable wage orders, Defendant failed to provide Rest Period Aggrieved Employees with rest periods of not less than ten (10) minutes for every major fraction of four (4) hours worked. Instead, Defendant regularly and consistently required at least some of the aggrieved employees to forgo rest periods and/or required them to remain on the premises and failed to relieve them of all duties. This

includes, but is not limited to failing to advise Plaintiff and the aggrieved employees of their right to take a second rest period when they worked shifts in excess of six (6) hours, but less than eight (8) hours and of their right to a third rest period when they worked more than ten (10) hours. Instead, Defendant regularly and consistently required aggrieved employees to forgo a second rest period when they worked shifts in excess of six (6) hours—including, but not limited to when the aggrieved employees worked shifts in excess of six (6) hours, but less than eight (8) hours—and failed to authorize and permit employees who worked more than ten (10) hours a third rest period. Further, on least some occasions, Defendant failed to provide any rest periods to the aggrieved employees whatsoever including on shifts of all lengths. This includes, but is not limited to, due to Defendant's failure to advise employees of their right to rest periods on shifts of any length.

Instead, Defendant advised Plaintiff and the other aggrieved employees that they were not allowed to leave the premises during their rest periods (on all shifts, but also including on graveyard shifts) and/or failed to relieve them of all duties and of all control including, but not limited to, not permitting them to smoke during rest periods. Defendant also did not permit aggrieved employees to leave the premises during rest periods as required by Labor Code § 226.7 and Wage Order No. 5-2001. *Augustus*, 2 Cal. 5th at 269

Defendant also required Plaintiff and all aggrieved employees to go through security checks, bag checks, and/or temperature checks and wellness checks during their breaks when entering and leaving the premises including if they attempted to go outside during a meal/rest period. As a result, Defendant deprived Plaintiff and the other aggrieved employees of lawful uninterrupted rest periods on a regular and consistent basis. When Plaintiff and the other aggrieved employees attempted to get food during their rest periods, they were required to go through security and bag checks while leaving the premises and reentering such that they were never relieved of their job duties. Such conduct is unlawful and requires an employer to provide both a rest period premium and to pay the employee for the wages associated with unlawful search. Through Defendant's policy and practice of conducting security and bag searches on employees who were on breaks, Defendant violated Labor Code §§ 226.7, and 1198.

Moreover, the aggrieved employees were denied rest periods as a result of Defendant's understaffing practices and policies. Notably, although Defendant's rest period policies and practices are not compliant, they also pressured and coerced employees to forgo rest periods and made it difficult for employees to take lawful duty-free rest periods both due to their understaffing policies and practices and otherwise.

Defendant also impermissibly combined meal and rest periods. Due to Defendant's policy and practice of requiring the aggrieved employees to clock-out for a combined meal and rest period, the aggrieved employees did not receive paid rest periods as required by IWC Wage Order No. 5-2001 and Labor Code § 226.7.

Further, when Defendant paid rest period premiums to the aggrieved employees, Defendant improperly paid the premium at the employee's hourly base rate instead of at their regular rate resulting in the underpayment of rest period premium and/or failed to include housing allowances when calculating and paying meal/rest period premiums.

Based upon the foregoing, Defendant violated Labor Code § 226.7 and 1198 as well as IWC Wage Order No. 5-2001 and other applicable wage orders with respect to the aggrieved employees. Employees, including Plaintiff and the other aggrieved employees who experienced a violation of Labor Code § 226.7 may pursue PAGA penalties under Labor Code § 558. Labor Code § 558 imposes a penalty upon employers "who violates, or causes to be violated…any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars ($50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages; (2) For each subsequent violation, one hundred dollars ($100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages; and (3) Wages recovered pursuant to this section shall be paid to the affected employee." For purposes of Labor Code § 558, Plaintiff and the aggrieved employees seek only the penalties assessed as civil penalties pursuant to *ZB, N.A. v. Sup. Ct.* 8 Cal.5th 175 (2019) and not any underpaid wages.

DEFENDANT VIOLATED AND CONTINUE TO VIOLATE LABOR CODE §§ 226(a), 226(e) and 226.3

As to Plaintiff and all aggrieved employees, Defendant also failed to provide accurate itemized wage statements in accordance with Labor Code § 226. Labor Code § 226 obligates employers, semi-monthly or at the time of each payment to furnish an itemized wage statement in writing showing:

(1) gross wages earned;
(2) total hours worked by the employee;
(3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece rate;
(4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item;
(5) net wages earned;
(6) the inclusive dates of the period for which the employee is paid;
(7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number;
(8) the name and address of the legal entity that is the employer…;
(9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee…

Due to Defendant's failure to pay Plaintiff and all aggrieved employees all minimum wages, overtime wages (including doubletime wages), meal period premiums, and rest period premiums owed, the wage statements issued by Defendant do not indicate the correct amount of gross wages earned, the total hours worked, the net wages earned, all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate. Thus, Plaintiff is an aggrieved employee within the meaning of PAGA and Defendant have violated Labor Code §226(a)(1), (2), (5), and (9) with respect to Plaintiff and all aggrieved employees. Plaintiff also alleges that Defendant issued some aggrieved employees some itemized wages statements, including but not limited to paper and/or final wage statements, that did not include the name of the employer, the address of the employer, all deductions, the number of piece rate units earned and any applicable piece rate if the employee is paid on a piece rate, the inclusive dates of the period for which the employee is paid (omitted start dates, end dates, and/or both start dates and end dates) the name of the employee and only the last four digits of the employees or the last four digits of the employees social security number (left-off and/or all nine digits of the employees social security number) as well as the non-derivative information for the amount of gross wages earned, the total hours worked, the net wages earned, all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate. This conduct violated Labor Code § 226(a)(1-9).

In addition, the wage statements issued to Plaintiff and all aggrieved employees did not include the actual total hours worked by the employee in violation of Labor Code § 226(a)(2). As previously explained, in express violation of Section 7(A)(3) of IWC Wage Order No. 5-2001 which requires employers to record "when the employee begins and ends **each work period**." Instead, Defendant failed to report the time that it knew that Plaintiff and the other aggrieved employees were working while off-the-clock as explained in detail above. As a result, the wage statements issued by Defendant did not include the correct amount of total hours worked.

Plaintiff and the aggrieved employees will prevail on their claim for PAGA penalties under Labor Code § 226(a). *See Lopez v. Friant & Assocs., LLC*, 15 Cal.App.5th 773, 788 (2017) ("hold[ing] a plaintiff seeking civil penalties under PAGA for a violation of Labor Code section 226(a) does not have to satisfy the 'injury' and 'knowing and intentional' requirements of section 226(e)(1)."); *Raines v. Coastal Pacific Food Distributors, Inc.*, 23 Cal.App.5th 667, 679 (2018) (finding that the "requirements for a section 226(e) claim do not apply to a PAGA claim for a violation of section 226(a).").

There is currently a split of authority regarding which PAGA penalties apply to violations of Labor Code § 226(a). *Gunther v. Alaska Airlines, Inc.*, 72 Cal. App. 5th 334, 355 (2021) (holding that such violations give rise to a 2699.3 penalty) *cf*.; *Raines v. Coastal Pacific Food Distributors, Inc.*, 23 Cal.App.5th 667, 675 (2018) (holding that such violations give rise to a Labor Code § 226.3

penalty). Labor Code § 226.3 provides that "[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars ($250) per employee per violation in an initial violation and one thousand dollars ($1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the required in subdivision (a) of Section 226." As explained in detail above, Defendant failed to provide Plaintiff and the other aggrieved employees with accurate itemized wage statements. Accordingly, to the extent it applies, Plaintiff and the other aggrieved employees may also recover Labor Code § 226.3 or 2699 penalties for Defendant's violations of Labor Code § 226(a).

DEFENDANT VIOLATED AND CONTINUES TO VIOLATE LABOR CODE §§ 246 and 246.5

Labor Code § 246 requires employer to calculate sick leave pay based upon one of the following formulas:

> (1) Paid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek.
>
> (2) Paid sick time for nonexempt employees shall be calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment.
>
> (3) Paid sick time for exempt employees shall be calculated in the same manner as the employer calculates wages for other forms of paid leave time.

Lab. Code § 246.

Throughout Plaintiff and the aggrieved employees' employment, Defendant failed to include housing allowances, non-discretionary bonuses, incentive payment/pay, shift differentials, hazard pay, piece rate compensation, flat sum production bonuses, non-discretionary production bonuses, attendance bonuses, any other form of non-discretionary bonus and/or incentive payment and/or a payment under the pay codes "Housing Allow" when calculating and paying sick pay. *See Wood v. Kaiser Found. Hosps*., 88 Cal. App. 5th 742, 759 (2023), as modified (Mar. 23, 2023*)*

Defendant also refused to allow at least some of their employees to use their protected sick leave on some occasions during the PAGA period in violation of Labor Code §§ 246 and 246.5. Defendant also on some occasions failed to include information about employees' accrued and used sick pay as well as the balance of their sick pay on the aggrieved employee's wage statement.

Further, as a result when Plaintiff and the Late Payment Aggrieved Employees' employment ended, they left their employment without having received compensation for all of their sick pay that they were owed under Labor Code § 246 and resulting in a violation of Labor Code §§ 201-203. As a result of Defendant's underpayment of sick pay, Plaintiff and the other Late Payment Aggrieved Employees experienced a violation of Labor Code §§ 201-202 upon separation from Defendant. *See Powell v. Walmart Inc.,* No. 3:20-cv-2412-BEN-LL, 2021 U.S. Dist. LEXIS 20777, at *6 (S.D. Cal. Feb. 2, 2021) (denying a motion to dismiss claims under Labor Code section 203 based upon the employer's alleged failure to include incentive pay when calculating and paying sick pay); *accord Flores v. Dart Container Corp*., No. 2:19-cv-00083 WBS EFB, 2020 U.S. Dist. LEXIS 93524, at *7 (E.D. Cal. May 27, 2020).

DEFENDANT VIOLATED AND CONTINUE TO VIOLATE LABOR CODE §§ 204 and 210

Labor Code § 204 expressly requires that "[a]ll wages…earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays." Pursuant to Labor Code § 204(a), "Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. Labor Code § 204 also expressly requires that "[a]ll wages…earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays." Defendant pays Plaintiff and all aggrieved employees on a bi-weekly basis.

With respect to Plaintiff and all aggrieved employees, for part of the PAGA period, Defendant failed to maintain regular pay dates as required by Labor Code § 204.

Due to Defendant's failure to pay Plaintiff and all aggrieved employees all minimum wages, all overtime wages (including doubletime wages), meal period premiums, rest period premiums, sick pay wages (including at the proper rate) for the reasons discussed above, Defendant failed to timely pay Plaintiff and all aggrieved employees all wages owed within the time constrains of Labor Code § 204 on a regular and consistent basis.

Labor Code § 210 provides that "in addition to, an entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections…204…shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars ($100) for each failure to pay each employee; (2) For each subsequent violation, or any willful or intentional violation, two hundred dollars ($200) for each failure to pay each employee, plus 25% of the amount unlawfully withheld." As a result of the faulty compensation policies and practices described in detail above, Plaintiff and the other

aggrieved employees are entitled to recover penalties under Labor Code § 210 through PAGA. *See Amaral v. Cintas Corp. No.* 2, 163 Cal.App.4th 1157, 1209 (2008) (affirming an award of Labor Code section 210 penalties under PAGA due to the employer's failure to timely pay wages at the proper rate in accordance with a local wage ordinance).

DEFENDANT VIOLATED AND CONTINUES TO VIOLATE LABOR CODE §§ 201-203

Under Labor Code §§ 201-202, an employer must provide an employee their wages at the time or discharge or within up to seventy-two (72) hours of their resignation. Labor Code § 203 provides "if an employer willfully fails to pay . . . any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty. . ." for up to 30 days. Lab. Code § 203; *Mamika v. Barca*, 68 Cal.App.4th 487, 492 (1998).

Defendant failed to Plaintiff and the other Late Payment Aggrieved Employees any wages whatsoever within the time constraints of Labor Code section 201-202. Moreover, as described in detail above, Defendant failed to pay aggrieved employees whose employment concluded all wages owed, including but not limited to minimum wages, overtime wages (including doubletime wages), meal period premiums, rest period premiums, vacation wages, and sick pay (including at the correct rates) within time constraints proscribed in Labor Code §§ 201-202. Thus, as result of Defendant's faulty policies described above, the Late Payment Aggrieved Employees left their employment with Defendant without being compensated for each and every hour worked at the appropriate rate in violation of Labor Code §§ 201, 202, 203.

DEFENDANT VIOLATED AND CONTINUES TO VIOLATE LABOR CODE §§ 1174 and 1174.5

Labor Code § 1174 provides that each employer shall keep "payroll records showing the hours worked daily by and the wages paid to…employees employed at…establishments." An employer who fails to maintain the records proscribed by Labor Code § 1174 is subject to a civil penalty of five hundred ($500) dollars under Labor Code § 1174.5.

As previously explained, Defendant failed to maintain accurate records of the total hours worked by employees or of the time associated with off-the-clock work as described above and failed to record time that employees were subject to Defendant's control and required to work during their meal/rest periods on a regular and consistent basis in express violation of Section 7(A)(3) of IWC Wage Order No. 5-2001 which requires employers to record "when the employee begins and ends **each work period**.":

7. RECORDS

(A) Every employer shall keep accurate information with respect to each employee including the following:

(1) Full name, home address, occupation and social security number.

(2) Birth date, if under 18 years, and designation as a minor.

(3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.

Due to Defendant's regular and consistent practice of not recording all hours worked, including the time associated with off-the-clock work and as described above, the time records maintained by Defendant do not show the actual hours worked daily by Plaintiff and the aggrieved employees. This caused Plaintiff and the other aggrieved employees time records not to actually show the total hours worked daily by each of them throughout the PAGA period in violation of Labor Code §§ 1174 and 1174.5.

Plaintiff seeks both PAGA penalties under Labor Code § 1174.5 for willful violations of Labor Code § 1174 since Defendant was previously sued for engaging in the same conduct, but also separate PAGA penalties pursuant to section 2699.3 for non-willful violations since no default is proscribed for such violations. Labor Code § 2699.3 (identifying a violation of Labor Code section 1174 subdivisions (c) and (d) as non-curable PAGA claims).

DEFENDANT VIOLATED AND CONTINUES TO VIOLATE LABOR CODE § 2802

Labor Code §2802 provides that "[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful."

During at least part of the PAGA period, Defendant required and/or expected aggrieved employees to use their own tools and implements in the discharge of their job duties. By failing to provide Plaintiff and the aggrieved employees with masks, gloves, scissors, water, and other safety equipment, Defendant caused Plaintiff and the other aggrieved employees to make expenditures and incur losses in the direct consequence of the discharge of their job duties. Moreover, Defendant also expected Plaintiff and the other aggrieved employees to use their personal vehicles for business purposes and for which they did not receive reimbursement. During at least part of the PAGA period, Defendant also required some of the aggrieved employees to utilize their cell phones in the discharge of their job duties for which they did not receive compensation. Defendant's conduct in requiring some of the aggrieved employees to engage in the above described activities caused them to incur losses as a direct consequence of their duties. Although some of the aggrieved employees were regularly required to and/or ordered/directed to use their own personal communication devices for work purposes (including cell phones and other devices), those aggrieved employees were not provided with any reimbursement for the use of their personal cell phones. Based upon information

and belief, some of the aggrieved employees were specifically directed by Defendant and/or its supervisory employees to utilize their cell phones in the discharge of their job duties for which they did not receive compensation. Defendant's conduct in requiring some of the aggrieved employees to engage in the above-described activities caused them to incur losses as a direct consequence of their duties.

Defendant required Plaintiff and the other aggrieved employees to wear distinctive uniforms including company shirts among other items and/or a specific color scheme as well as other items such as shoes. However, Defendant failed to provide expense reimbursements either for the uniform themselves and/or the expenses associated with maintaining such uniform (including, but not limited to laundry detergent and/or dry cleaning).

CONCLUSION

Therefore, pursuant to Labor Code § 2699.3, we write to inform the Labor and Workforce Development Agency of information about Plaintiff's claims.

Very truly yours,

WINSTON LAW GROUP, P.C.

By: _/s/ David S. Winston_____
DAVID S. WINSTON

Certified Mail #: 9589 0710 5270 1274 0531 88

Exhibit 2

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN MATEO

ANTONIO URRUTIA, an individual, on behalf of himself, others similarly situated, PLAINTIFF, vs. BLVD RESIDENTIAL INC., a Delaware Corporation, DEBRA O'TOOLE, an individual, and DOES 2 thru 50, inclusive, DEFENDANTS.	CASE NO.: 24-CIV-00086 [Assigned for All Purposes to the Hon. Nicole S. Healy, Dept. 28] **JOINT STIPULATION OF CLASS ACTION AND PAGA SETTLEMENT**

This Joint Stipulation of Class and Representative Action Settlement is made and entered into between Plaintiff Antonio Urrutia ("Plaintiff") on behalf of himself, as a representative of the Settlement Class, and as a Private Attorney General on behalf of the State of California under PAGA (as defined below) and Defendants BLVD Residential Inc. ("BLVD Residential") and Debra O'Toole (BLVD Residential Inc. and Debra O'Toole are collectively referred to as the "Defendants"), (Plaintiff and Defendants hereinafter are collectively referred to as the "Parties"). This is a non-reversionary checks-mailed settlement and Defendants (as defined below) shall pay 100% of the Gross Settlement Amount (as defined below). This Stipulation is subject to the approval of the Court, pursuant to California Rules of Court, Rule 3.769(c), (d) and (e), and is made for the sole purpose of attempting to consummate settlement of the Action on a class-wide and PAGA basis subject to the following terms and conditions. As detailed below, in the event the Court does not enter an order granting final approval of the Class Settlement, as defined below, or the conditions precedent are not met for any reason, this Stipulation is void and of no force or effect whatsoever.

I. DEFINITIONS

As used in this Stipulation, the following terms shall have the meanings specified below. To the extent terms or phrases used in this Stipulation are not specifically defined below, but are defined elsewhere in this Stipulation, they are incorporated by reference into this definition Section.

A. Action. "Action" shall mean the above captioned action titled *ANTONIO URRUTIA, an individual, on behalf of himself, others similarly situated, PLAINTIFF, v. BLVD RESIDENTIAL INC., a Delaware Corporation, DEBRA O'TOOLE, an individual, and DOES 2 thru 50, inclusive, DEFENDANTS,* San Mateo County Superior Court, Case No. 24-CIV-00086.

B. Administrative Expenses. "Administrative Expenses" shall include all costs and expenses associated with and paid to the third-party Settlement Administrator, which are anticipated not to exceed $12,000.00.

C. Class Attorney Fees and Expenses. "Class Attorney Fees and Expenses" shall mean Class Counsel's attorney fees and expenses as set forth in Section IV(G).

D. Class Counsel. "Class Counsel" shall mean David S. Winston of Winston Law Group, P.C.

E. Class, Settlement Class, Class Member or Settlement Class Member. "Class," "Settlement Class," "Class Member," or "Settlement Class Member" shall mean and refer to all non-exempt, hourly employees who were employed by BLVD Residential in California at any point from August 11, 2023 to March 22, 2025. Based upon a review of its records, BLVD Residential represented that there are 419 Class Members who worked 19,262 workweeks during the Class Period.

F. Class List. "Class List" means the data file BLVD Residential shall diligently and in good faith compile from their records and provide to the Settlement Administrator within fourteen (14) calendar days after notice of entry of the Preliminary Approval Order, which will be formatted in a readable Microsoft Office Excel spreadsheet and will include each Class Member's full name, last-known mailing address, last known telephone number, Social Security number, the number of Workweeks during the Class Period and, if applicable, pay periods during the PAGA Period for each Class Member and/or PAGA Member (as the case may be).

G. Class Notice. "Class Notice" shall mean the Notice of Proposed Class Action Settlement and Hearing Date for Court Approval, as set forth in the form agreed upon by the Parties or as otherwise approved by the Court, which is to be mailed to Class Members.

H. Class Participants. "Class Participants" shall mean any and all Class Members who do not timely Opt Out of the Class Settlement.

I. Class Period. "Class Period" shall mean and refer to the period from August 11, 2023 to March 22, 2025.

J. Class Released Claims. "Class Claims" or "Class Released Claims" shall mean all claims, complaints, causes of action, damages and liabilities that arise during the Class Period that each Settlement Class Member had, now has, or may hereafter claim to have against the Released Parties and that were asserted in or that reasonably could have been could have been alleged based upon the facts alleged in the in the Complaint (filed on January 4, 2024) and/or the First Amended Complaint ("FAC") (filed on March 12, 2024) (hereafter collectively the "Complaints") based on any of the facts or allegations in the Complaints. The Class Released Claims specifically include claims for (1) failure to pay minimum wages in violation of Labor Code §§ 1194 and 1194.2; (2) failure to pay overtime wages in violation of Labor Code § 510; (3) failure to provide lawful meal periods and/or pay meal period

premiums in violation of Labor Code §§ 226.7 and 512 as well as IWC Wage Order No. 5-2001; (4) failure to provide lawful rest periods and/or pay rest period premiums in violation of Labor Code § 226.7 and IWC Wage Order No. 5-2001; (5) failure to provide accurate itemized wage statements in violation of Labor Code § 226; (6) failure to timely pay wages upon separation in violation of Labor Code §§ 201-203; and (7) unfair competition in violation of Bus. & Prof. Code § 17200. The Class Released Claims do not include any claims for workers compensation, unemployment, or disability benefits of any nature, nor does it release any claims, actions, or causes of action which may be possessed by Settlement Class Members under state or federal discrimination statutes, or any other law aside from those specifically identified above.

K. **Class Representative.** "Class Representative" shall mean Plaintiff Antonio Urrutia.

L. **Class Settlement.** "Class Settlement" shall mean the resolution of the Class Released Claims.

M. **Court.** "Court" shall mean the San Mateo County Superior Court.

N. **Day**. "Day" or "days" refers to a calendar day(s) unless otherwise stated. If any designated date or deadline falls on a weekend or holiday, the designated date or deadline will occur on the next business day.

O. **Defendants.** "Defendants" shall mean and refer to BLVD Residential Inc. and Debra O'Toole.

P. **Defense Counsel.** "Defense Counsel," "Defendants' Counsel" or "Releasees' Counsel" shall mean Elaisha Nandrajog and Servando Sandoval of Spencer Fane LLP.

Q. **Distribution Date**. "Distribution Date" shall mean fifteen (15) days after BLVD Residential deposits the entirety of the Gross Settlement Amount with the Settlement Administrator.

R. **Effective Date.** "Effective Date" shall mean the first business day following the last of the following occurrences: (i) if no Class Member timely and properly intervenes, files a timely motion to vacate judgment under, or objects to the Settlement, then the date the Court enters the Final Approval Order and Judgment; (ii) if a Class Member timely intervenes or files a timely motion to vacate the judgment or objects to the Settlement, then sixty-one (61) days following the date the Court enters the Final Approval Order and Judgment, assuming no appeal is filed; or (iii) if a Class Member timely

intervenes or files a motion to vacate judgment, or objects to the Settlement, and files a timely appeal, then the date of final resolution of that appeal (including any requests for rehearing and/or petitions for certiorari), resulting in final and complete judicial approval of the Settlement in its entirety, with no further challenge to the Settlement being possible.

S. Employee's Taxes and Required Withholding. "Employee's Taxes and Required Withholding" shall mean the employee's share of any and all applicable federal, state or local payroll taxes, including those collected under authority of the Federal Insurance Contributions Act ("FICA"), FUTA and/or SUTA on the portion of any Class Participant's Individual Settlement Amount, as defined below, that constitutes wages. The Employee's Taxes and Required Withholdings will be withheld from and paid out of the Net Settlement Amount.

T. Employer's Taxes. "Employer's Taxes" shall mean and refer to BLVD Residential's share of payroll taxes (*e.g.*, UI, ETT, Social Security and Medicare taxes) that is owed on the portion of any Class Participant's Individual Settlement Amount that constitutes wages. The Employer's Taxes shall be paid separately to the Settlement Administrator by BLVD Residential in addition to the Gross Settlement Amount and shall **not** be paid from the Gross Settlement Amount or Net Settlement Amount.

U. Final Approval and Fairness Hearing. "Final Approval and Fairness Hearing" shall mean the final hearing held to ascertain the fairness, reasonableness, and adequacy of the Settlement.

V. Final Approval Order and Judgment. "Final Approval Order and Judgment" means the order and judgment entered and filed by the Court, that: (1) ultimately approves this Settlement; (2) awards and orders the payment of all required amounts pursuant to the terms of this Settlement, and (3) enters judgment in connection with the Action pursuant to California Rules of Court, 3.769, et seq. The Final Approval Order and Judgment will constitute a binding and final resolution, have full *res judicata* effect, and discharge the Released Parties, including but not limited to Defendants, from liability for any and all claims by Plaintiff and all Settlement Class Members as to all Class Released Claims and by Plaintiff, PAGA Members, and the State of California with respect to all PAGA Released Claims as set forth in this Stipulation.

W. Funding Date. "Funding Date" shall mean the date that BLVD Residential will deposit the Gross Settlement Amount with the Settlement Administrator as discussed in Section V(B). below.

X. Gross Settlement Amount. "Gross Settlement Amount" or "GSA" is the agreed upon non-reversionary settlement amount totaling $300,000.00, which represents the non-reversionary amount payable in this Settlement by BLVD Residential and includes attorneys' fees and costs, costs of settlement administration by the Settlement Administrator, the Service Payment to the Class Representative of up to $5,000.00, payment in the total amount of $30,000.00 for Private Attorneys General Act ("PAGA") penalties 75% or $22,500.00 of which will be paid to the Labor & Workforce Development Agency ("LWDA"), and 25% or $7,500.00 (the "Net PAGA Distribution Amount") will be included in the amount allocated to the Settlement Class and in the Net Settlement Amount, and the amounts payable to the Settlement Class.

Y. Hearing on Preliminary Approval. "Hearing on Preliminary Approval" shall mean the hearing held on the motion for preliminary approval of the Class Settlement.

Z. Individual Settlement Amount. "Individual Settlement Amount" or "Individual Settlement Award" shall mean the amount which is ultimately distributed to each Class Participant. It shall include the Individual Class Payment(s) and the Individual PAGA Payment(s) as set forth in this Stipulation under Sections IV.C., IV.D. and VII.B. below.

AA. Net Settlement Amount. "Net Settlement Amount" shall mean the Gross Settlement Amount minus Settlement Administration Expenses, Class Attorney Fees and Expenses, 75% of the PAGA Payment payable to the LWDA, and the Service Award.

BB. Objection(s). "Objection" or "Objections" means objection(s) to the Class Settlement that Settlement Class Member(s) submit(s) in writing to the Settlement Administrator. Each Objection should contain: (1) the name and address of the Settlement Class Member objecting for identity verification and correspondence purposes; (2) be signed by the Settlement Class Member; (3) should contain a written statement of the grounds for the Objection accompanied by any legal support for such Objection they wish to be considered; and (4) be postmarked on or before the Response Deadline (as defined below) and returned to the Settlement Administrator at the specified address. Class Members wishing to object need not file anything with the Court and may instead appear at the final approval hearing regardless of whether or not they submitted a written objection. Class Members who do not submit a timely written objection may still appear at the final approval and fairness hearing and speak to

the Court about any potential projection at the hearing to the extent permitted by the Court. If a Class Member submits both an Opt Out and an Objection, the Settlement Administrator shall attempt to contact and determine whether the Class Member would like to withdraw either the Opt Out or the Objection. If the Class Member does not withdraw the Opt Out or if the Settlement Administrator cannot contact a Class Member who submits both an Opt Out and an Objection, the Request for Exclusion shall be valid, and it shall be presumed that the Class Member does not wish to participate in the Settlement. The Class Notice received by each Class Member shall include an Objection form that contains the name and address of the Settlement Class Member to which it corresponds.

CC. Opt Out(s). "Opt Out" or "Opt Outs" mean request(s) by Class Member(s) to be excluded from the Class Settlement. In order to opt out of the Class Settlement, the Class Member should submit a letter or the individualized opt out form included within the Class Notice Package to the Settlement Administrator by the Response Deadline. Each "Opt Out" must contain: (1) the name and address of the Class Member for identification purposes; (2) be signed by the Class Member; (3) contain a clear written statement indicating that the Class Member wishes to be excluded from the Class Settlement (an example of such a statement is "I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN URRUTIA VS. BLVD RESIDENTIAL"); and, (4) be postmarked on or before the Response Deadline and returned to the Settlement Administrator at the specified address. With respect to (3) above, a request for exclusion or Opt Out shall not be deemed invalid if it does not include the exact phrase "I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN URRUTIA VS. BLVD RESIDENTIAL" as long as the Class Member's intent to exclude themselves is evident from the submission. Absent a good cause finding by the Court, any Opt Out request that is not postmarked by the Response Deadline will be invalid.

DD. PAGA Member(s). "PAGA Member(s)" or "Aggrieved Employee(s)" means all current and former non-exempt employees of BLVD Residential employed in California during the PAGA Period. Based upon a review of its records, BLVD Residential represented that there are 419 PAGA Members.

EE. PAGA Payment. "PAGA Payment" means the penalties pursuant to California Labor Code sections 2698, et seq., the Labor Code Private Attorneys General Act of 2004 ("PAGA"), that the Parties have agreed is a reasonable sum to be paid in settlement of the PAGA claims included in the

Action, which is $30,000.00 for Private Attorneys General Act ("PAGA") penalties 75% or $22,500.00 of which will be paid to the LWDA, and 25% or $7,500.00 (i.e., Net PAGA Distribution Amount) will be included in the amount allocated to the Settlement Class. Since PAGA does not permit employees to opt out, any Class Member who opts out shall still receive their pro rata share of the PAGA penalties. *Baumann v. Chase Inv. Servs. Corp*., 747 F.3d 1117, 1122 (9th Cir. 2014) (explaining that PAGA "has no notice requirement for unnamed aggrieved employees, nor may such employees opt out of a PAGA action."); *accord Arias v. Sup. Ct*. 46 Cal.4th 969, 986-987 (2009); *Williams v. Sup. Ct*., 3 Cal.5th 531, 547, fn. 4 (2017) (explaining that aggrieved employees "do not own a personal claim for PAGA civil penalties…and whatever personal claims the absent employees might have for relief are not at stake"). Each PAGA Member shall receive a pro rata share of the $7,500 in PAGA penalties payable to the PAGA Members based upon the number of pay periods they worked relative to the total number of pay periods worked by all PAGA Members during the PAGA period.

FF. **PAGA Period**. "PAGA Period" shall mean and refer to the period from August 11, 2023 to March 22, 2025.

GG. **PAGA Released Claims**. "PAGA Released Claims" shall mean any claim for PAGA penalties under Labor Code section 2699 that were alleged or reasonably could have been alleged based on the facts stated in the January 4, 2024 PAGA Notice including claims for violations of Labor Code sections 200, 201, 202, 203, 204, 210, 226, 226.3, 226.7, 246-248, 256, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198, 1198.5, 1199 as well as applicable Industrial Welfare Commission Wage Orders (including but not limited IWC Wage Order No. 5-2001). This includes claims for failure to pay all minimum wages, overtime wages due, failure to provide lawful meal periods and associated premiums, failure to provide lawful rest periods and associated premiums, failure to pay all wages timely during employment and/or at the time of termination, failure to maintain accurate time records, and failure to provide complete, accurate, or properly formatted wage statements.

HH. **PAGA Settlement**. "PAGA Settlement" refers to the settlement and resolution of the PAGA Released Claims.

II. **Plaintiff.** "Plaintiff" shall mean the named Plaintiff Antonio Urrutia.

JJ. **Parties.** "Parties" shall mean Plaintiff and Defendants.

KK. Preliminary Approval Date. "Preliminary Approval Date" shall mean the date upon which the Court enters an order preliminarily approving this Stipulation.

LL. Preliminary Approval Order. "Preliminary Approval Order" is the Order entered and filed by the Court that preliminarily approves the terms and conditions of this Stipulation.

MM. Response Deadline. The "Response Deadline" means the day that is sixty (60) days after the date the Class Notice is mailed to Class Members via First-Class U.S. Mail and is the deadline to submit Opt Outs(s) (as defined herein), Objection(s) (as defined herein), and/or Workweek Dispute(s) (as defined below). Any Class Members that have their notices remailed shall have an additional fourteen (14) calendar days to respond.

NN. Release Effective Date. "Release Effective Date" means the date upon which Defendants and Releasees shall be released of the Released Claims and is the Effective Date for BLVD Residential; however, any release shall not be effective as to the owners, officers, directors, managing agents, and shareholders including Debra O'Toole, Robert Talbott, and Scott Mencaccy unless and until the entirety of the Gross Settlement Amount is deposited with the Settlement Administrator. The Release Effective Date applies to both the Class Released Claims and the PAGA Released Claims.

OO. Releasees or Released Parties. "Defendants," "Releasees," or "Released Parties" shall mean and refer to BLVD Residential Inc. and each of its officers, directors, members, partners, owners, shareholders, managing agents, human resource employees, attorneys, assigns, predecessors, successors, and any and all other persons, firms and corporations in which BLVD Residential, Inc. may have an interest. These terms specifically include but are not limited to Debra O'Toole, Robert Talbott, and Scott Mencaccy.

PP. Service Award. "Service Award" shall mean the amount approved by the Court, not to exceed $5,000.00, to be paid to the Class Representative in recognition of his efforts and time on behalf of the Class and as consideration for a full, general, and comprehensive release and Civil Code section 1542 waiver as referenced in this Stipulation below.

QQ. Settlement. "Settlement" shall mean the settlement between the Parties, which is memorialized in this Stipulation and subject to approval by the Court.

/ / /

RR. Settlement Administrator. "Settlement Administrator" shall mean ILYM Group, Inc. who will be responsible for administration of the Settlement and related matters.

SS. Stipulation. "Stipulation" shall mean this Joint Stipulation of Class and PAGA Settlement.

TT. Workweek. "Workweek" shall mean any calendar week (*i.e.*, a week beginning on Sunday and ending on Saturday) in which a Class Member or PAGA Member was employed by BLVD Residential for at least one day. The Parties agree that, for purposes of determining a Class Member's and/or PAGA Member's Workweeks under this Stipulation, Workweeks may be calculated by BLVD Residential and/or the Settlement Administrator based on the number of days between a Class Member's and/or PAGA Member's (1) hire date(s) or the start of the applicable Class Period or PAGA Period (which ever is later) and (2) termination date(s), or, in the absence of a subsequent termination date, either the end date of March 22, 2025 or, Alternative End Date pursuant to the Escalator Clause. .

II. FACTUAL AND PROCEDURAL BACKGROUND OF ACTION

A. Plaintiff's Claims and Procedural History. Plaintiff alleged on behalf of the Class that BLVD Residential: 1) failed to pay minimum wages for all hours worked; 2) failed to pay overtime wages and/or at the proper rate; 3) failed to provide meal periods and/or pay meal period premiums at the correct rate; 4) failed to provide rest periods and/or pay rest period premiums at the correct rate; 5) failed to provide accurate itemized wage statements; and 6) failed to timely pay all wages owed upon separation including both derivative and non-derivative claims as well as based upon the alleged failure to calculate sick pay at the correct rate; 7) engaged in unfair competition in violation of Bus. & Prof. Code § 17200; and also sought PAGA penalties for Defendant BLVD's alleged violations of Labor Code §§ 201, 202, 203, 204, 210, 226, 226.2, 226.3, 510, 558, 1174, 1174.5, 1194, 1197, 1197.1, and 1198 as well as IWC Wage Order No. 5-2001 and/or other applicable wage orders. Among other claims, Plaintiff alleges that Defendants failed to include housing allowances provided to Plaintiff and the other employees when calculating and paying meal/rest period premiums, calculating and paying sick pay, failed to relieve employees of all duties during meal/rest periods including refusing to allow them to smoke during their breaks, failed to timely pay all wages during and after employment, and failed to provide accurate itemized wage statements.

On January 4, 2024, Plaintiff filed a PAGA Notice with the California Labor and Workforce Development Agency. That same day, Plaintiff submitted a Class Action Complaint in San Mateo County Superior Court. After exhausting his administrative remedies under PAGA, Plaintiff filed the First Amended Complaint on March 12, 2024 adding the PAGA claims. The Parties mediated the matter with third-party mediator Mark Peters on October 21, 2024. The Parties were unable to reach a settlement at the Mediation and proceeded with the litigation. Plaintiff propounded formal written discovery on November 19, 2024 including Special Interrogatories, Requests for Production, Requests for Admission, and General Form Interrogatories. Following the receipt of Defendant BLVD's initial discovery responses, Plaintiff added individual Defendant Debra O'Toole to this Action via a Doe Amendment on January 2, 2025. Unfortunately, BLVD's financial challenges caused it to restructure its payment plan in a prior class action called *Tavera vs. BLVD Residential Inc.*, Sacramento County Superior Court Case No. 34-2022-00327501, and rendered it difficult to conduct meaningful settlement discussions. Eventually BLVD Residential and the Parties in the prior *Tavera* case whose class and PAGA period predate this settlement agreed to a restructured payment plan allowing the Parties in this Action to engage more meaningful in settlement discussions.

Following resolution of the *Tavera* payment plan issues, the Parties continued to discuss the possibility of settlement and agreed to attend a second mediation, and were ultimately able to resolve this matter through direct negotiations in advance of the second mediation. At all times, the Parties' settlement negotiations have been non-collusive, adversarial, and at arm's length.

B. <u>Discovery, Investigation, and Research</u>. In advance of the scheduled Mediations and/or the submission of the preliminary approval motion, Class Counsel conducted a detailed investigation of the Settlement Class's putative claims. This discovery and investigation among other things, information about: the number of Class Members/PAGA Members (419),[1] the total number of pay periods through March 22, 2025 (9,941) and the total number of workweeks through March 22, 2025 (19,262). Class Counsel also considered the number of Class Members/PAGA Members who worked overtime (403), the number of Class Members PAGA Members who worked overtime and receiving a housing allowance (123), the number of pay periods where Class Members/PAGA Members worked overtime and received

[1] Since the Class and PAGA periods are the same in this Action due to the prior *Tavera* Action, the terms Class Members and PAGA Members are largely coextensive except that Class Members have the right to opt out of the Settlement.

a housing allowance (3,751 pay periods), the number of Class Members/PAGA Members who received a meal/rest period premium in the same pay period that they also received a housing allowance (103), the number of pay periods where Class Members/PAGA Members received a meal/rest period premium in the same pay period that they also received a housing allowance (897), the number of Class Members/PAGA Members who received sick pay (348), the number of Class Members/PAGA Members who received sick pay during the same pay period that they also received a housing allowance (110), the number of pay periods where Class Members/PAGA Members received sick pay during the same pay period that they also received a housing allowance (673), the number of Class Members/PAGA Members whose employment ended and who received sick pay, a meal period premium or worked overtime during the same pay period that they received a housing allowance (35), and the number of Class Members/PAGA Members whose employment ended (185). BLVD Residential also provided Plaintiff with relevant policy documents and provided time and pay data for all of the Class Members/PAGA Members.

The pre-Mediation and settlement negotiation preparations also included an investigation into the viability of class treatment of the claims asserted in the Action, an analysis of potential class-wide damages by a third-party data and damages expert, including information sufficient to understand Defendants' potential defenses to Plaintiff and the Settlement Class Members' claims, an analysis of the applicable law with respect to the claims asserted in the Complaint and the potential defenses thereto, and a review and analysis of information provided by BLVD Residential about its relevant policies and practices.

The Parties agree that the above-described investigation and evaluation, as well as discovery and the information exchanged during the settlement negotiations, are more than sufficient to assess the merits of the Parties' respective positions and to compromise the issues on a fair and equitable basis. The Parties have engaged in sufficient investigation and discovery to assess the relative merits of the claims of the Class Representative and of Defendants' defenses to them.

C. Benefits of Class Settlement. The extensive discovery conducted in this matter has been adequate to give the Class Representative and Class Counsel a sound understanding of the merits of their positions and to evaluate the worth of the claims of the Settlement Class. The informal discovery

conducted in this Action and the information exchanged by the Parties through discovery and settlement discussions are sufficient to reliably assess the merits of the Parties' respective positions and to compromise the issues on a fair and equitable basis given BLVD's financial challenges.

Plaintiff and Class Counsel believe that the claims, causes of action, allegations and contentions asserted in the Action have merit. Class Counsel has diligently pursued an investigation of Plaintiff's claims against Defendants and Releasees. Based on their own independent investigation and evaluation, Class Counsel is of the opinion that settlement with Defendants and Releasees for the consideration and on the terms set forth in this Settlement is fair, reasonable, and adequate, and is in the best interest of the Settlement Class in light of all known facts and circumstances, the various factual and legal defenses asserted by Defendants, as well as BLVD's financial challenges.

Plaintiff and Class Counsel also recognize and acknowledge the expense and delay of continued lengthy proceedings necessary to prosecute the Action against Defendants through trial and through appeals. Class Counsel has taken into account the uncertain outcome of the litigation, the risk of continued litigation in complex actions such as this, as well as the difficulties and delays inherent in such litigation. Plaintiff is mindful of the potential challenges and possible defenses to the claims alleged in the Action.

Plaintiff and Class Counsel believe that the Settlement set forth in this Stipulation confers substantial benefits upon Plaintiff and the Settlement Class Members and that an independent review of this Stipulation by the Court in the approval process will confirm this conclusion. Based on their own independent investigation and evaluation, Class Counsel has determined that the Settlement set forth in the Stipulation is in the best interests of Plaintiff and the Settlement Class Members.

D. Defendants' Denials of Wrongdoing and Liability. Defendants have denied and continue to deny each and all of the allegations, claims, and contentions alleged by Plaintiff in the Action. Defendants have expressly denied and continue to deny all charges of intentional or knowing wrongdoing or liability against it arising out of any of the conduct, statements, acts, or omissions alleged in the Action. Defendants contend that there is a good faith dispute as to whether they violated California's Labor Code, including whether they acted in good faith and whether they intentionally or knowingly failed to comply with California's Labor Code. Defendants contend that no Class Member or PAGA Member was injured

and that Defendants dealt legally and fairly with Plaintiff, the Settlement Class Members, and the PAGA Members. Defendants further deny that, for any purpose other than settling this Action, these claims are appropriate for class or representative treatment. Nonetheless, Defendants have concluded that further proceedings in the Action would be protracted and expensive and that it is desirable that the Action be fully and finally settled in the manner and upon the terms and conditions set forth in this Stipulation in order to dispose of burdensome and protracted litigation, to permit the operation of BLVD Residential's business without further expensive litigation and the distraction and diversion of its personnel with respect to matters at issue in the Action. Defendants have also taken into account the uncertainty and risks inherent in any litigation, especially in complex cases such as the Action. Defendants have, therefore, determined that it is desirable and beneficial to them that the Action be settled in the manner and upon the terms and conditions set forth in this Stipulation.

E. Intent of the Class Settlement. The Class Settlement set forth herein intends to achieve the following: (1) entry of an order approving the Class Settlement; (2) entry of judgment of the Action; (3) discharge of Defendants and Released Parties from liability for any and all of the released claims (i.e., Class Released Claims, PAGA Released Claims and Plaintiff's General Release) and any and all claims arising out of the Action; however, the releases for Debra O'Toole, Robert Talbott, and Scott Mencaccy under Labor Code section 558.1 are not effective until BLVD Residential has paid the entirety of the Gross Settlement Amount.

III. CONDITIONAL CLASS CERTIFICATION AND APPOINTMENT OF CLASS COUNSEL

A. The Settlement Class. For the purposes of this Stipulation and the Class Settlement of this Action only, the Parties stipulate to conditional class certification of the Settlement Class. Defense Counsel believes this conditional certification for settlement purposes only is appropriate because the released claims (i.e., Class Released Claims, PAGA Released Claims and Plaintiff's General Release) are being compromised without need to establish the elements of those claims on which liability turns.

B. Appointment of Class Counsel. For purposes of this Stipulation and subject to the Court's approval, the Parties hereby stipulate to the appointment of Class Counsel as counsel for the Class and the effectuation of the Class Settlement pursuant to this Stipulation.

IV. CLASS SETTLEMENT CONSIDERATION

A. Settlement Amount. The Parties agree to settle this Action for the Gross Settlement Amount of $300,000.00. There shall be no reversion to Defendants or Releasees. The Gross Settlement Amount and other actions and forbearances taken by Defendants and Releasees shall constitute adequate consideration for the Class Settlement and will be made in full and final settlement of: (a) the released claims (i.e., Class Released Claims, PAGA Released Claims and Plaintiff's General Release), (b) Class Attorneys' Fees and Expenses, (c) Settlement Administrative Expenses, (d) the Service Award, (e) PAGA Payment to the LWDA, and (f) any other obligation of Defendants under this Stipulation. After the Court issues an order preliminarily approving this Class Settlement, the Settlement Administrator will distribute the Class Notice to the Settlement Class Members, which shall describe the terms of the Class Settlement and procedures to opt out, object or participate in the Class Settlement.

B. Service Award for Class Representative. The Class Representative may petition the Court to approve a Service Award in an amount up to $5,000.00 for his efforts on behalf of the Settlement Class in this Action, including assisting in the investigation and consulting with Class Counsel and providing crucial documents to Class Counsel. Defendants and Releasees shall not oppose any request by the Class Representative for a Service Award in such an amount. Any Service Award approved by the Court shall be paid to the Class Representative from the Gross Settlement Amount and shall be in addition to any distribution to which he may otherwise be entitled to as a Settlement Class Member and PAGA Member. The Service Award shall not be considered wages, and the Settlement Administrator shall issue the Class Representative an IRS Form 1099 reflecting such payment. The Class Representative shall be responsible for the payment of any and all taxes with respect to his Service Award and shall hold Defendants and Releasees harmless and indemnify Defendant and Releasees from any and all liability with regard thereto. If Plaintiff's request for a service award is not approved or is reduced by the Court, the fact the amount was reduced shall not be cause to cancel the Stipulation and any amount not approved or reduced by the Court added to the amount of the Net Settlement to be distributed to the participating Class Members.

C. Payment to Class Participants. Each Class Member shall be eligible to receive a portion of the Net Settlement Amount on a pro rata basis based on the Workweeks worked by the Class Member

during the Class Period (August 11, 2023 to March 22, 2025), as discussed in Section VII(B). below. As to a Class Member who opts out of the Settlement (as discussed below) and/or whose Notice of Settlement is determined to be undeliverable after reasonable re-mailing efforts made by the Settlement Administrator, the Class Member's portion of the settlement payment will be added to the Net Settlement Amount and re-distributed among eligible participating Class Members on a pro rata basis.

D. Payment to PAGA Members. The portion of the PAGA penalty payment allocated to the PAGA Members who worked during the PAGA Period (August 11, 2023 to March 22, 2025), shall be distributed to the PAGA Members who worked during the PAGA Period, regardless of whether or not they opt out of the Settlement. This individual PAGA payment will be calculated on a pro rata basis based on the number of pay periods worked by the PAGA Member during the PAGA Period, as discussed in Section VII(B). below.

E. Tax Treatment and Payment. For calculating Employee's Taxes and Required Withholding for the Individual Class Payments to participating Class Members (including any payments to the Class Representative but exclusive of his Service Award), 20% of each Individual Class Payment paid to each Class Member shall constitute wages and be reported on an IRS W-2 form on that basis and 80% shall be considered penalties and interest, to be reported on an IRS form 1099. Prior to final distribution, the Settlement Administrator shall calculate the total Employee's Taxes and Required Withholding due as a result of the wage portion of participating Class Members' anticipated Individual Class Payments and such actual amount will be deducted from the Net Settlement Amount. Additionally, prior to the final funding of the Gross Settlement Amount and final distribution, the Settlement Administrator shall calculate the total Employers' Taxes due on the wage portion of the participating Class Members' Individual Class Payments and issue instructions to Defendants and Releasees and BLVD Residential shall thereafter pay the employer's share of payroll taxes. The Parties understand that Plaintiff and the participating Class Members who receive any payment pursuant to this Stipulation shall be solely responsible for any and all other individual tax obligations—which does not include the employer's share of payroll taxes—associated with this Class Settlement. Neither Plaintiff, Class Counsel, Defendants nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230

(31 CFR Part 10, as amended) or otherwise. The Individual PAGA Payments to PAGA Members will be designated one hundred percent (100%) as penalties and will be reported on an IRS Form 1099 (if required). Class Counsel will be issued an IRS Form 1099 for the Attorneys' Fees and Expenses awarded by the Court. Plaintiff will be issued an IRS Form 1099 for any Service Award approved by the Court. As noted, the Service Award payable to Plaintiff shall be in addition to the Individual Class Payment and, if applicable, Individual PAGA Payment that he will receive.

F. No Effect on Employee Benefit Plans. All payments made under this Stipulation shall not be utilized to calculate any additional benefits under any benefit plans to which any Settlement Class Members or PAGA Members may be eligible, including, but not limited to: profit-sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan. Rather, it is the Parties' intention that this Stipulation will not affect any rights, contributions, or amounts to which any Settlement Class Members and/or PAGA Members may be entitled under any benefit plans.

G. Class Counsels' Attorneys' Fees and Expenses. As part of the motion for final approval of the Class Settlement, Class Counsel may submit an application for an award of Class Attorney Fees and Expenses with the fee portion not to exceed one third of the Gross Settlement Amount (*i.e.*, $100,000.00) and the award of costs and expenses of up to an additional $22,000.00. Defendants and Releasees agree not to object to any such fee, cost, or expense application in those amounts. As a condition of this Class Settlement, Class Counsel has agreed to pursue fees only in the manner reflected by this Section except in the event of a breach of this Stipulation or fees incurred to enforce the Parties' Settlement. Any Class Attorneys' Fees and Expenses awarded by the Court shall be paid from the Gross Settlement Amount in arriving at the Net Settlement Amount and shall not constitute payment to any Settlement Class Members. If Class Counsel voluntarily reduces the request for Class Attorney Fees or Expenses or if the Court's award of Class Attorney Fees or Expenses is less than set forth above, the Net Settlement Amount shall be recalculated to reflect the actual Class Attorney Fees and Expenses awarded and such amounts shall be distributed to the Class.

The Class Attorney Fees and Expenses approved by the Court shall encompass: (a) all work performed and costs and expenses incurred by, or at the direction of, any attorney purporting to represent

the Settlement Class through the date of this Stipulation; (b) all work to be performed and costs to be incurred in connection with approval by the Court of the Class Settlement; (c) all work to be performed and costs and expenses, if any, incurred in connection with administering the Class Settlement through the Effective Date and dismissal of the Action, with prejudice; and (d) may be based on the Catalyst Theory, Common Fund Doctrine, and/or other basis.

V. SETTLEMENT ADMINISTRATION COSTS AND EXPENSES

A. The Settlement Administrator's Costs and Expenses. All costs and expenses due to the Settlement Administrator in connection with its administration of the Class Settlement, including, but not limited to, providing the Class Notice, locating Settlement Class Members, processing Opt Out requests and objections, and calculating, administering, and distributing Individual Settlement Amounts to the Class Participants and related tax forms, shall be paid from the Gross Settlement Amount, and shall not exceed $12,000.00. To the extent actual Settlement Administration Costs are greater than the estimated amount stated herein, such excess amount will be deducted from the Gross Settlement Amount, subject to approval by the Court. Any funds allocated to settlement administration costs that are not awarded by the Court will be included within the Net Settlement Amount and distributed to the class on a pro rata basis when calculating and paying the Individual Settlement Awards.

B. Payments by BLVD Residential. BLVD Residential will deposit the Gross Settlement Amount in an account maintained by the Settlement Administrator in accordance with the following payment schedule: BLVD Residential shall make an initial deposit of $75,000.00 the earlier of 30 days from the Preliminary Approval Order or December 10, 2025 to the Qualified Settlement Fund established by the Settlement Administrator. BLVD shall also deposit $18,750.00 on the 10th of each month following the initial deposit until it has fully funded the $300,000.00 Gross Settlement Amount. If the 10th of the month falls on a weekend and/or holiday, BLVD shall deposit the $18,750.00 monthly installment payment on the next business day. Under the terms of the payment plan articulated above, BLVD shall finish funding the entirety of the Gross Settlement Amount within 12 months of the $75,000.00 initial deposit.

C. Qualified Settlement Fund. The Settlement Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund ("QSF") pursuant to the requirements

of section 468(B)(g) of the Internal Revenue Code of 1986, as amended, and section 1.468B-1 *et seq.* of the income tax regulations.

VI. NOTICE TO CLASS MEMBERS, the LWDA, AND CLAIMS ADMINISTRATION PROCESS

A. The Settlement Administrator. The Settlement Administrator will be responsible for mailing the Class Notice to Settlement Class Members, handling inquiries from Settlement Class Members concerning the Class Notice, determination of Individual Settlement Amounts, maintaining the settlement funds in an appropriate account, preparing, administrating and distributing Individual Settlement Amounts to participating Class Members and PAGA Members, issuing a final report and performing such other duties as the Parties may direct.

Administrative Expenses are estimated not to exceed $12,000.00. Prior to the calculation and distribution of the Individual Settlement Amounts, the Settlement Administrator shall calculate the total Administrative Expenses through the conclusion of their services and such actual amount will be deducted from the Gross Settlement Amount prior to the final calculation of the Individual Settlement Amounts.

B. Notice to Settlement Class Members. Notice shall be provided to Settlement Class Members in the following manner: Fourteen (14) calendar days after entry of the Preliminary Approval Order, BLVD Residential shall provide the Settlement Administrator with the Class List. The Settlement Administrator will keep the Class List confidential and shall not provide it to anyone, including Class Counsel, absent express written approval from BLVD Residential, and shall use it only for the purposes described herein, take adequate safeguards to protect confidential or private information, and return or certify the destruction of the information upon completion of the Settlement Administration process.

i) Within fourteen (14) calendar days following receipt of the Class List, the Settlement Administrator shall prepare and mail the approved Class Notice. The Settlement Administrator shall deliver the Class Notice by First-Class U.S. Mail to each Class Member's last known mailing address. Prior to mailing the Class Notice, the Settlement Administrator will update the addresses for the Class Members using the National Change of Address database maintained by the USPS. To the extent this process yields a different address from

the one supplied by BLVD Residential, that updated address shall replace the address supplied by BLVD Residential and be treated as the new mailing address for purposes of this Agreement and for subsequent mailings in particular.

ii) If the Settlement Administrator, Defense Counsel, Defendants or Class Counsel are contacted by or otherwise discovers any persons who believe they should have been included on the Class List and should have received Class Notice, all counsel will expeditiously meet and confer and in a good faith effort to agree on whether to include them as Class Members. If the Parties agree or the Settlement Administrator determines that the individual should have been included within the Class List and received a Class Notice, such persons will be Class Members entitled to the same rights as other Class Members, and the Settlement Administrator will send, a Class Notice requiring them to exercise options under this Stipulation not later than fourteen (14) calendar days..

iii) The Class Notice shall contain an easily understood statement alerting the Class Members that, unless they elect to Opt Out of the Class Settlement, the Settlement Class Member is releasing the Class Released Claims against the Released Parties. The Class Notice will inform Settlement Class Members of the general terms of the Settlement and his/her estimated Individual Settlement Amount share. The Class Notice shall be distributed in English and Spanish.

iv) In addition to the Class Notice, Class members shall also receive notice informally through the establishment of a case specific website that shall contain copies of the Settlement, the motion for preliminary approval and related papers, and the Preliminary Approval Order, and any other documents directed to be posted by the Court.

v) In the event that, prior to the Response Deadline, any Class Notice mailed to a Settlement Class Member is returned as having been undelivered by the U.S. Postal Service, the Settlement Administrator shall perform a skip trace search and seek an address correction for such Settlement Class Member(s), and a second Class Notice will be sent to any new or different address obtained. Such Settlement Class Member(s) shall have an additional fourteen (14) calendar days in which to Opt Out.

C. Opt Out Procedure. Any Class Member may exclude himself or herself from the Class Settlement. Any such Opt Out must be submitted to the Settlement Administrator in writing on or before the Response Deadline and must follow the four requirements listed in Section I(CC) above. Opt Out Requests do not apply to the PAGA Settlement; PAGA Members will be bound to the PAGA Settlement irrespective of whether they exclude themselves from the Class Settlement. Absent a good cause finding by the Court before and/or at the Final Approval and Fairness Hearing, a Class Member will not be entitled to opt out of the Class Settlement established by this Stipulation unless he or she submits to the Settlement Administrator a timely and valid Opt Out. Those Settlement Class Members who do not timely Opt Out will be bound by the release of released claims (i.e., Class Released Claims, PAGA released Claims and Plaintiff's General Release) set forth in this Stipulation. The Settlement Administrator shall not have the authority to extend the deadline for Class Members to submit an Opt Out absent agreement by both Parties. Class Members shall be permitted to rescind in writing their Opt Out by submitting a written rescission statement to the Settlement Administrator no later than the day before the Final Approval and Fairness Hearing.

D. Objections. Any Class Member who has not submitted an Opt Out Request from the Class Settlement (i.e., Settlement Class Member) may object to the Class Settlement by submitting an Objection in writing to the Settlement Administrator at the address indicated on the Class Notice, following the four (4) requirements listed in Section I(BB) above or may also present their objection orally at the Final Approval and Fairness Hearing, irrespective of whether they submit a written Objection. The Parties shall be permitted to file responses to any Objections prior to the Final Approval Hearing and/or to respond to or address the Objection at the Final Approval Hearing. At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage Class Members to submit any Objections to the Settlement or appeal from the Final Approval Order and Judgment. Class Counsel shall not represent any Settlement Class Members with respect to any such Objections. Within two (2) business days after receipt of an Objection, the Settlement Administrator shall serve the Objection on the Parties, and at least sixteen (16) court days before the Final Approval and Fairness Hearing, the Settlement Administrator shall submit all Objections received by the Settlement Administrator to the Court. The Court may consider any Opt Outs, and/or Objections submitted at or before the hearing on Final

Approval. Subject to the steps listed under section I(BB), if a Class Member submits both an Objection and an Opt Out, he or she will be excluded from the Class Settlement and the Objection will not be considered.

E. Workweek Disputes. Class Members may dispute BLVD Residential's records of the number of Workweeks worked during the Class Period by submitting information to the Settlement Administrator no later than the Response deadline. Class Members may submit disputes directly to the Settlement Administrator by mail, fax, or personal delivery or other similar method. The Settlement Administrator will jointly work with the Settlement Class Member, Defendants, Defense Counsel, and Class Counsel to resolve disputes in good faith. If the Class Member and Defendants cannot agree over the Workweeks to be credited, the Settlement Administrator shall make the final decision based on the information presented by the Settlement Class Member and Defendants.

F. Settlement Administrator Duties.

i) Late Submissions. The Settlement Administrator shall not accept as timely any Opt Out Request, Objection, or Workweek Dispute postmarked after the Response Deadline. It shall be presumed that, if an Opt Out Request, Objection, or Workweek Dispute is not postmarked or fax stamped on or before the Response Deadline, the Class Member did not return the Opt Out Request, Objection, or Workweek Dispute in a timely manner. However, the Court may consider any Opt Outs, and/or Objections submitted after the Response deadline at or before the Final Approval and Fairness Hearing.

ii) Documenting Communications. The Settlement Administrator shall date stamp documents it receives, including Opt Out Requests, Objections, Workweek Disputes, and any correspondences and documents from Class Members and PAGA Members.

iii) Calculations of Individual Settlement Payments. Within seven (7) calendar days after resolving all Workweek Disputes made by Settlement Class Members, and following entry of the Final Approval Order and Judgment, the Settlement Administrator shall provide to the Parties a report showing its calculation of all amounts that must be funded by BLVD Residential under the Settlement, including and not limited to, calculations of the Individual Class Payments to be made to Settlement Class Members and Individual PAGA Payments to

be made to PAGA Members. After receiving the Settlement Administrator's report, Class Counsel and Defendants' Counsel shall review the same to determine if the calculation of payments is consistent with this Agreement and the Court's orders, and shall notify the Settlement Administrator if either counsel does not believe the calculation is consistent with the Agreement and/or the Court's orders. After receipt of comments from counsel, the Settlement Administrator shall finalize its calculations of payments, at least five (5) calendar days prior to the distribution of such payments, and shall provide Class Counsel and Defendants' Counsel with a final report listing the amount of all payments to be made to each Settlement Class Member from the Net Settlement Amount and listing the amount of all payments to be made to each PAGA Member from the Net PAGA Distribution Amount. The Settlement Administrator will also provide information that is requested and approved by both Parties regarding its duties and other aspects of the Settlement, and that is necessary to carry out the terms of the Settlement.

iv) Settlement Administrator Written Reports. Each week after initially mailing the Class Notices and prior to the Response Deadline, the Settlement Administrator shall provide the Parties with a report listing the number of Class Members that submitted Opt Out Requests, Objections, and/or Workweek Disputes. Within seven (7) calendar days after the Response Deadline, the Settlement Administrator will provide a final report listing the number of Class Members who submitted Opt Out Requests, Objections, and/or Workweeks Disputes. No later than thirty (30) calendar days prior to the Final Approval and Fairness Hearing, the Settlement Administrator will compile and deliver to Class Counsel and Defense Counsel a report with summary information regarding (a) the total Individual Settlement Amounts of each participating Class Member and PAGA Member; (b) the number of Class Members and PAGA Members to receive such payments; and (c) the final number of Opt Outs, Objections and Workweek Disputes.

v) Declaration. At least thirty (30) calendar days prior to the Final Approval and Fairness Hearing, the Settlement Administrator shall provide Class Counsel and Defense Counsel with a Declaration of Due Diligence and Proof of Mailing with regard to the mailing of the Class

Notice and its attempts to locate Class Members. The declaration shall specify the total Individual Settlement Amounts of each participating Class Member and PAGA Member, the number of Class Members and PAGA Members to receive such payments, the number of Settlement Class Members to whom Class Notices were sent, the number of Settlement Class Members to whom Class Notices were not delivered, and the final number of Opt Outs, Objections and Workweek Disputes. Class Counsel shall file this declaration with the Court.

G. Notice to the LWDA. Class Counsel shall give timely notice of the Settlement to the LWDA under Labor Code section 2699(l)(2). Specifically, Class Counsel will provide a copy of this Agreement to the LWDA at the same time that it is submitted to the Court and Final Approval Order and Judgment to the LWDA within ten (10) calendar days after receipt of said judgment or order as required by Labor Code sections 2699(l)(2)-(3).

VII. CLASS SETTLEMENT FUNDING AND DISTRIBUTION

A. Allocation of the Gross Settlement Amount. The claims of all Settlement Class Members are settled for the Gross Settlement Amount of $300,000.00, which will be allocated as follows:

1. The Administrative Expenses, estimated not to exceed $12,000.00;

2. The Class Attorney Fees and Expenses not to exceed $100,000.00 in fees and expenses not to exceed $22,000.00;

3. PAGA Payment of $30,000.00, of which $22,500.00 shall be paid to the LWDA;

4. Service Award, not to exceed $5,000.00; and

5. The Net Settlement Amount, estimated to be $131,000.00 and $138,500 when including the Aggrieved Employees' $7,500 Share of PAGA Penalties.

For purposes of calculating the estimated Individual Settlement Amounts, the Settlement Administrator shall calculate the estimated Net Settlement Amount based on the estimated values in Section VII.A., sub-sections 1-4 prior to sending Notice to the Settlement Class Members. Prior to final distribution, the Settlement Administrator shall calculate the final Net Settlement Amount based on the actual values in Section VII.A., sub-sections (1-4).

B. Calculation of the Individual Settlement Amounts.

1. No claim form is necessary to participate in the Class Settlement. Unless a Class Member

submits a valid and timely Opt Out Request, that Class Member will be a Settlement Class Member, bound by the Final Approval Order and Judgment and Class Settlement, and will receive a payment from the Net Settlement Amount. All PAGA Members shall be bound by the PAGA Settlement and will be issued payment from the Net PAGA Distribution Amount.

2. Individual Class Payment(s): Individual Class Payments Class Members will be calculated as follows:

i) The Settlement Administrator will use the number of Workweeks worked by Class Members during the Class Period as reflected in the Class List to be provided by Defendants to the Settlement Administrator;

ii) Each of the Class Members is eligible to receive a pro rata share of the Net Settlement Amount based on his or her share of the total number of Workweeks during the Class Period worked.

iii) The value of a single Workweek during the Class Period shall be determined by dividing the Net Settlement Amount by the total number of Workweeks during the Class Period worked by all Settlement Class Members. Each Settlement Class Member shall receive a gross individual settlement share equal to his or her individual Workweeks during the Class Period multiplied by the value of a single Workweek during the Class Period.

3. Individual PAGA Payment(s): Pursuant to California Labor Code section 2698, *et seq*., the Parties designate $30,000.00 towards the PAGA Released Claims. Pursuant to the California Labor Code, 75%, which is $22,500.00 will be paid to the LWDA. The remaining 25%, which is $7,500.00 (i.e., the Net PAGA Distribution Amount), shall be paid to PAGA Members on a pro rata basis based on the number of pay periods worked by the PAGA Member during the PAGA Period as follows:

i) The Settlement Administrator will use the number of Workweeks worked by PAGA Members during the PAGA Period as reflected in the Class List to be provided by Defendants to the Settlement Administrator;

ii) Each of the PAGA Members is eligible to receive a *pro rata* share of the Net PAGA Distribution Amount based on his or her share of the total number of Workweeks worked during the PAGA Period.

iii) The value of a single pay period during the PAGA Period shall be determined by dividing the Net PAGA Distribution Amount by the total number of pay periods worked during the PAGA Period by all PAGA Members. Each PAGA Member shall receive an Individual PAGA Payment equal to his or her individual pay periods during the PAGA period multiplied by the value of a single pay period during the PAGA Period. PAGA Members shall receive their respective PAGA Payments regardless of whether they opt out of the Class Settlement.

4. The Parties agree that under no circumstances shall Defendants be obligated to pay any amounts under this Agreement to any Class Member other than the Individual Class Payments to Class Members and Individual PAGA Payments to PAGA Members that is provided for under this Agreement.

5. Defendants and Releasees shall have no responsibility for deciding the validity of the Individual Settlement Amounts or any other payments made pursuant to this Stipulation, shall have no involvement in or responsibility for the determination or payment of Employee's Taxes, and shall have no liability for any errors made with respect to such Employee's Taxes. Plaintiff and participating Class Members as well as PAGA Members shall be solely responsible for any and all tax obligations associated with their respective Individual Settlement Amounts.

C. Time for Payment of Attorney Fees and Expenses to Class Counsel. The Settlement Administrator shall distribute to Class Counsel the attorneys' fees and expenses approved by the Court to Class Counsel within fifteen (15) calendar days after BLVD Residential deposits the entirety of the Gross Settlement Amount. Winston Law Group, P.C. shall be solely and legally responsible to pay their applicable taxes on the payment made pursuant to this Paragraph. Under no circumstances shall the foregoing payments be made prior to the distribution of payments to Settlement Class Members and PAGA Members.

D. Time for Payment of Service Award to Class Representative. The Settlement Administrator shall distribute to the Class Representative any Service Award approved by the Court no later than fifteen (15) calendar days after BLVD Residential deposits the entirety of the Gross Settlement Amount with the Settlement Administrator. Under no circumstances shall the foregoing payments be made prior to the distribution of payments to Settlement Class Members and PAGA Members.

E. Time for Payment of PAGA Payment to the LWDA. The Settlement Administrator shall distribute to the LWDA the portion of the PAGA Payment due to it and approved by the Court no later than fifteen (15) calendar days after BLVD Residential deposits the entirety of the Gross Settlement Amount with the Settlement Administrator.

F. Time for Payment of Individual Settlement Amounts. The Settlement Administrator shall mail the Individual Settlement Amount to each Class Participant, by first-class U.S. mail, to the last-known address no later than fifteen (15) calendar days after Defendant BLVD deposits the entirety of the Gross Settlement Amount with the Settlement Administrator. Under no circumstances shall the Settlement Administrator distribute checks to participating Class Members or PAGA Members until all Individual Settlement Amounts have been considered, calculated, and accounted for, and all of the remaining monetary obligations have been calculated and accounted for. If the Settlement Administrator receives notice from Settlement Class Members or PAGA Members that they have not received their settlement check due to changes of address or other circumstances, the Settlement Administrator shall make reasonable efforts to ensure the initial payment is cancelled and re-issue the payment to the Settlement Class Member or PAGA Member. Within 200 days of the distribution of the individual settlement awards, the Settlement Administrator shall provide to Class Counsel a declaration that provides sufficient information to allow the Court to conduct a compliance hearing in accordance with Code of Civ. Proc. § 384. In the event that any participating Class Member is deceased, payment shall be made payable to the estate of that Class Member and delivered to the executor or administrator of that estate, unless the Settlement Administrator has received an affidavit or declaration pursuant to Cal. Probate Code § 13101, in which case payment shall be made to the affiant(s) or declarant(s).

G. Non-Cashed Settlement Checks. Any funds associated with checks that have not been cashed within one hundred and eighty (180) days, will become void and the Individual Settlement Amount (i.e, Individual Class Payments and Individual PAGA Payments) associated with the un-cashed check shall be paid out in accordance with Civil Code section 384 to a *cy pres* agreed to by the Parties or any other method of distribution consistent with Code of Civil Procedure section 384. Upon the expiration of the180 days, the Settlement Administration shall pay all remaining settlement funds to the designated *cy pres* recipient. The *cy pres* recipient shall be CASA of San Mateo County. The Parties, Class Counsel

and Defense Counsel represent that they have no interest or relationship, financial or otherwise, with the intended *cy pres* recipient. Settlement Class Members whose Individual Class Payment checks are not claimed and sent to the *cy pres* recipient pursuant to Code of Civil Procedure section 384 shall, nevertheless, be bound by this Settlement Agreement and the Final Approval Order and Judgment will have claim preclusive impact with respect to them and all Settlement Class Members with respect to the Class Settlement. The Final Approval Order and Judgment will have claim preclusive impact on the PAGA Members with respect to the PAGA Settlement irrespective of whether their Individual PAGA Payment checks are canceled.

VIII. NULLIFICATION OF THIS STIPULATION

A. Stipulation for Class Certification Only; Non-Approval of the Stipulation. The Parties stipulate to the certification of the Class for purposes of this Settlement only. If, however, the Settlement does not become final for any reason, the Parties' Stipulation shall become null and void *ab initio* and shall have no bearing on, and shall not be admissible in connection with, whether class certification would be appropriate in a non-settlement context. In the event that the Court fails to approve the Settlement under the terms agreed to by the Parties, or if the appropriate appellate court fails to uphold or affirm the Settlement or if the Settlement is otherwise terminated: (1) the Settlement shall have no force and effect and the parties shall be restored to their respective positions prior to entering into it, and no Party shall be bound by any of the terms of the Settlement; (2) Defendant and Releasees shall have no obligation to make any payments to the Settlement Class Members, Plaintiff, or Plaintiff's counsel; (3) all amounts deposited by BLVD Residential with the Settlement Administrator shall immediately be returned to BLVD Residential; (4) any Preliminary Approval Order, Final Approval Order and Judgment, shall be vacated; and (5) the Settlement and all negotiations, statements, proceedings and data relating thereto shall be deemed confidential mediation settlement communications and not subject to disclosure for any purpose in any proceeding. However, the Parties shall first make good faith efforts to resolve any issues raised by the Court during the approval process.

B. Parties' Rights to Void Class Settlement. If more than ten percent (10%) of the Class Members timely opt out of the Class Settlement, Defendants shall have the sole discretion to withdraw from this Settlement within seven (7) calendar days after the Response Deadline and written notice from

the Settlement Administrator of the final opt out rate. Defendants shall provide written notice of such withdrawal to Class Counsel. In the event that Defendants elects to so withdraw, the withdrawal shall have the same effect as a termination of this Settlement for failure to satisfy a condition of Settlement, and the Settlement shall become null and void and have no further force or effect, and Defendants will be responsible for any and all Settlement Administration Costs incurred thus far.

C. Amounts Not Awarded by the Court. In the event that the Court does not award any of the requested attorneys' fees, costs, settlement administration costs, and/or service awards, any amount not approved or awarded by the Court added to the amount of the Net Settlement to be distributed to the participating Class Members. The fact that such amounts were not awarded and/or were reduced shall not be cause to cancel the Settlement

D. Invalidation. Invalidation of any material portion of the Class Settlement shall invalidate the Class Settlement in its entirety, unless the Parties shall subsequently agree in writing that the remaining provisions of the Class Settlement are to remain in full force and effect.

E. Stay Upon Appeal. In the event of a timely appeal from the approval of the Class Settlement and judgment by a class member who submits an objection, the judgment shall be stayed, and Defendant shall not be obligated to continue to take any other actions required by this Stipulation, except for continuing to make any outstanding monthly installment payments in accordance with the schedule set forth in Section V.B of this Stipulation, until all appeal rights have been exhausted by operation of law.

IX. MOTION FOR COURT APPROVAL

A. Preliminary Approval. Class Counsel will submit this Stipulation to the Court along with a Motion for Preliminary Approval of the Settlement. A request by the Court for supplemental briefing, or a preliminary denial pending additional briefing, shall not be deemed a denial of preliminary approval or final approval. To the extent the Court requests further or supplemental briefing, the Parties will work in good faith to address the Court's concerns and questions.

B. Final Approval. The Final Approval and Fairness Hearing shall be held before the Court unless the Court orders otherwise. At the Final Approval and Fairness Hearing, Plaintiff shall move the Court for the entry of the final order certifying the Class for settlement purposes only and approving the

Class Settlement as being fair, reasonable, and adequate to the Class Participants within the meaning of California Rules of Court, Rule 3.769(c), (d) and (e) and for the entry of a final judgment of the Action consistent with the terms of the Class Settlement and California Rule of Court 3.769(h). Class Counsel and Defense Counsel shall submit to the Court such pleadings and/or evidence as may be required for the Court's determination.

X. RELEASES AND WAIVERS

A. Release of Claims by Settlement Class. As of the Effective Date, Plaintiff and all Class Members who do not submit a timely and valid Opt Out shall each be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged any and all Class Released Claims against Defendant BLVD Residential and all other Released Parties (except for Debra O'Toole, Robert Talbott, and Scott Mencaccy). The release under this paragraph shall not be effective as to Debra O'Toole, Robert Talbott, and Scott Mencaccy unless and until the entirety of the Gross Settlement Amount is deposited with the Settlement Administrator. Once the entirety of the Gross Settlement Amount is deposited with the Settlement Administrator, Plaintiff and all Class Members who do not submit a timely and valid Opt Out shall each be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged any and all Class Released Claims against all of the Released Parties as defined herein. Released Parties shall be entitled to a release of Class Released Claims only during such time that the Settlement Class Member was classified as non-exempt, and expressly excluding claims outside of the Class Period and otherwise not waivable under the law. The Parties agree for settlement purposes only that, because the Class Members are so numerous, it is impossible or impracticable to have each Class Member execute this Stipulation. Accordingly, the Class Notice will advise all Class Members of the binding nature of the Class Settlement as to Settlement Class Members and such notice shall have the same force and effect as if the Stipulation were executed by each Class Member. The Parties agree that this is a settlement of disputed claims not involving undisputed wages, and that Labor Code section 206.5 is therefore inapplicable.

B. PAGA Release of Claims for the State of California. As of the Effective Date, Plaintiff, the State of California, and the PAGA Members, shall be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged Defendant BLVD Residential and all other

Released Parties (except for Debra O'Toole, Robert Talbott, and Scott Mencaccy) from any and all PAGA Released Claims. The release under this paragraph shall not be effective as to Debra O'Toole, Robert Talbott, and Scott Mencaccy unless and until the entirety of the Gross Settlement Amount is deposited with the Settlement Administrator. Once the entirety of the Gross Settlement Amount is deposited with the Settlement Administrator, Plaintiff and all PAGA Members shall each be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged any and all PAGA Released Claims against all of the Released Parties as defined herein. The Parties agree that it is their intent that the terms set forth in this Stipulation will release any further attempt, by lawsuit, administrative claim or action, arbitration, or other action of any kind, by each and every PAGA Member to obtain any recovery for the PAGA Released Claims. Released Parties shall be entitled to a release of PAGA Released Claims only for such time that PAGA Members were classified as non-exempt.

C. Plaintiff's General Release.

Plaintiff, on behalf of himself and his heirs, executors, administrators, and representatives, shall and does hereby forever releases, discharges and agrees to hold harmless the Released Parties from any and all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts and expenses (including attorney fees and costs), known or unknown, at law or in equity, which they may now have or may have after the signing of this Stipulation, arising out of or in any way connected with his employment with BLVD Residential and Releasees including, the Released Claims, claims that were asserted or could have been asserted in the Complaints (as defined above), and any and all transactions, occurrences, or matters between the Parties occurring through and up to date this Stipulation is fully executed. Without limiting the generality of the foregoing, this release shall include, but not be limited to, any and all claims under the (a) Americans With Disabilities Act, as amended; (b) Title VII of the Civil Rights Act of 1964, as amended; (c) the Civil Rights Act of 1991; (d) 42 U.S.C. § 1981, as amended; (e) the Age Discrimination in Employment Act, as amended; (f) the Fair Labor Standards Act, as amended; (g) the Equal Pay Act; (h) the Employee Retirement Income Security Act, as amended; (i) the Consolidated Omnibus Budget Reconciliation Act; (j) the Rehabilitation Act of 1973; (k) the Family and Medical Leave Act; (l) the Civil Rights Act of 1966; (m) the California Fair Employment and Housing Act; (n) the California

Constitution; (o) the California Labor Code; (p) the California Government Code; (q) the California Civil Code; (r) the California Wage Orders, and (s) any and all other federal, state and local statutes, ordinances, regulations, rules and other laws, and any and all claims based on constitutional, statutory, common law or regulatory grounds as well as any other claims based on theories of wrongful or constructive discharge, breach of contract or implied contract, fraud, misrepresentation, promissory estoppel or intentional and/or negligent infliction of emotional distress, or damages under any other federal, state or local statutes, ordinances, regulations, rules or laws. This release is for any and all relief, no matter how denominated, including, but not limited to, back pay, front pay, vacation pay, bonuses, compensatory damages, tortious damages, liquidated damages, punitive damages, damages for pain and suffering, and attorney fees and costs, and Plaintiff hereby forever releases, discharges and agrees to hold harmless Defendant and the Released Parties from any and all claims for attorney fees and costs arising out of the matters released in this Stipulation.

Plaintiff specifically acknowledges that he is aware of and familiar with the provisions of section 1542, which provides as follows:

> **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.**

Plaintiff, being aware of section 1542, hereby expressly waives and relinquishes all rights and benefits he may have under section 1542 as well as any other statutes or common law principles of a similar effect. Plaintiff may hereafter discover facts in addition to or different from those which he now knows or believes to be true with respect to the subject matter of all the claims referenced herein, but stipulates and agrees that, except as otherwise provided herein, upon the Effective Date, Plaintiff shall and hereby does fully, finally and forever settle and release any and all claims against the Defendants and the Released Parties, known or unknown, suspected or unsuspected, contingent or non-contingent, that were asserted or could have been asserted upon any theory of law or equity without regard to the subsequent discovery of existence of such different or additional facts. Notwithstanding the foregoing, if BLVD Residential fails to deposit the entirety of the Gross Settlement Amount, Plaintiff will not be bound to this additional release against Defendants or Releasees or anyone affiliated with any Defendants or Releasees except for the Class Released Claims and this general release shall be void and of no force

or effect whatsoever. Further, notwithstanding the foregoing, nothing in this Settlement shall serve to or be construed as releasing any non-releasable claims, such as claims for unemployment, that cannot be released as a matter of law.

XI. DUTIES OF THE PARTIES

A. Mutual Full Cooperation. The Parties agree to cooperate fully with one another to accomplish and implement the terms of this Stipulation. Such cooperation shall include, but not be limited to, execution of such other documents and the taking of such other actions as may reasonably be necessary to fulfill the terms of this Class Settlement unless the Court denies the proposed Settlement with prejudice. As part of the preliminary approval process, BLVD Residential has and will provide Class Counsel with detailed financial information that will allow them to evaluate its financial condition. BLVD will also provide a declaration to the Court as part of the preliminary approval process confirming that it has provided Class Counsel with financial information and that this Settlement is consistent with its current financial condition. Defendant Debra O'Toole will also provide a declaration that affirms that she could not afford to fund the Gross Settlement Amount. As soon as reasonably practicable after execution of this Stipulation, Class Counsel, with the cooperation of Defendants and Defense Counsel, shall take all necessary and reasonable steps to secure the Court's approval of this Stipulation. The Parties will work together to make any non-material modifications of the Settlement requested by the Court to obtain approval of the Parties' proposed Settlement and will work collaboratively together to obtain approval unless the Parties' proposed Settlement is denied with prejudice and cannot be cured by making reasonable modifications to the proposed Settlement. Defendants shall not attack any provisions of this Settlement, including, but not limited to Plaintiff's Proposed Service Award. The Parties shall use their best efforts, including all efforts contemplated by this Stipulation and any other efforts that may become necessary by court order or otherwise, to effectuate this Stipulation and the terms set forth herein.

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

C. Duties Prior to Court Approval. Class Counsel shall promptly submit this Stipulation

to the Court for preliminary approval and determination by the Court as to its fairness, adequacy, and reasonableness. Promptly upon execution of this Stipulation, Class Counsel shall apply to the Court for the entry of a preliminary order**,** scheduling a hearing on the question of whether the proposed Class Settlement should be approved as fair, reasonable, and adequate as to the Settlement Class Members, approving as to form and content the proposed Class Notice, respectively, and directing the mailing of the Class Notice to Settlement Class Members.

XII. MISCELLANEOUS PROVISIONS

A. Escalator Clause. BLVD Residential estimates that, during the period from August 11, 2023 through March 22, 2025, the Class Members worked, collectively, approximately 19,262 Workweeks. If it is determined that the total number of Workweeks during the Class Period exceed 19,262 by more than ten percent (10%) (i.e., exceeds 21,189 workweeks then, either (a) the Gross Settlement Amount will increase by the same number of percentage points above 10% by which the actual number of Workweeks exceeds 19,262 (e.g., if the actual number of Workweeks is 12% higher than19,262, the Gross Settlement Amount will be increased by 2%) or (b) at BLVD Residential's option, modifying the end date of the Class and PAGA Period to an earlier date, but in no event shall the earlier date be earlier than January 1, 2025 (and such date shall be referred to as the "Alternate End Date").

B. Different Facts. The Parties hereto, and each of them, acknowledge that, except for matters expressly represented herein, the facts in relation to the dispute and all claims released by the terms of this Stipulation may turn out to be other than or different from the facts now known by each party and/or its counsel, or believed by such Party or counsel to be true, and each Party therefore expressly assumes the risk of the existence of different or presently unknown facts, and agrees that this Stipulation shall be in all respects effective and binding despite such difference.

C. Binding Effect. Subject to final Court approval, all Settlement Class Members, the State of California, PAGA Members and Defendants shall be bound by this Stipulation and a Final Approval Order and Judgment shall be entered in the Action.

D. No Prior Assignments. The Parties represent, covenant, and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action, or right herein

released and discharged except as set forth herein.

E. Non-Admission. Nothing in this Stipulation shall be construed as or deemed to be an admission by any party of any liability, culpability, negligence, or wrongdoing toward any other party, or any other person, and the Parties specifically disclaim any liability, culpability, negligence, or wrongdoing toward each other or any other person. Each of the Parties has entered into this Stipulation with the intention to avoid further disputes and litigation with the attendant inconvenience, expenses, and contingencies. Nothing herein shall constitute any admission by Defendants or Releasees of wrongdoing or liability, or of the truth of any factual allegations in the Action. Nothing herein shall constitute any admission by Defendants regarding the merits of the claims in this Action. Nothing herein shall constitute an admission by Defendants that the Action was properly brought as a class or representative action other than for settlement purposes. To the contrary, and as discussed, Defendants have denied and continue to deny each and every material factual allegation and all Claims. To this end, the Class Settlement of the Action, the negotiation and execution of this Stipulation, and all acts performed or documents executed pursuant to or in furtherance of this Stipulation or the Class Settlement are not, shall not be deemed to be, and may not be used as, an admission or evidence of any wrongdoing or liability on the part of Defendants or Releasees or of the truth of any of the factual allegations in the Complaint in the Action; and are not, shall not be deemed to be, and may not be used as, an admission or evidence of any fault or omission on the part of Defendants or Releasees in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal.

F. Media or Press Inquiries.

1. The Parties and their Counsel agree that they will not issue any press releases, initiate any contact with the press, respond to any press inquiry or have any communications with the press about the amount or terms of the Settlement.

2. To the extent documents produced, formally or informally, by Defendants during the course of the Action are confidential or otherwise subject to confidentiality, Plaintiff and Class Counsel agree to maintain the confidentiality of such materials.

G. Non-Retaliation. Defendants understand and acknowledge that it has a legal obligation not to retaliate against any Settlement Class Member who elects to participate in the Class Settlement or

elects to Opt Out of the Class Settlement. Defendants will not discourage Settlement Class Members who are employees, directly or indirectly, from participating in the Settlement or encourage or advise Settlement Class Members to opt out or object to the Class Settlement.

H. Construction. The Parties hereto agree that the terms and conditions of this Stipulation are the result of lengthy, intensive, arms-length non-collusive negotiations between the Parties and that this Stipulation is not to be construed in favor of or against any party by reason of the extent to which any party or its counsel participated in the drafting of this Stipulation. If any of the dates in the Stipulation fall on a weekend, bank or court holiday, the time to act shall be extended to the next business day.

I. Governing Law. This Stipulation is intended to and shall be governed by the laws of the State of California, without regard to conflict of law principles, in all respects, including execution, interpretation, performance, and enforcement.

J. Notices. Except for Settlement Class Member notices required to be made by the Settlement Administrator, any and all notices or other communications required or permitted under this Stipulation shall be in writing and shall be sufficiently given if delivered in person to the party or their counsel by U.S. certified mail, postage prepaid, e-mail, facsimile, or overnight delivery addressed to the address of the party appearing in this Stipulation.

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

L. Modification. This Stipulation may not be changed, altered, or modified, except in writing signed by the Parties and approved by the Court. This Stipulation may not be discharged except by performance in accordance with its terms or by a writing signed by the Parties.

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

N. Successors and Assigns. This Stipulation shall be binding upon and inure to the benefit

of the Parties and Settlement Class Members (excluding only persons who timely Opt Out) and their respective present and former heirs, trustees, executors, administrators, representatives, officers, directors, shareholders, agents, employees, insurers, attorneys, accountants, auditors, advisors, consultants, pension and welfare benefit plans, fiduciaries, parent companies, subsidiaries, affiliates, related companies, joint ventures, predecessors, successors, and assigns.

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

P. Execution in Counterparts. This Stipulation shall become effective upon its execution by all of the undersigned and may be executed electronically (such as via Docusign or HelloSign). The Parties may execute this Stipulation in counterparts, and execution of counterparts shall have the same force and effect as if all Settling Parties had signed the same instrument.

Q. Code of Civ. Proc. Section 664.6. The Court shall retain jurisdiction including to enforce the terms of the Settlement pursuant to California Code of Civil Procedure § 664.6.

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

S. Attorneys' Fees, Costs and Expenses. Except as otherwise specifically provided for herein, each party shall bear his or her or its own attorney fees, costs, and expenses, taxable or otherwise, incurred by them in or arising out of the Action and shall not seek reimbursement thereof from any other party to this Stipulation.

T. Notice. All notices, demands or other communications between the Parties in connection with this Stipulation 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:

WINSTON LAW GROUP, P.C.
David S. Winston, Esq. CA Bar No. 301667
david@employmentlitigators.com
1880 Century Park East, Suite 511
Los Angeles, California 90067

To Defendants:

SPENCER FANE LLP
Servando Sandoval, Esq. CA Bar No. 205339
ssandoval@spencerfane.com
Elaisha Nandrajog, Esq. CA Bar No. 301798
enandrajog@spencerfane.com
225 W. Santa Clara St., Suite 1500
San Jose, CA 95113

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

Date: 09 / 05 / 2025, 2025

Antonio Urrutia as an Individual, as the Proposed Class Representative, and as the PAGA Representative

Date: September 3rd, 2025

Robert C. Talbott

On behalf of BLVD Residential Inc.
By: Robert Talbott
Its : Chief Executive Officer

APPROVED AS TO FORM:

Date: 9/5/25, 2025

WINSTON LAW GROUP, P.C.

David S. Winston, Esq.
Attorney for Plaintiff Antonio Urrutia, the Proposed Class, and the aggrieved employees

Date: _____, 2025

SPENCER FANE LLP

Servando Sandoval, Esq.
Elaisha Nandrajog, Esq.
Attorneys for Defendant BLVD Residential Inc.

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

Date: _____, 2025

_____
Antonio Urrutia as an Individual, as the Proposed Class Representative, and as the PAGA Representative

Date: _____, 2025

_____
On behalf of BLVD Residential Inc.
By: _____
Its : _____

APPROVED AS TO FORM:

Date: _____, 2025

WINSTON LAW GROUP, P.C.

_____
David S. Winston, Esq.
Attorney for Plaintiff Antonio Urrutia, the Proposed Class, and the aggrieved employees

Date: September 3, 2025

SPENCER FANE LLP

_____
Servando Sandoval, Esq.
Elaisha Nandrajog, Esq.
Attorneys for Defendant BLVD Residential Inc.

Exhibit 3

WINSTON LAW GROUP, P.C.
David S. Winston, Esq. CA Bar No. 301667
david@employmentlitigators.com
1880 Century Park East, Suite 511
Los Angeles, California 90067
Phone: (424) 288-4568
Fax: (424) 532-4062
Attorneys for Plaintiff and the Proposed Classes

SPENCER FANE LLP
Servando Sandoval. Esq. CA Bar No. 205339
ssandoval@spencerfane.com
Helene Simvoulakis, Esq. CA Bar No. 256334
hsimvoulakis@spencerfane.com
225 W Santa Clara St, Suite 1500
San Jose, CA 95113
Telephone: (408) 286-5100
Facsimile: (408) 286-5722

Attorneys for Defendant BLVD Residential Inc.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN MATEO

ANTONIO URRUTIA, an individual, on behalf of himself, others similarly situated,

PLAINTIFF,

v.

BLVD RESIDENTIAL INC., a Delaware Corporation, and DOES 1 thru 50, inclusive,

DEFENDANTS.

CASE NO.: 24-CIV-00086

[Assigned for All Purposes to the Hon. Nicole S. Healy, Dept. 28]

JOINT CASE MANAGEMENT STATEMENT

DATE: February 11, 2025
TIME: 2:00 PM
DEPT: 28

Date Filed: January 4, 2024
Trial Date: None Set

This Case Management Statement is submitted jointly by Plaintiff Antonio Urrutia and Defendant BLVD Residential Inc. There have been several significant developments since the last case management conference. After engaging in formal written discovery, Plaintiff identified another potential Defendant, Debra O'Toole, filed a Doe amendment naming Ms. O'Toole as a Defendant and served Ms. Toole via a Notice and Acknowledgment that is due to be returned on February 4, 2025. As such, it is unlikely that the case will be fully at issue or that Ms. O'Toole will have filed her responsive pleading prior to the February 11, 2025 Case Management Conference. Both Counsel were operating with the understanding at the last Case Management Conference that the *Tavera vs. BLVD Residential Inc*. Sacramento County Superior Court Case No. 34-2022-00327501 and related financial issues were the primary impediment in this case; however, there are actually some financing issues that predated *Tavera* that are making it challenging to settle this case.

Plaintiff's Position:

Plaintiff's position is that, in order to engage in meaningful discussions, Defendant BLVD Residential needs to provide the financial information previously requested in March 2024. Plaintiff is willing to mediate the case a second time at Defendant BLVD Residential's expense; however, Plaintiff will not agree to fund a second mediation since he still has not received what was requested in March and Defendant—not its Counsel—is not making efforts to provide Plaintiff with the necessary information needed to resolve this case and did not in advance of the first mediation. Plaintiff has proposed this to Defendant BLVD Residential several times and Defendant's Counsel has expressed a willingness to entertain this proposal; however, Defendant BLVD Residential has declined to commit. Simply put, if Defendant was serious about resolution, it could schedule a second mediation and provide the needed financial information to facilitate meaningful settlement discussions.

At this point, absent a marked change from Defendant BLVD Residential, Plaintiff intends to take the deposition of Debra O'Toole as a party Defendant and as a PMK on most topics, file a motion for summary judgment on the PAGA claims, and then move for class certification. Plaintiff would then use the one-way collateral estoppel from the PAGA Motion for

Summary adjudication to have a judgment entered with respect to at least some of the claims. *Arias v. Sup. Ct.*, 46 Cal. 4th 969, 987 (2009) ("if an employee plaintiff prevails in an action under the act for civil penalties by proving that the employer has committed a Labor Code violation, the defendant employer will be bound by the resulting judgment. Nonparty employees may then, by invoking collateral estoppel, use the judgment against the employer to obtain remedies other than civil penalties for the same Labor Code violations."). Notably, as part of the formal discovery process, Defendant also has admitted in verified discovery responses that "Having analyzed its payroll records, Defendant concedes that there are pay periods where it incorrectly calculated the amount of overtime, meal period premiums, and sick wages due and owing to its employees...the total number of employee affected by these issues is 106 and the total number of pay periods is 1,103." Plaintiff does not necessarily agree with these numbers, but it is clear that the claims related to these issues and the derivative wage statement and waiting time penalty claims will be resolved in Plaintiff's favor and certified. The Parties have also discussed a potential stipulation to class certification on these issues to try to keep the attorneys' fees and costs down. There will be a dispute regarding at least first meal periods that may eventually necessitate the filing of a motion for class certification. Regardless, Plaintiff feels that this case needs to advance since Defendant—not its Counsel—is not attempting to resolve the Action.

With respect to timing, Defendant's primary handling Counsel, Ms. Simvoulakis is leaving Defendant's firm and another attorney will be taking over the primary day-to-day responsibilities. Plaintiff wishes to be respectful of this transition period and has provided Defendant with an extension on some of the written discovery to late April at Defendant's request. Plaintiff requests that the Court schedule a Case Management Conference for early May 2025. At that point, the Parties should know with certainty whether or not a mutually agreeable resolution is possible and either the deposition of Debra O'Toole and/or a second mediation will have been completed.

Defendant BLVD Residential's Position:

Defendant's position is that Debra O'Toole is not a proper party to this litigation. That being said, Defendant has agreed to accept service on Ms. O'Toole's behalf and will make Ms. O'Toole available for deposition on a mutually agreeable date.

Regarding mediation, Defendant's Counsel is in agreement that the best next step is to proceed with a second mediation. Defendant's Counsel has relayed Plaintiff's request for the financial documentation and will get back to Plaintiff as to Defendant's willingness to do so shortly.

Regarding *Tavera*, Defendant maintains that case is not relevant to the instant litigation. To that end, Defendant has confirmed that there will not be any default in *Tavera*. Defendant and Plaintiff's Counsel in *Tavera* have come to an agreement that will enable Defendant to comply with the court's order regarding payment to the members of the class. Defendant and Plaintiff's Counsel in *Tavera* have agreed to amend the settlement agreement relative to payment of attorneys' fees and are in the process of finalizing a payment plan for the same.

Defendant is in agreement with Plaintiff's proposed scheduling of a Case Management Conference in May 2025.

A. BRIEF SUMMARY OF THE CASE

Plaintiff brings Class and PAGA claims against Defendant BLVD Residential Inc. for a period commencing on August 11, 2023. Plaintiff alleges that Defendant: 1) failed to pay minimum wages for all hours worked; 2) failed to pay overtime wages and/or at the proper rate; 3) failed to provide meal periods and/or pay meal period premiums at the correct rate; 4) failed to provide rest periods and/or pay rest period premiums at the correct rate; 5) failed to provide accurate itemized wage statements; and 6) failed to timely pay all wages owed upon separation including both derivative and non-derivative claims as well as a claim that Defendant failed to calculate sick pay at the correct rate; 7) engaged in unfair competition in violation of Bus. & Prof. Code § 17200; and 8) seeks PAGA penalties for Defendant's alleged violations of Labor Code §§ 201, 202, 203, 204, 210, 226, 226.2, 226.3, 510, 558, 1174, 1174.5, 1194, 1197, 1197.1, and 1198 as well as IWC Wage Order No. 16-2001 and/or other applicable wage order. Although

there are a number of subclasses and groups, the claims in this case effectively concern all non-exempt employees who worked for Defendant in California from August 11, 2023.

The truncated class/PAGA period in this case is a result of a prior Class/PAGA settlement, *Tavera vs. BLVD Residential Inc*. Sacramento County Superior Court Case No. 34-2022-00327501, that was resolved last year. Defendant is still making payment under the payment plan in *Tavera*. Defendant has confirmed that there will not be any default in *Tavera*. Defendant and Plaintiff's Counsel in *Tavera* have come to an agreement that will enable Defendant to comply with the court's order regarding payment to the members of the class. Defendant and Plaintiff's Counsel in *Tavera* have agreed to amend the settlement agreement relative to payment of attorneys' fees and are in the process of finalizing a payment plan for the same.

Plaintiff filed an amended complaint on March 12, 2024 adding the PAGA claims after the 65-day PAGA exhaustion period. The amended complaint was served on March 22, 2024. Following service of the amended complaint, Defendant filed an answer on April 5, 2024. Plaintiff filed a Doe Amendment on January 2, 2025 after identifying Debra O'Toole as a managing agent with personal liability under Labor Code § 558.1. Defendant denies that Debra O'Toole is a managing agent or is personally liable.

B. PRIOR CASE MANAGEMENT CONFERENCE ORDERS

This is the fourth Case Management Conference in this Action.

C. DISCOVERY

The Court lifted the stay on discovery at the initial status conference. As part of the informal discovery process associated with the mediation, Defendant produced informal discovery including relevant policy documents and a sample of time and pay records for current and former nonexempt employees. Plaintiff engaged a data expert to analyze the sample produced by Defendant for the mediation. Plaintiff has propounded initial formal written discovery and the Parties are currently engaged in the *Belaire-West* notice process. Defendant has provided some initial written responses and the Parties have conferred about them and are working through some minor disputes that we expect to resolve cooperatively.

Plaintiff has provided an extension on some of the outstanding requests at Defendant's request to April 24, 2025. The Parties may be attending a second mediation during that time.

D. ANTICIPATED MOTIONS

Plaintiff's Response: Motion for Class Certification, motion for summary judgment and/or summary adjudication, and motions *in limine*. Plaintiff would request that the Court defer scheduling a motion for class certification filing deadline until after the Motion for summary judgment on the PAGA claim. Plaintiff believes that aside from the a few depositions and resolving the outstanding discovery responses that he will be in a position to file a motion for summary judgment on the PAGA claims shortly.

Defendant's Response: At this time, Defendant does not anticipate filing any motions. This may change depending on the outcome of the parties' attempt at informal resolution.

E. PROCEDURAL OR PRACTICAL PROBLEMS LIKELY TO ARISE

The Parties do not presently believe that *Tavera vs. BLVD Residential Inc*. Sacramento County Superior Court Case No. 34-2022-00327501, which is post-judgment, qualifies as a related case. However, it is Plaintiff's position that due to issues that Defendant has represented have arisen regarding the ongoing payment plan in *Tavera*, it is possible that the cases might end up needing to be related. The Parties previously discussed *Tavera* with the Court at the last two CMCs.

Defendant disputes that Debra O'Toole is a proper party to this action and will oppose any attempt to include her as a party. To the extent she is added as a party, Defendant may deem it necessary to file a motion for summary adjudication on this issue.

Plaintiff would agree to sever the issue of attorneys' fees until after trial.

F. STATUS OF SETTLEMENT OR MEDIATION

The Parties mediated this matter on October 21, 2024. The Parties mediated this case on October 21, 2024.

Plaintiff's Position: Plaintiff is willing to mediate the case a second time at Defendant BLVD Residential's expense; however, Plaintiff will not agree to fund a second mediation since he still has not received what was requested in March and Defendant—not its Counsel—is not

making efforts to provide Plaintiff with the necessary information needed to resolve this case and did not in advance of the first mediation. Plaintiff has proposed this to Defendant BLVD Residential several times and Defendant's Counsel has expressed a willingness to entertain this proposal; however, Defendant BLVD Residential has declined to commit. Simply put, if Defendant was serious about resolution, it could schedule a second mediation and provide the needed financial information to facilitate meaningful settlement discussions.

Defendant's Position: Defendant's Counsel is in agreement that the best next step is to proceed with a second mediation. Defendant's Counsel has relayed Plaintiff's request for the financial documentation and will get back to Plaintiff as to Defendant's willingness to do so shortly.

G. SUGGESTIONS FOR EFFICIENT MANAGEMENT OF THE CASE

The Parties believe that they would be in a better position to address non-settlement related issues in May 2025.

H. OTHER MATTERS HELPFUL TO THE COURT

The Parties attempted to address this topic at the beginning.

I. PROPOSED DATE FOR NEXT CMC

May 2025 on a dater other than May 19, 20 2025 or a date thereafter that is convenient to the Court.

DATED: January 31, 2025 WINSTON LAW GROUP, P.C.

By: _____
DAVID S. WINSTON
Attorneys for Plaintiff and the Proposed Class

DATED: January 31, 2025 SPENCER FANE LLP

By: _____
Servando Sandoval
Helene Simvoulakis
Attorneys for Defendant BLVD Residential Inc.

(PROOF OF SERVICE)
[CCP 1013(a)(3)]
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action. My business address is 1880 Century Park East, Suite 511, Los Angeles, California 90067.

On **February 3, 2025**, I served all interested parties in this action the following documents described as on the persons below as follows: **JOINT CASE MANAGEMENT STATEMENT**

Servando Sandoval, Esq.
ssandoval@spencerfane.com
Helene Simvoulakis-Panos, Esq.
hsimvoulakis@spencerfane.com
SPENCER FANE LLP
225 W Santa Clara St. Suite 1500
San Jose, CA 95113

Attorneys for Defendants **BLVD Residential Inc.**

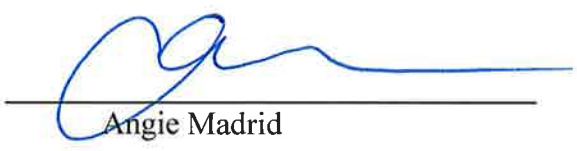
Assistants to be served:
Yvonne Leon
Yleon@spencerfane.com
Estella Chavarria
echavarria@spencerfane.com

San Mateo County Superior Court
Complex Civil Division; Dept 28
complexcivil@sanmateocourt.org
Dept28@sanmateocourt.org

[XX] (BY EMAIL OR ELECTRONIC TRANSMISSION): Pursuant Code of Civil Procedure § 1010.6 and to an agreement to accept electronic service via e-mail, I caused the document to be sent to the persons at the e-mail addresses listed above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

[XX] (STATE): I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on **February 3, 2025**, at Los Angeles, California.



Angie Madrid

Exhibit 4

PLEASE READ THIS NOTICE CAREFULLY.
IT CONTAINS IMPORTANT INFORMATION ABOUT YOUR RIGHTS.

*This is **not** a solicitation from a lawyer. A court authorized this notice.*

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

Antonio Urrutia vs. BLVD Residential Inc. et al.

Superior Court of The State of California, County of San Mateo Case No. 24-CIV-00086

If you were employed as a non-exempt, hourly employee by BLVD Residential Inc. ("BLVD Residential") in California at any point from August 11, 2023 to March 22, 2025, a proposed class action settlement may affect your rights and you may be entitled to money under the proposed Settlement.

You are **not** being sued. A court authorized this notice. This is **not** a solicitation from a lawyer.

PLEASE READ THIS NOTICE CAREFULLY.
IT CONTAINS IMPORTANT INFORMATION ABOUT YOUR RIGHTS.

- You are receiving this Class Notice ("Notice") because Defendant BLVD Residential's records show that you are in the proposed Settlement Class. Your estimated Net Settlement Award is [INSERT ESTIMATED NET SETTLEMENT AWARD]. Defendant BLVD Residential's records indicate that you worked [INSERT NUMBER OF WORKWEEKS WORKED DURING THE CLASS PERIOD PER DEFENDANT'S RECORDS] workweeks during the Class Period.

- Plaintiff alleges that Defendants (BLVD Residential and Debra O'Toole) failed to pay minimum wages for all hours worked, failed to pay overtime wages and/or at the proper rate, failed to provide meal periods and/or pay meal period premiums at the correct rate, failed to provide rest periods and/or pay rest period premiums at the correct rate, failed to provide accurate itemized wage statements, failed to timely pay all wages owed upon separation, and that these actions constituted unfair competition in violation of Bus. & Prof. Code § 17200. Plaintiff also sought penalties under the Private Attorneys' General Act of 2004 ("PAGA") for the same alleged conduct as well as Defendants' alleged failure to timely pay wages during employment, failed to maintain accurate time records, and failed to pay sick pay at the proper rate.

- Defendants deny Plaintiff's claims and assert that they have complied with all of their legal obligations under the California Labor Code. The Settlement is not an admission of any wrongdoing, and the Court has not made any findings of liability.

- Plaintiff and Defendants (collectively the "Parties") disagree as to the probable outcome of the lawsuit with respect to liability and damages if it were not settled. Although Plaintiff believes his claims have merit, he recognizes that litigating is a risky proposition, and that he may not prevail on all or some of his claims. Likewise, while Defendants are confident that they have strong defenses to Plaintiff's claims, they recognize the risks, distractions, and costs involved with litigation. The Parties reached a proposed Settlement of the claims asserted in the lawsuit after considering the risks and costs inherent in litigation.

- On [INSERT PRELIMINARY APPROVAL DATE] the Court granted preliminary approval of the proposed Settlement. The Court has expressed no opinion on the merits of Plaintiff's claims or Defendants' defenses.

- You have several options available to you:

PARTICIPATE IN THE SETTLEMENT AND RECEIVE A SETTLEMENT PAYMENT	**YOU DO NOT NEED TO DO ANYTHING TO PARTICIPATE IN THE SETTLEMENT AND RECEIVE A SETTLEMENT PAYMENT**. By doing nothing, you **WILL** receive a share of the Settlement proceeds if the proposed Settlement is finally approved, and you will give up any rights to sue Defendants separately regarding certain claims as described below in this Notice. Your estimated Settlement Award is [INSERT ESTIMATED NET SETTLEMENT AWARD].
ASK TO BE EXCLUDED (OPT OUT)	If you timely request in writing to be excluded from the proposed Settlement, you **WILL NOT** receive a share of the Settlement proceeds, but you will keep any rights you may have to sue Defendants separately about the same legal claims in this lawsuit. Your written Opt Out must be postmarked by _____, _____. However, you will still be bound to the PAGA release of claims and still receive your portion of the PAGA Members' $7,500.00 in PAGA penalties, if you are a PAGA Member, as explained in more detail below.
OBJECT	You may object to the Settlement if you did not ask to be excluded from the Settlement. If you timely submit in writing an objection to the Settlement and the Settlement is nonetheless granted final approval, you **WILL** (i) receive a share of the Settlement proceeds and (ii) release legal claims against Defendants. Your written objection should be postmarked by _____, _____. You can also appear at the Final Approval Hearing scheduled to take place on _____ to verbally object to the Settlement.
FILE A WORKWEEK DISPUTE	If you believe that BLVD Residential's records are incorrect and that you worked more than [INSERT NUMBER OF WORKWEEKS WORKED DURING THE CLASS PERIOD PER DEFENDANT'S RECORDS] workweeks from August 11, 2023 to March 22, 2025, then you may file a Workweek Dispute with the Settlement Administrator. Your Workweek Dispute must be postmarked by _____, _____.

Your options are explained further in this Notice.

1. Why did I get this Notice?

The Court has granted preliminary approval of the Settlement of the class action brought on behalf of all non-exempt, hourly employees who were employed by BLVD Residential in California at any point from August 11, 2023 to March 22, 2025.You have received this Notice because Defendants' records indicate that you are a member of the Settlement Class ("Class Member").

2. What is this lawsuit about?

This lawsuit was filed on January 4, 2024. Plaintiff alleges that Defendants failed to pay minimum wages for all hours worked, failed to pay overtime wages and/or at the proper rate, failed to provide meal periods and/or pay meal period premiums at the correct rate, failed to provide rest periods and/or pay rest period premiums at the correct rate, failed to provide accurate itemized wage statements, failed to timely pay all wages owed upon separation, and that these actions constituted unfair competition in violation of Bus. & Prof. Code § 17200. Plaintiff also sought penalties under PAGA for the same alleged conduct as well as BLVD Residential's alleged failure to timely pay wages during employment, failed to maintain accurate time records, and failed to pay sick pay at the proper rate. Defendants deny the allegations and contend that they have complied with all of their legal obligations under the California Labor Code.

3. Has the Court decided who is right?

No. The Court has made no decision regarding the merits of Plaintiff's allegations or Defendants' defenses.

4. Why did this case settle?

The Parties in this Action disagree as to the probable outcome of the action with respect to liability and damages if it were not settled. Although Plaintiff believes his claims and that of the Settlement Class have merit, Plaintiff recognizes that litigating is a risky proposition, and that he may not have prevailed on all or some of his claims. Likewise, while Defendants are confident that they have strong defenses to Plaintiff's claims, they recognize the risks, distractions, and costs involved with litigation. The Parties reached the proposed Settlement of the claims asserted in the lawsuit after consideration of the risks and costs inherent in litigation.

5. What are the terms of the proposed Settlement and how much will I receive?

The Gross Settlement Amount is $300,000.00. Under the proposed Settlement, the following amounts will be deducted before any payments are made to the Settlement Class, subject to final approval by the Court:

- Attorneys' Fees – up to $100,000.00
- Reimbursement for Case Expenses – up to $22,000.00
- Payments to the Labor & Workforce Development Agency for PAGA Penalties – $30,000.00 ($7,500 of the $30,000.00 in PAGA Penalties will be distributed to the PAGA Members as part of the Net Settlement Amount, as further explained below).
- Settlement Administration Expenses – up to $12,000.00

- Service Award to the Class Representative (*i.e.* the Plaintiff): – up to $5,000.00

After these deductions, approximately $138,500.00 (when including the PAGA Members' $7,500.00 share of PAGA penalties) will be available for payment to the Settlement Class receiving this Notice as the Net Settlement Amount. Each Participating Class Member will share in the Net Settlement Amount on a pro rata basis based upon the number of workweeks worked relative to all Participating Class Members from August 11, 2023 to March 22, 2025.

The Settlement Administrator will then divide the Net Settlement Amount by the total amount of workweeks worked as discussed above to figure out how much money each class member will receive.

Each Class Member who does not opt-out shall receive a pro rata portion of the Settlement. To calculate a Class Member's Individual Settlement Payment, the Net Settlement Amount will be divided by the aggregate total number of workweeks worked by all Participating Class Members, resulting in the "Workweek Value." Each Participating Class Member's Individual Settlement Payment will be calculated by multiplying each individual Participating Class Member's total number of Workweeks by the Workweek Value. Here's how it works. If there are 20,000 total workweeks and you worked 10 workweeks, your share would be calculated as follows:

Share Calculation
$138,500.00 Net Settlement Amount = $6.925 Workweek Value 20,000 total workweeks 10 workweeks x $6.925 Workweek Value = $69.25 Individual Settlement Payment

The number of workweeks that you worked for BLVD Residential in California as a non-exempt, hourly employee from August 11, 2023 to March 22, 2025 was [INSERT AMOUNT OF WORKWEEKS WORKED DURING THE CLASS PERIOD] and your Estimated Net Settlement Award is [INSERT ESTIMATED NET SETTLEMENT AWARD]. These amounts are based upon Defendant BLVD Residential's records.

BLVD Residential shall pay the employer's share of payroll taxes. 20% of each settlement share paid to each Class Member will be considered wages, will have amounts withheld for the payment of the employee's share of payroll taxes, and will be reported on an IRS W-2 form on that basis. 80% of each Class Member's settlement share will be considered penalties and interest from which no withholdings will be made and will be reported on an IRS form 1099.

6. What do I have to do to receive a share of the proposed Settlement?

Nothing. If you wish to receive a payment under the terms of this proposed Settlement, you do **NOT** have to do anything. However, it is important that if your address has changed, you give your current mailing address to the Settlement Administrator in order to ensure you receive your share of the Settlement proceeds if the proposed Settlement is finally approved. You will be covered by the release summarized in Section 7, below.

7. What rights am I giving up?

As part of the Settlement, Plaintiff and each Class Member (excluding those who elect to exclude themselves from the class settlement) will fully release and discharge BLVD Residential Inc. and each of its officers, directors, members, partners, owners, shareholders, managing agents, human resource employees, attorneys, assigns, predecessors, successors, and any and all other persons including Debra O'Toole, Robert Talbott, and Scott Mencaccy, and all firms and corporations in which BLVD Residential Inc. may have an interest from any all claims, complaints, causes of action, damages and liabilities that arise during the Class Period that each Settlement Class Member had, now has, or may hereafter claim to have against the Released Parties and that were asserted in or that reasonably could have been could have been alleged based upon the facts alleged in the in the Complaint (filed on January 4, 2024) and/or the First Amended Complaint ("FAC") (filed on March 12, 2024) (hereafter collectively the "Complaints") based on any of the facts or allegations in the Complaints. The Class Released Claims specifically include claims for (1) failure to pay minimum wages in violation of Labor Code §§ 1194 and 1194.2; (2) failure to pay overtime wages in violation of Labor Code § 510; (3) failure to provide lawful meal periods and/or pay meal period premiums in violation of Labor Code §§ 226.7 and 512 as well as IWC Wage Order No. 5-2001; (4) failure to provide lawful rest periods and/or pay rest period premiums in violation of Labor Code § 226.7 and IWC Wage Order No. 5-2001; (5) failure to provide accurate itemized wage statements in violation of Labor Code § 226; (6) failure to timely pay wages upon separation in violation of Labor Code §§ 201-203; and (7) unfair competition in violation of Bus. & Prof. Code § 17200. (the "Class Released Claims"). The Class Released Claims do not include any claims for workers compensation, unemployment, or disability benefits of any nature, nor does it release any claims, actions, or causes of action which may be possessed by Settlement Class Members under state or federal discrimination statutes, or any other law aside from those specifically identified above.

The PAGA Released Claims are defined as any claim for PAGA penalties under Labor Code section 2699 that were alleged or reasonably could have been alleged based on the facts stated in the January 4, 2024 PAGA Notice including claims for violations of Labor Code sections 200, 201, 202, 203, 204, 210, 226, 226.3, 226.7, 246-248, 256, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198, 1198.5, 1199 as well as applicable Industrial Welfare Commission Wage Orders (including but not limited IWC Wage Order No. 5-2001). This includes claims for failure to pay all minimum wages, overtime wages due, failure to provide lawful meal periods and associated premiums, failure to provide lawful rest periods and associated premiums, failure to pay all wages timely during employment and/or at the time of termination, failure to maintain accurate time records, and failure to provide complete, accurate, or properly formatted wage statements. (the "PAGA Released Claims"). Under the terms of this Settlement, every Class Member is a PAGA Aggrieved Employee whether or not they want to participate in the Settlement and will receive their pro rata portion of the employees $7,500 share of PAGA penalties. PAGA Aggrieved Employees cannot opt out of or object to the foregoing PAGA Release because PAGA claims are brought on behalf of and belong to the State of California. PAGA Aggrieved Employees who are Class Members can opt-out of all claims except for the PAGA claim that is brought on behalf of and belongs to the State of California.

8. When will I receive my Settlement Payment?

The Settlement is subject to a payment plan. Under the terms of the proposed payment plan, BLVD Residential will make an initial deposit of $75,000 the earlier of 30 days from the Preliminary Approval Order or December 10, 2025. BLVD Residential will then make 12 equal payments of $18,750.00 on the 10th of each month following the initial deposit until it has fully funded the $300,000.00 Gross Settlement Amount. The Settlement Administrator will distribute the settlement funds 15 days after

BLVD Residential deposits the entirety of the Settlement funds. As such, assuming the Settlement is finally approved, it is currently estimated that the Individual Settlement awards will be mailed in late December 2026.

9. What are PAGA Penalties?

$30,000.00 of the Gross Settlement Amount is allocated to alleged PAGA civil penalties ("PAGA Penalties"), subject to Court approval. Since this action was initiated prior to July 1, 2024, by law, 75% of the PAGA Penalties (*i.e.*, $22,500.00) will be paid to the California Labor & Workforce Development Agency and 25% of the PAGA Penalties (*i.e.*, $7,500.00) will be distributed to the Class Members who worked during the PAGA period (August 11, 2023 to March 22, 2025) regardless of whether they seek to be excluded from (*i.e.* opt out from) the class settlement or not. Under PAGA, the State of California deputizes private attorney generals, such as Plaintiff, to prosecute employers for alleged violations of the Labor Code and all employees are entitled to share in the 25% of the penalties that would otherwise be recoverable by the State if it directly prosecuted Defendants for the alleged Labor Code violations.

10. What if I do not wish to be part of the proposed Settlement?

Anyone not wishing to participate in the proposed Settlement may exclude himself or herself ("opt out") by completing, signing and mailing a Request for Exclusion either by using the Request for Exclusion Form included on page 10 of this Notice or by sending a letter no later than [INSERT RESPONSE DEADLINE] to the Settlement Administrator. To be valid, any request to Opt Out should include: 1) the name and address of the Class Member for identification purposes; 2) be signed by the Class Member; 3) contain a clear written statement indicating that the Class Member wishes to be excluded from the Class Settlement (an example of such a statement is "I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN URRUTIA VS. BLVD RESIDENTIAL"); and, 4) be postmarked on or before the Response Deadline and returned to the Settlement Administrator at the specified address. If your Opt Out is postmarked after [INSERT RESPONSE DEADLINE], it will be rejected, and you will be a Participating Class Member and be bound by the Settlement terms.

The Settlement Administrator's address is:

ILYM Group, Inc.
[Mailing Address]
[Mailing Address]

Anyone who submits a timely and valid Opt Out shall not be deemed a Participating Class Member and will not receive any payment as part of this proposed Settlement. Such persons will keep any rights to sue Defendants separately about the claims made in this lawsuit.

11. What if I have an objection?

Class Members wishing to object need not file anything with the Court and may instead appear at the Final Approval and Fairness Hearing and speak about any potential objection at the hearing regardless of whether or not they submitted a written objection. The Final Approval and Fairness Hearing is scheduled on [INSERT FINAL APPROVAL HEARING DATE] at [INSERT TIME OF HEARING] in Department 28 of the San Mateo County Superior Court located at 800 North Humboldt St., San Mateo, CA 94401. You may also file a written objection either by filling out and mailing the Objection Form

included on page 11 of this Notice package or by submitting a letter or other writing by mail. To be valid, any written objection should: 1) the name and address of the Settlement Class Member objecting for identity verification and correspondence purposes; 2) be signed by the Settlement Class Member; 3) should contain a written statement of the grounds for the Objection accompanied by any legal support for such Objection they wish to be considered; and 4) be postmarked on or before [INSERT RESPONSE DATE] and returned to the Settlement Administrator at the specified address. You do not need to include legal arguments for your written objections to be considered.

Class Members who do not submit a timely written objection may still appear at the final approval and fairness hearing and to speak about any potential objection at the hearing.

The Settlement Administrator's address is:

ILYM Group, Inc.
[Mailing Address]
[Mailing Address]

You may not submit both an objection and an opt out. If you submit both an objection and an opt out, and you do not withdraw your opt out, your objection will not be considered.

12. What if the number of workweeks listed for me in this Notice and BLVD Residential's records are not accurate?

Defendant BLVD Residential's records indicate that you worked [INSERT NUMBER OF WORKWEEKS WORKED DURING THE CLASS PERIOD PER DEFENDANT BLVD RESIDENTIAL'S RECORDS] workweeks from August 11, 2023 to March 22, 2025 as a non-exempt, hourly employee in California. If you believe that the number of workweeks that Defendant BLVD Residential's records indicate that you worked for them from August 11, 2023 to March 22, 2025 is inaccurate, you may file a workweek dispute with the Settlement Administrator and provide any supporting information by [INSERT RESPONSE DEADLINE]. To file a Workweek Dispute, send a letter and any supporting documents that you wish to be considered to the Settlement Administrator using the contact information below. Do not send any original documents to the Settlement Administrator.

ILYM Group, Inc.
[Mailing Address]
[Telephone]
[Fax Number]
[Email Address]

13. Who represents the Class?

The Court has appointed the following Plaintiff's attorneys as Class Counsel:

WINSTON LAW GROUP, P.C.
David S. Winston
david@employmentlitigators.com
1880 Century Park East, Suite 511

Los Angeles, California 90067
Phone: (424) 288-4568

You do not need to hire your own lawyer because Class Counsel is working on your behalf. However, if you want your own lawyer, including to make any objections to the proposed Settlement, you are free to hire one at your own expense.

14. How can I contact the Settlement Administrator or update my address?

You can contact the Settlement Administrator at:

ILYM Group, Inc.
[Mailing Address]
[Telephone]
[Fax Number]
[Email Address]

If you've moved and need to update your address, please contact the Settlement Administrator by calling [INSERT PHONE NUMBER].

15. What happens next in the case?

The proposed Settlement has only been preliminarily approved. The Court will hold a hearing in Department 28 of the San Mateo County Superior Court located at 800 North Humboldt St., San Mateo, CA 94401 on [INSERT FINAL APPROVAL HEARING DATE] at [INSERT TIME OF HEARING] Pacific Time, to consider any objections and determine whether the Settlement should be finally approved as fair, reasonable, and adequate.

The Court will also be asked to approve the settlement of the PAGA claim, Class Counsel's request for attorneys' fees and expense reimbursement, the costs of settlement administration, and the proposed service award to the Plaintiff/Class Representative in this case. The hearing may be continued without further notice to you. You are **not** required to attend the Final Approval and Fairness Hearing, although any Class Member is welcome to attend the hearing.

16. How can I receive more information?

This Notice is a summary of the basic terms of the proposed Settlement. For the precise terms and conditions of the proposed Settlement, you may review the detailed "Joint Stipulation of Class Action and PAGA Settlement" on file with the Clerk of the Court as well as the pleadings and other records in this litigation by visiting the Court's Access Portal Available at https://sanmateo.courts.ca.gov/online-services/online-case-access/odyssey-portals, selecting Odyssey Public Portal (No registration required), selecting Proceed to the Odyssey Public Portal (after reviewing and agreeing to the terms of use), selecting Smart Search, and entering the Case Number: 24-CIV-00086. The Settlement Administrator has also posted copies of the Settlement Agreement and the other documents filed in advance of the Preliminary Approval Hearing on a case specific website located at: [INSERT THE URL FOR THE CASE SPECIFIC WEBSITE]. Documents may also be available in-person through the Court's Records Management Counter located at 400 County Center Redwood City, California 94063. You may also contact Class Counsel, Winston Law Group, P.C., using the information located in Section 13 of this Notice.

PLEASE DO NOT TELEPHONE THE COURT, THE OFFICE OF THE CLERK, OR DEFENDANTS FOR INFORMATION REGARDING THIS PROPOSED SETTLEMENT.

17. What If I Don't Cash My Check by the Check Void Date After the Settlement is Approved?

If the Settlement is Approved, you will have 180 days from the date of the mailing of the settlement awards to deposit or cash your settlement check. Settlement checks will be null and void 180 days after issuance if not deposited or cashed. In such event, the Settlement Administrator shall direct such unclaimed funds to CASA of San Mateo as a *cy pres* recipient in accordance with California Code of Civil Procedure Section 384. By law all unclaimed funds must be sent to a *cy pres* recipient under California Code of Civil Procedure Section 384.

[INSERT NAME OF THE CLASS MEMBER]
[INSERT ADDRESS OF THE CLASS MEMBER]
[INSERT SECOND LINE OF MAILING ADDRESS]

OPT OUT REQUEST FROM CLASS ACTION SETTLEMENT

Antonio Urrutia v. BLVD Residential, Inc. et al. – San Mateo County Superior Court Case No. 24-CIV-00086

THIS IS NOT A CLAIM FORM. DO NOT SUBMIT THIS FORM IF YOU WISH TO PARTICIPATE IN OR RECEIVE A PORTION OF THE CLASS SETTLEMENT.

I, _____WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN URRUTIA VS. BLVD RESIDENTIAL. **I understand that by requesting exclusion from the settlement I will NOT** receive a share of the Class Settlement and will not release any claims against the Defendants.

You may not submit both an objection and an opt out.

Date: _____ Signature: _____

For this opt out request to be effective, you MUST complete, sign, and mail this form to the address below, so that it is postmarked by [INSERT RESPONSE DATE].

MAIL YOUR OPT OUT REQUEST TO:
ILYM Group, Inc.
[Mailing Address]
[Mailing Address]

[INSERT NAME OF THE CLASS MEMBER]
[INSERT ADDRESS OF THE CLASS MEMBER]
[INSERT SECOND LINE OF MAILING ADDRESS]

OBJECTION TO CLASS ACTION SETTLEMENT

Antonio Urrutia v. BLVD Residential, Inc. et al. – San Mateo County Superior Court Case No. 24-CIV-00086

I, _____object to the proposed settlement in *Antonio Urrutia v. BLVD Residential, Inc. et al.* – San Mateo County Superior Court Case No. 24-CIV-00086. The basis for my objection is _____

_____

_____

_____

_____

_____

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_____

_____

_____

_____

The Final Approval Hearing is scheduled on [INSERT DATE OF FINAL APPROVAL HEARING] at [INSERT TIME OF FINAL APPROVAL HEARING] in Department 28 of the San Mateo County Superior Court located at 800 North Humboldt St., San Mateo, CA 94401. You are not required to appear at the final approval hearing in order for your objection to be considered.

You may not submit both an objection and an opt out request.

Date: _____ Signature: _____

Exhibit 5

From:
Mail received time: Wed, 10 Sep 2025 19:10:42
Sent: Wednesday, September 10, 2025 12:10:44 PM
To: David Winston
Subject: Thank you for your Proposed Settlement Submission
Importance: Normal
Sensitivity: None
Archived: Wednesday, September 10, 2025 12:17:35 PM

09/10/2025 12:09:36 PM

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

Item submitted: Proposed Settlement

On 09/10/2025 12:09:36 PM your Proposed Settlement was successfully processed for case number LWDA-CM-1003011-24

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

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

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

Exhibit 6

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

DOUGLAS TROESTER, on behalf of himself, and all others similarly situated,

Plaintiff,

v.

STARBUCKS CORPORATION, and Does 1-50,

Defendants.

Case No.: CV 12-07677-CJC(PJWx)

ORDER GRANTING DEFENDANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT [Dkt. 85] AND DENYING PLAINTIFF'S MOTION FOR CLASS CERTIFICATION [Dkt. 88]

I. INTRODUCTION

Plaintiff Douglas Troester brings this putative class action against Defendant Starbucks Corporation ("Starbucks"), alleging claims for (1) failure to pay minimum and overtime wages, (2) failure to provide accurate written wage statements, (3) failure to timely pay all final wages, and (4) unfair competition. (Dkt. 1-1 [Complaint, hereinafter "Compl."].) Plaintiff's claims, theories, and available relief have been narrowed after appeal to the Ninth Circuit of a previous summary judgment order, related certification to

the California Supreme Court, and additional summary judgment motions. The relevant allegations now are that Starbucks required employees to perform four tasks after clocking out—uploading data to Starbucks' computer system, programming the alarm, locking doors, and walking coworkers to their cars—but did not compensate employees for these tasks. Before the Court are Starbucks' Motion for Partial Summary Judgment (Dkt. 85 [hereinafter "MSJ"]) on Plaintiff's wage statement claim and his unpaid wages claim to the extent it seeks liquidated damages, and Plaintiff's Motion for Class Certification (Dkt. 88 [hereinafter "MCC"]). For the following reasons, Starbucks' Motion for Partial Summary Judgment is **GRANTED** and Plaintiff's Motion for Class Certification is **DENIED**.

II. BACKGROUND

In February 2008, Starbucks hired Plaintiff to work as a barista in one of its coffee shops. (Dkt. 92-1 [Defendant's Reply Separate Statement of Undisputed Facts, hereinafter "UF"] ¶¶ 1–2.) Starbucks promoted him to shift supervisor in June 2008. (*Id.* ¶ 2.) In January 2011, Plaintiff stopped working for Starbucks. (UF ¶ 1.)

Plaintiff recorded his work time for Starbucks and clocked in and out using Starbucks's point-of-sale ("POS") system. (Dkt. 64-4 ¶ 5.) Plaintiff admits Starbucks always paid him for all the time he recorded in the POS system. (*Id.* ¶ 6.) Instead, at issue in this case is time Plaintiff allegedly worked off the clock while he was a shift supervisor on shifts at the end of the business day ("closing" shifts). (UF ¶ 3.) Based on the software Starbucks used, Plaintiff alleges he had to clock out before using the store computer to send sales data to Starbucks headquarters. (*Id.* ¶¶ 4, 6.) Plaintiff then set the store alarm, exited, locked the front door, and walked coworkers to their cars. (*Id.* ¶¶ 8–10.) In total, Plaintiff contends he spent about four to ten minutes performing these tasks every shift, and that he was not compensated for this time.

III. STARBUCKS' MOTION FOR PARTIAL SUMMARY JUDGMENT

Three claims remain in this case: unpaid wages, failure to provide accurate wage statements, and violation of California's Unfair Competition Law. Starbucks seeks summary judgment on Plaintiff's wage statement claim, and on his unpaid wages claim to the extent it seeks liquidated damages. For the following reasons, Starbucks' motion is **GRANTED**.

A. Legal Standard

The Court may grant summary judgment on "each claim or defense—or the part of each claim or defense—on which summary judgment is sought." Fed. R. Civ. P. 56(a). Summary judgment is proper where the pleadings, the discovery and disclosure materials on file, and any affidavits show that "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." *Id.*; *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). The party seeking summary judgment bears the initial burden of demonstrating the absence of a genuine issue of material fact. *Celotex*, 477 U.S. at 325. A factual issue is "genuine" when there is sufficient evidence such that a reasonable trier of fact could resolve the issue in the nonmovant's favor. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A fact is "material" when its resolution might affect the outcome of the suit under the governing law, and is determined by looking to the substantive law. *Id.* "Factual disputes that are irrelevant or unnecessary will not be counted." *Id.* at 249.

In considering a motion for summary judgment, the court must examine all the evidence in the light most favorable to the nonmoving party, and draw all justifiable inferences in its favor. *Id.*; *United States v. Diebold, Inc.*, 369 U.S. 654, 655 (1962); *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass'n*, 809 F.2d 626, 630–31 (9th Cir. 1987).

The court does not make credibility determinations, nor does it weigh conflicting evidence. *Eastman Kodak Co. v. Image Tech. Servs., Inc.*, 504 U.S. 451, 456 (1992). But conclusory and speculative testimony in affidavits and moving papers is insufficient to raise triable issues of fact and defeat summary judgment. *Thornhill Publ'g Co. v. GTE Corp.*, 594 F.2d 730, 738 (9th Cir. 1979).

B. Wage Statement Claim

Plaintiff alleges that Starbucks failed to provide accurate written wage statements by giving him pay statements that did not reflect his actual hours worked—that is, statements that did not include the time Plaintiff spent working after he clocked out. California Labor Code Section 226 requires employers to give employees "accurate itemized statement[s]" every pay period showing, among other things, the employee's total hours worked and gross wages. "An employee suffering injury as a result of a knowing and intentional failure by an employer" to provide such statements is entitled to the greater of (1) actual damages, or (2) penalties of $50 for the initial pay period in which a violation occurs and $100 per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of $4,000. Cal. Lab. Code § 226(e)(1). An employee may also bring an action for injunctive relief to ensure compliance with California wage statement law. *Id.* § 226(h).

In his complaint, Plaintiff sought both an injunction and the greater of actual damages or statutory penalties. The Court has previously granted summary judgment in Starbucks' favor on the wage statement claim as to injunctive relief, finding that Plaintiff lacks standing to seek injunctive relief because he no longer works at Starbucks. (Dkt. 65 at 17–18.) In another summary judgment order, the Court found that Plaintiff also cannot seek penalties on his wage statement claim because he failed to bring the claim within the one-year statute of limitations. (Dkt. 76 at 4–5.)

Starbucks now argues the Court should grant summary judgment in its favor on the last remaining category of damages, actual damages, because Plaintiff cannot show he suffered actual damages from the fact that his wage statements did not accurately list his hours. (MSJ at 5.) In support, Starbucks points to Plaintiff's deposition testimony. (*Id.*; UF 11.) At his deposition, Plaintiff was asked, "Do you contend that you've been injured in any way as a result of inaccuracies in the pay statements?" (Dkt. 85-3 at 193.) Plaintiff's counsel objected that this question called for a legal conclusion.[1] (*Id.*) Plaintiff answered that he had been injured because he did not get paid for time he spent working. (*Id.*) He could not think of any other way he had been harmed by the allegedly inaccurate wage statements. (*Id.* at 193–94.) Based on this testimony, Starbucks argues that Plaintiff does not have any evidence that he suffered actual damages based on any wage statement violations. The Court agrees.

As explained, an employee suffering "injury" as a result wage statement violation may recover, among other types of damages, actual damages. Cal. Lab. Code § 226(e)(1). To prove such "injury," Plaintiff must submit evidence showing that he suffered some sort of "concrete" or "tangible loss as a result of the allegedly deficient information on [his] wage statements." *Hoffman v. Constr. Protective Servs., Inc.*, 2006 WL 6105636, at *2 (C.D. Cal. Feb. 27, 2006). Such loss may include "the possibility of not being paid overtime, employee confusion over whether they received all wages owed them, difficulty and expense involved in reconstructing pay records, [] forcing employees

[1] Plaintiff reiterates this objection on summary judgment. (See UF ¶ 11 [responding to Starbucks' statement that it is undisputed that Plaintiff was not harmed as a result of any wage statement violations, Plaintiff responds that it is "[u]ndisputed that this is how a lay witness testified in response to a legal contention question"].) This objection is **OVERRULED**. Asking a witness how he has been harmed from an alleged legal violation is a proper question for a lay witness. *See* Fed. R. Evid. 704 Adv. Comm. Note (explaining that "opinions phrased in terms of inadequately explored legal criteria" are not permissible, and "[t]hus the question, 'Did T have capacity to make a will?' would be excluded, while the question, 'Did T have sufficient mental capacity to know the nature and extent of his property and the natural objects of his bounty and to formulate a rational scheme of distribution?' would be allowed").

to make mathematical computations to analyze whether the wages paid in fact compensated them for all hours worked," "lost time from other employment, [or being] denied a loan." *Id.*; *Alonzo v. Maximus, Inc.*, 832 F. Supp. 2d 1122, 1135 (C.D. Cal. 2011) (granting summary judgment for lack of injury where the plaintiffs' only alleged injury was "mathematical injury" because the "missing information on their wage statements [did not require] them to do any more than 'simple math' to determine whether they were compensated at the proper hourly rate").

However, a claim that Plaintiff was not paid the amount he was owed is not sufficiently "linked to a knowing and intentional failure on the part of Defendant to provide an accurate wage statement" to constitute actual damages on a wage statement claim. *See Hoffman*, 2006 WL 6105636, at *2 (granting judgment as a matter of law in the defendant's favor because evidence that the plaintiff's bank returned a check for insufficient funds and penalized him for a late payment on an automobile loan, and that plaintiff once lacked [the] funds to fulfill a promise to his daughter" was insufficient evidence of injury); *see also Pytelewski v. Costco*, 2010 WL 11442902, at *9 (S.D. Cal. Nov. 3, 2010) (granting summary judgment for failure to present evidence of injury).

Plaintiff's only response to Starbucks' argument is that, according to Plaintiff, the Court has already ruled that Plaintiff "had a claim for actual damages." (Opp. at 3 [citing Dkt. 76 at 5].) But the Court has not so ruled. In a motion for clarification regarding a previous summary judgment order, Starbucks asked the Court to decide that Plaintiff did not have evidence of actual damages. (*See* Dkt. 76.) The Court explicitly stated that it was not deciding whether Plaintiff had proof of actual damages because the issue "was not properly raised in Starbucks' motion." (*Id.* at 3.) Rather, the Court only ruled that Plaintiff filed his complaint for actual damages within the applicable limitations period. (Dkt. 76 at 5.)

Plaintiff has failed to identify evidence of injury sufficient to raise a genuine dispute of material fact on his wage statement claim. Accordingly, Starbucks' motion is **GRANTED** on Plaintiff's wage statement claim.

C. Claim for Liquidated Damages for Unpaid Wage Violations

One of the categories of damages that Plaintiff seeks on his unpaid wages claim is liquidated damages. (Dkt. 1-1 ¶¶ 23, 43.) Under California Labor Code § 1194.2, employees may recover liquidated damages "in an amount equal to the wages unlawfully unpaid and interest thereon." Starbucks argues that summary judgment should be granted on this claim because it is barred by (1) the statute of limitations and (2) the Court's previous finding that Starbucks acted reasonably in asserting that it did not owe Plaintiff any wages. The Court agrees.

1. Statute of Limitations

In 2014, the California legislature added the following language to California Labor Code § 1194.2: "A suit may be filed for liquidated damages at any time before the expiration of the statute of limitations on an action for wages from which the liquidated damages arise." The statute of limitations on a liquidated damages claim is therefore now three years. However, this case was filed in 2012, before the amendment. The parties disagree over what statute of limitations applied to liquidated damages claims before the 2014 amendment. Starbucks argues that before 2014, the statute of limitations was one year, because liquidated damages were considered a penalty, and the amendment changed the law. Plaintiff argues that the amendment was only a "*clarification* of the law," and that a three-year statute of limitations was in effect all along. The distinction is important because Plaintiff filed this case after the one-year statute of limitations passed, but before the three-year statute of limitations passed. (*See* Dkt. No. 76 at 4–5.)

a. Whether Liquidated Damages are a Penalty or Compensation

Determining whether liquidated damages are a penalty requires the Court to construe California Labor Code Section 1194.2. In interpreting California statutes, federal courts follow California's principles of statutory construction. *See In re First T.D. & Inv., Inc.*, 253 F.3d 520, 527 (9th Cir. 2001). Courts first turn to the plain language of the statute, "giv[ing] the language of the statute 'its usual, ordinary import.'" *Id.* If the statute's language is ambiguous, courts "may consider extrinsic evidence of the legislature's intent," including the statute's scheme and history, background, and purpose. *Id.*

The plain language of Section 1194.2 shows that liquidated damages are a penalty. The statute states that "an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon." Cal. Lab. Code § 1194.2. This means that an employee may recover the wages the employer failed to pay, *plus* that same amount in liquidated damages. *Djukich v. AutoNation, Inc.*, 2014 WL 12845830, at *6 (C.D. Cal. Nov. 12, 2014) (explaining that liquidated damages "essentially double[] the award" for unpaid wages). "The settled rule in California is that statutes which provide for recovery of damages additional to actual losses incurred, such as double or treble damages, are considered penal in nature, and thus governed by the one-year period of limitations stated in section 340, subdivision (1) [of the Code of Civil Procedure]." *Prudential Home Mortg. Co. v. Superior Court*, 66 Cal. App. 4th 1236, 1242 (1998) (citation omitted). California case law from before 2014 is in accord. *See Martinez v. Combs*, 49 Cal. 4th 35, 48 n.8 (2010), *as modified* (June 9, 2010) (explaining in dictum that liquidated damages under Section 1194.2 "are in effect a penalty equal to the amount of unpaid minimum wages"); *Bain v. Tax Reducers, Inc.*, 219 Cal. App. 4th 110, 550–51 (Cal. Ct. App. 2013) (depublished), *reh'g denied,* (Sept. 26, 2013), *review denied and ordered depublished,* (Dec. 11, 2013) (holding that liquidated damages

under Section 1194.2 are penalties and therefore subject to a one-year statute of limitations). Apparently conceding this point, Plaintiff does not analyze the plain language of the statute, referring only to the statute's legislative history to determine its meaning. (*See* Opp. at 4–6.)

Even if Section 1194.2's plain language were ambiguous, and reasonably susceptible to interpreting liquidated damages as either compensation or a penalty, both the legislative history and purpose of Section 1194.2 show that the legislature intended liquidated damages to operate as a penalty used to punish and deter employers from unlawfully failing to pay wages. *See Djukich*, 2014 WL 12845830, at **5–7. The bill report for SB 955, which the legislature later enacted as Section 1194.2, stated that SB 955's proponents "believe that the provision for liquidated damages should serve as a deterrent to those employers who fail to pay minimum wages." *Id.* at *5. The deterrence purpose clearly indicates that liquidated damages operate as a penalty. *See id.* at **5–6.

The statute of limitations for actions seeking statutory penalties is one year, unless the statute imposing liability gives a different time period. Cal. Civ. Proc. Code § 340(a). Because Section 1194.2 as it existed in 2012 did not state a different statute of limitations, the statute of limitations was one year at that time. *Djukich*, 2014 WL 12845830, at *6.

b. Whether the 2014 Amendment Was a Clarification or Change in the Law

However, the inquiry does not end there because now, Section 1194.2 *does* give a different statute of limitations. As stated, in 2014 the California Legislature amended Section 1194.2 to state that a three-year statute of limitations applies to liquidated damages claims. The Court now considers whether the amendment clarified the law, as

Plaintiff contends, or changed the law, as Starbucks contends. If the amendment clarified the law, then Plaintiff's claim is timely, because the three-year statute of limitations was in effect all along. *Djukich*, 2014 WL 12845830, at *6. If the amendment changed the law, the Court would need to consider whether the change operates retroactively.

As another court in this district has thoroughly explained, the 2014 amendment changed the statute of limitations for liquidated damages claims, rather than clarified it. *Djukich*, 2014 WL 12845830, at *6–8. The legislature added the relevant language to Section 1194.2 "to respond to the disparity between claims for unpaid minimum wages, to which a three-year statute of limitations applies, and claims for liquidated damages, to which a one-year limitations period generally applies," which "dilute[d] the deterrent effect of liquidated damages for minimum wage violations," thereby "send[ing] a statement that there is no real penalty for such worker exploitation beyond one year." *Id.* at *8 (citing legislative history documents). Accordingly, through the amendment "the legislature appears to have recognized that liquidated damages under the statute are a penalty, but that a three-year limitations period should apply to ensure the statute has a deterrent effect." *Id.* This was a change in the law. *Id.*

Plaintiff points to language in the legislative history that speaks of "clarif[ying]" the statute of limitations. (Opp. at 5–6.) But the court in *Djukich* addressed this isolated language from the legislative history and persuasively explained that it is not dispositive and does not negate the overall thrust of the legislative history discussed in the preceding paragraph, which weighs strongly in favor of showing a change. 2014 WL 12845830, at *8; (*see also* Reply at 6 [citing places in the legislative history where the legislature suggests or even expressly uses the word "change[]" with reference to the amendment]).

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c. Whether the Change Applies Retroactively

The Court next turns to whether the change applies retroactively. Unless the legislature clearly states otherwise, new statutes operate only prospectively. *See Quarry v. Doe I*, 53 Cal. 4th 945, 955 (2012). "[T]he presumption against retroactive legislation is deeply rooted in [California's] jurisprudence." *McClung v. Emp. Dev. Dep't*, 34 Cal. 4th 467, 475 (2004). Where an amendment extends the limitations period, "revival of [a] claim is seen as a retroactive application of the law under an enlarged statute of limitations," and the expanded limitations period will not be applied retroactively "without express language of revival" in order to protect "the defendant's interest in repose." *Quarry*, 53 Cal. 4th at 947. There is no evidence that the legislature intended to revive liquidated damages claims that had lapsed under the previous one-year statute of limitations when it amended Section 1194.2. Accordingly, the change does not apply retroactively to save Plaintiff's claim, which was filed within the three-year statute of limitations, but not the one-year statute claims that had lapsed under the old one-year statute of limitations. *See Djukich*, 2014 WL 12845830, at *9; (Dkt. No. 76 at 4–5).

Concluding that liquidated damages under Section 1194.2 constituted a penalty under California law at the time Plaintiff filed his complaint, that a subsequent amendment to Section 1194.2 constituted a change and not a clarification in the law, and that the change does not apply retroactively, the Court finds that Plaintiff's claim for liquidated damages is time-barred because he filed his complaint more than one year after he received his last wage statement.

2. Good Faith

Starbucks also argues that summary judgment should be granted on Plaintiff's claim for liquidated damages based on Section 1194.2(b), which states that even where

liquidated damages are awardable, the court "may, as a matter of discretion, refuse to award liquidated damages . . . if the employer demonstrates to the satisfaction of the court . . . that the act or omission giving rise to the action was in good faith and that the employer had reasonable grounds for believing that the act or omission was not a violation of any provision of the Labor Code relating to minimum wage." Cal. Lab. Code § 1194.2(b). The Court agrees.

The Court previously held that Starbucks met a similar standard in finding that it did not "willfully" fail to pay wages due at termination because there was "a good faith dispute that any wages [were] due." (Dkt. 65 at 16–17.) In so holding, the Court explained that "[u]ntil the California Supreme Court's decision in this case, it was reasonable for Starbucks to assert that it did not owe any wages under the de minimis doctrine." (*Id.*) A similar logic bars Plaintiff's claim for liquidated damages.

Plaintiff urges the Court to wait to exercise its discretion until "after a trial, on a fully developed record, including but not limited to evidence of the actual amount of unpaid wages." (Opp. at 4.) But Plaintiff offers no explanation on how trial evidence could alter the clear history described above.

Accordingly, the Court **GRANTS** summary judgment in favor of Starbucks on Plaintiff's claim for liquidated damages on his unpaid wages claim because the claim is barred by the statute of limitations or, in the alternative, because Starbucks acted in good faith and had reasonable grounds for believing that the alleged act or omission was not a violation of law.

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IV. PLAINTIFF'S MOTION FOR CLASS CERTIFICATION

After this order on Starbucks' motion for summary judgment, the following claims remain: (1) unpaid wages, by which Plaintiff may seek those wages but not liquidated damages, and (2) violation of the UCL, by which Plaintiff seeks restitution of unpaid wages, reasonable costs, and attorney fees. Plaintiff moves for class certification of the following class:

> All Starbucks employees in California from August 6, 2008 through December 31, 2012 who worked a closing shift in a Starbucks store and performed work after clocking out.

Starbucks opposes, arguing that individual issues predominate. For the following reasons, Plaintiff's motion is **DENIED**.

A. Legal Standard

Under Federal Rule of Civil Procedure 23, district courts have broad discretion to determine whether a class should be certified. *Armstrong v. Davis*, 275 F.3d 849, 871 n.28 (9th Cir. 2001). Rule 23 is not merely a pleading standard—a party seeking class certification must affirmatively demonstrate compliance with the Rule by proving the requirements in fact. *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011). A class may be certified if: "(1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a).

To be certified, a class must also meet the standards of one of the subsections of Rule 23(b). In this case, Plaintiff seeks certification pursuant to Rule 23(b)(3). Rule 23(b)(3) permits certification if the court "finds that the questions of law or fact common to class members predominate over any questions affecting only individual members." Plaintiff bears the burden of satisfying the elements of Rules 23(a) and 23(b)(3). *See Zinser v. Accufix Research Inst., Inc.*, 253 F.3d 1180, 1186 (9th Cir. 2001).

B. Predominance

Starbucks does not contend that Plaintiff fails to meet any of the Rule 23(a) requirements. Rather, the certification dispute concerns whether "questions of law or fact common to class members predominate over any questions affecting only individual members" under Rule 23(b)(3). The Court finds that they do not, and therefore denies Plaintiff's motion.

"The predominance inquiry focuses on 'the relationship between the common and individual issues' and 'tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation.'" *Senne v. Kansas City Royals Baseball Corp.*, 934 F.3d 918, 927 (9th Cir. 2019) (quoting *Vinole v. Countrywide Home Loans, Inc.*, 571 F.3d 935, 944 (9th Cir. 2009)). In determining whether the predominance requirement is met, courts have a "duty to take a close look at whether common questions predominate over individual ones" to ensure that individual questions do not "overwhelm questions common to the class." *Id.* (quoting *Comcast Corp. v. Behrend*, 569 U.S. 27, 34 (2013)). Under Rule 23(b)(3) one factor "pertinent" to predominance is "the likely difficulties in managing a class action."

Starbucks' policy is that time worked should equal time paid—that is, employees should not work off the clock. (*See* Dkt. 91-1, Ex. G [hereinafter "Pl. Depo."] at 100;

Dkt. 91-1, Ex. F.) Plaintiff alleges, then, that Starbucks had a custom or practice where employees performed off-the-clock work. He argues that class certification is appropriate because the putative class was "subjected to the same practices in terms of uncompensated closing shift work," and that any individualized issues go to damages alone and thus do not defeat predominance. (MCC at 15–16.) The Court disagrees. Indeed, as the Court now explains, the evidence shows employee practices were not uniform, instead varying based on the store where they worked, the manager they worked for, and the time period, among other factors.

Store Close Procedure. Plaintiff alleges that he was forced to perform the store close procedure off the clock. However, many Starbucks employees testified that they ran the store close procedure on the clock. (*See, e.g.*, Dkt. 91-1, Ex. B [Amanda Barb initially testifying she always did this on the clock and then saying she could remember doing it both ways]; Ex. C [Blake Barnett testifying he performed the close store procedure on the clock]; Ex. D [Cecelia Cerna testifying that if you looked at the store's surveillance videos, "it would show, on the computer, closing store, and then . . . clocking out"]; Ex. 5 [Christopher Coye stating store close procedure was "always done on the clock"]; Ex. 7 [Roy Dominguez stating same]; Ex. 10 [Don Jenkins stating same]; Ex. 14 [Eddie Necochea stating same]; Ex. 3 [Oscar Cardona testifying he was trained to do the close store procedure before clocking out, and that is what he did].) This is consistent with Starbucks' policy and training that the store close procedure should be performed on the clock. (*See, e.g.*, *id.* Ex. E [Paul O'Leary explaining that Starbucks' "training materials are to run end of day and then clock out," and that he did not know of any managers who trained employees to clock out before running it].)

The differing experiences may be explained by the fact that Starbucks changed its computer system sometime between August and November 2010. (Dkt. 91-1 at 113 [Declaration of Connie Lange, hereinafter "Lange Decl."].) It appears that with the old

system, employees performed the store close procedure off the clock, and with the new system, employees performed the store close procedure on the clock. *See Troester v. Starbucks Corp.*, 2014 WL 1004098, at *1 (C.D. Cal. Mar. 7, 2014), *rev'd and remanded,* 738 F. App'x 562 (9th Cir. 2018); (*see* Lange Decl. ¶ 5 ["After November 2010, because the [old] system was no longer in use in California, partners no longer ran the close store procedure."]; Dkt. 91-1, Ex. H [Celia Westby testifying that under the new system, the close store procedure "doesn't exist anymore"].)

Regardless, Plaintiff's proposed class is simply not cohesive on this issue. The evidence shows that "Starbucks employees in California from August 6, 2008 through December 31, 2012 who worked a closing shift in a Starbucks store and performed work after clocking out"—the proposed class definition—have experienced the close store procedure in different ways. Nor is this a matter of creating subclasses, because some employees testified that they performed even the old store close procedure on the clock. (*See, e.g.*, Dkt. 91-1, Ex. H [Celia Westby explaining that with the old system, she did the close store procedure before she clocked out].) There may be additional individualized issues regarding individual managers' practices, given Plaintiff's testimony that his manager told him, "you now have to clock out first before you [do] the store-closing procedures." (Pl. Depo at 130.)

Setting the Alarm and Locking the Door. Similarly, as to setting the alarm and locking the door, Plaintiff does not point to any policy or uniform custom or practice such that common issues predominate. Some employees performed these functions on the clock. (*E.g.*, Dkt. 91-1, Ex. C [Blake Barnett testifying he always set the alarm on the clock]; *id.* Ex. 3 [Oscar Cardona testifying that in some stores, the door locked from the inside, so he could lock the door on the clock].) Other employees did them off the clock. (*E.g.*, *id.*, Exs. 4–6 [employees explaining they set the alarm and locked the door off the clock].) Other employees testified whether they did these activities on or off the clock

depended on the store they were working in. (*E.g.*, *id.*, Exs. 3, 7 [employees testifying that in some stores, the door locked by itself from the inside so they did not have to lock the door after clocking out, but in others, a physical key was required so they locked the door off the clock].) Still other employees performed these functions on the clock sometimes, and off the clock other times. (*E.g.*, *id.*, Ex. 6 [Stephanie Deleon explaining that she sometimes set the alarm on the clock, and other times off the clock].)

Walking Baristas to Cars. Analyzing Plaintiff's claim regarding time spent walking baristas to their cars is also replete with individualized issues. Although there is at least one training document stating that a shift supervisor must complete all closing tasks including walking employees to their vehicles, (*see* Dkt. 65 at 14), there is evidence showing that this was not always the policy, (*see* Lange Decl. ¶ 4), and regardless, custom and practice varied. For example, many people testified that they walked baristas to their cars not because of a Starbucks policy, but rather that they did so voluntarily, without expectation of payment. (*E.g.* Dkt. 91-1, Exs. A–C, E–H, 1–9); *see Cornn*, 2005 WL 2072091, at *2 (finding common issues did not predominate and pointing to fact that some class members "ha[d] agreed that time spent changing into uniforms is not compensable"). Additionally, many employees testified that they did not walk others to their cars because the employees in their store did not drive to work, but rather took public transportation, Uber or Lyft, walked, or biked. (Opp. at 14 [collecting testimony]; *e.g.*, Dkt. 91-1 Exs. 2–3.)

The individualized experiences of class members make managing a single trial extremely difficult if not impossible. *See* Fed. R. Civ. P 23(3)(D). Individualized issues regarding which employees performed the relevant functions on or off the clock, and why they performed those functions, predominate over common questions. And those individualized issues go not just to damages, but also to liability. *See Gibbs v. TWC Admin., LLC*, 2020 WL 42770, at *4 (S.D. Cal. Jan. 3, 2020) (declining to certify off-the-

clock work class where the employer had a policy prohibiting such work and the plaintiffs failed to show a company-wide policy or practice because claims depended on individual supervisors' behavior and individualized differences did not go only to damages).

Indeed, Plaintiff points to no records or other evidence that would create common proof on whether employees performed these functions on or off the clock, or that would otherwise allow these claims to be proven for all class members collectively one way or another. *See Stiller v. Costco Wholesale Corp.*, 298 F.R.D. 611, 628 (S.D. Cal. 2014), *aff'd, 673 F. App'x 783 (9th Cir. 2017), abrogated on other grounds by Campbell v. City of Los Angeles*, 903 F.3d 1090 (9th Cir. 2018) (finding "no class-wide method of determining whether, how often, and for how long class members actually experienced unpaid [off the clock, 'OTC'] time"). This is important because without such common evidence, "liability cannot be proved on a classwide basis without thwarting [Starbucks'] ability to demonstrate that some class members, due to a variety of circumstances, did not actually experience unpaid OTC time." *Id.* Starbucks has the right to present at trial its evidence that some class members did not work off the clock. *See id.* Doing so in a single trial applicable to all class members would be simply unworkable.

For these reasons, among others, where courts have granted certification of classes alleging off-the-clock work claims, those claims generally revolve around company-wide policies—for example requirements that employees undergo security or bag checks, or wear special gear that they must put on and take off before and after shifts. *See Negrete v. ConAgra Foods*, 2019 WL 1960276 at *4 (C.D. Cal. 2019) (granting class certification for off-the-clock claims where Defendant did not compensate Plaintiffs for "time spent donning and doffing protective gear at the beginning and end of their shifts"); *Lao v. H&M Hennes & Mauritz, L.P.*, 2018 WL 3753708 at *1–2 (N.D. Cal. 2018) (granting class certification for off-the-clock claims where plaintiffs challenged a company-wide

policy requiring employees to undergo security checks before leaving the store for rest breaks and at the end of their shifts); *Moore v. Ulta Salon Cosmetics & Fragrance Inc.*, 311 F.R.D. 590, 604, 612 (C.D. Cal. 2015) (granting class certification in bag checks case where Ulta had a "written exit inspection policy" and "company-wide practice" and individualized issues went to time spent in line for the bag check); *Scott-George v. PVH Corporation*, 2015 WL 7353928 *9 (E.D. Cal. 2015) (bag checks); *Otsuka v. Polo Ralph Lauren Corp.*, 251 F.R.D. 439, 448 (N.D. Cal. 2008) (loss-prevention inspections); *Cervantez v. Celestica Corp.*, 253 F.R.D. 562, 572 (C.D. Cal. 2008) (bag checks).

In contrast, where, as here, there is no uniform practice regarding off-the-clock work, courts deny certification. *See, e.g.*, *Koike v. Starbucks Corp.*, 378 Fed.Appx. 659, 661 (9th Cir. 2010) (finding district court did not abuse its discretion in finding that "individualized factual determinations were required to determine whether class members did in fact engage in OTC work and whether Starbucks had actual or constructive knowledge of the OTC work performed"); *In re AutoZone, Inc., Wage & Hour Emp't Practices Litig.*, 289 F.R.D. 526, 539 (N.D. Cal. 2012), *aff'd,* 2019 WL 4898684 (9th Cir. Oct. 4, 2019) (finding common issues did not predominate where there was no common answer to the question of why off-the-clock work occurred, and pointing to putative class member declarations attesting to never having performed or reported any off-the-clock work); *Stiller*, 298 F.R.D. at 628 ("[T]here is no common answer as to whether each class member actually performed uncompensated OTC work."); *Cornn v. United Parcel Serv., Inc.*, 2005 WL 2072091, at *2 (N.D. Cal. Aug. 26, 2005) (finding common issues did not predominate given individualized inquiries including whether each class member actually performed compensable work before the recorded start time).

In sum, individualized issues regarding whether employees worked off the clock and why they did so predominate over common questions regarding whether such work is compensable. Accordingly, class certification is not appropriate.

V. CONCLUSION

For the foregoing reasons, Starbucks' Motion for Partial Summary Judgment is **GRANTED** and Plaintiff's Motion for Class Certification is **DENIED**.

DATED: January 27, 2020

CORMAC J. CARNEY
UNITED STATES DISTRICT JUDGE

Exhibit 7

FILED
Superior Court of California
County of Los Angeles

JUN 16 2017

Sherri R. Carter, Executive Officer/Clerk
By Isabel Arellanes, Deputy
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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

STEVEN PRICE, an individual; individually and on behalf of all others similarly situated,

Plaintiff,

vs.

UBER TECHNOLOGIES, INC., a Delaware Corporation, RAISER-CA, LLC, a Delaware Limited Liability Company, and DOES 2 through 100, inclusive,

Defendant.

Case No: BC554512

Assigned for all Purposes to:
Hon. Maren Nelson – Dept. 307

THE CALIFORNIA LABOR COMMISSIONER'S AMICUS CURIAE BRIEF PURSUANT TO MAY 11, 2017 ORDER

BY FAX

Dept: 307
Date: June 30, 2017
Time: 1:30 p.m.

[***EXEMPT FROM FILING FEES PURSUANT TO GOVERNMENT CODE SECTION 6103 ****]

TABLE OF CONTENTS

Pursuant to the Court's May 11, 2017 order, Labor Commissioner Julie A. Su ("Labor Commissioner") respectfully submits this *amicus curiae* brief regarding the proposed settlement in this matter.[1] The Court requested briefing on three issues:

1. Where multiple plaintiffs bring PAGA claims against the same employer for the same or similar alleged violations of law, which plaintiffs, if any, speak on behalf of the Labor Commissioner?

2. What legal standard should the court apply in approving a settlement under Labor Code section 2699, subdivision (*l*)(2)?

3. The propriety of the proposed settlement in this action.

While these issues implicate some unsettled legal questions, the Labor Commissioner believes that these issues are best resolved by applying principles of fairness and justice that have developed in other forms of representative actions, as well as by considering PAGA's role in helping the Labor Commissioner discharge her mandate

> to vigorously enforce minimum labor standards in order to ensure employees are not required or permitted to work under substandard unlawful conditions or for employers that have not secured the payment of compensation, and to protect employers who comply with the law from those who attempt to gain a competitive advantage at the expense of their workers by failing to comply with minimum labor standards.

(Lab. Code § 90.5, subd. (a).)

I. WHERE MULTIPLE PLAINTIFFS BRING PAGA CLAIMS AGAINST THE SAME EMPLOYER FOR THE SAME OR SIMILAR ALLEGED VIOLATIONS OF LAW, WHICH PLAINTIFFS, IF ANY, SPEAK ON BEHALF OF THE LABOR COMMISSIONER?

The California Supreme Court has recognized the Private Attorneys General Act of 2004 ("PAGA") as a procedural device that allows aggrieved employees to bring actions to recover civil penalties that otherwise could only be sought by the State. (*See Amalgamated Transit Union*

[1] While the Court's May 11, 2017 order invited the Labor Commissioner to submit an *amicus* brief, the state's interest with regard to the Private Attorneys General Act, Labor Code section 2698, *et seq.*, lies with the Labor and Workforce Development Agency, the legislatively-created, cabinet-level agency within the State of California charged with coordinating enforcement of California's Labor Code and on whose behalf PAGA claims are brought. The Labor Commissioner is the Chief of the Division of Labor Standards Enforcement within the Department of Industrial Relations, and the LWDA oversees the Department of Industrial Relations. (Lab. Code §§ 50, 79, 82.) It is the LWDA that is the real party in interest with regard to PAGA claims, not the Labor Commissioner.

Local 1756 v. Super. Ct. (2009) 46 Cal.4th 993, 1003.) It neither creates substantive rights nor, even as a form of qui tam action, authorizes any plaintiff to speak on behalf of the Labor Commissioner. To the extent the parties and objectors disagree on whether more than one plaintiff may bring an action based on the same or similar allegations, the Labor Commissioner notes that nothing in PAGA or the general jurisprudence regarding representative actions precludes this. PAGA—unlike California's principal qui tam statute, the California False Claims Act—does not place limits on how many representative actions may proceed. (*See* Gov. Code § 12652, subd. (c)(10) ["When a person brings an action under this subdivision, no other person may bring a related action based on the facts underlying the pending action."].) The absence of such limits indicates the Legislature's intention to permit overlapping litigation against the same employer; but a judgment in a PAGA action can bind all who would be bound by a judgment in an action brought by the State. (*Arias v. Super. Ct.* (2009) 46 Cal.4th 969, 985.)

II. WHAT LEGAL STANDARD SHOULD THE COURT APPLY IN APPROVING A SETTLEMENT UNDER LABOR CODE SECTION 2699(*l*)(2)?

It is well established that PAGA serves to augment the limited enforcement capability of the Labor and Workforce Development Agency by empowering employees to bring actions to enforce California's labor standards. (*Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348, 383; *accord Arias, supra*, 46 Cal.4th at p. 986 ["The act's declared purpose is to supplement enforcement actions by public agencies, which lack adequate resources to bring all such actions themselves."]; *see also* Stats. 2003, ch. 906, § 1.) In doing so, PAGA plaintiffs "take on a special responsibility to their fellow aggrieved workers who are effectively bound by any judgment." (*O'Connor v. Uber Technologies* (N.D. Cal. 2016) 201 F.Supp.3d 1110, 1134.) This responsibility "is especially significant given that PAGA does not require class action procedures" that would safeguard against fraud and collusion. (*Id.* at p. 1133.) In this context, the touchstone for the adequacy of the settlement must always be the purposes and policies underlying California's labor laws, and PAGA as a proxy for a state action. To that end, a PAGA settlement must provide for relief that is genuine, meaningful, and consistent with the State's goal of benefitting the public through enforcement of its labor laws.

Against this backdrop, the Labor Commissioner believes that courts evaluating PAGA settlements should utilize the standard employed in qui tam and other representative actions: is the settlement fair, adequate, and reasonable under all of the circumstances in light of the public policies underlying California's labor standards? Part of this analysis is a consideration of the strength of the plaintiffs' case—something that courts have considered in both qui tam and class actions. (*See United States ex rel. Schweizer v. Oce N. Am., Inc.* (D.D.C. 2013) 956 F.Supp.2d 1, 11 ["While there is 'no single test' for class action settlement approval under Rule 23(e) in this jurisdiction, courts look to the following factors: . . . "(b) the terms of the settlement in relation to the strength of plaintiffs' case. . . . "]; *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130 ["The proposed settlement cannot be judged without reference to the strength of plaintiffs' claims. [Citations]"].)

The Labor Commissioner takes no position on the merits of plaintiffs' case, but to the extent the Court determines plaintiffs may succeed, the Court may consider multiple forms of relief. While PAGA does not imbue a plaintiff with the same range of authority as the Labor Commissioner,[2] nothing in the statute precludes an aggrieved employee from seeking, and a court from imposing, injunctive relief to end ongoing violations (*e.g.*, ordering an employer to appropriately classify its workforce as employees and affirmatively comply with employer obligations like reimbursing employees for business expenses, providing meal and rest periods, paying overtime, providing paid sick leave, etc.). Consequently, where a settlement solely provides for the recovery of monetary penalties, and does not otherwise effectuate the State's interests through affirmative actions, a court should weigh the full monetary value of relevant

[2] To end and deter Labor Code violations and vindicate individual employee's rights, the Labor Commissioner possesses and utilizes broad authority. For example, in addition to the various specific citations and penalties that the Commissioner may impose, she may: investigate and adjudicate claims for wages and money owed; prosecute actions for the collection of wages and other moneys payable to employees where she determines they are financially unable to employ counsel; take assignment of employee claims for wages and other compensation; prosecute civil actions to recover unpaid minimum wage and overtime compensation with or without the affected employees' consent; represent claimants in *de novo* appeals from administrative adjudications awarding compensation; issue stop work orders prohibiting use of employee labor where an employer has failed to secure the workers' compensation for its workforce; and license various industries (*e.g.*, garment manufacturer, farm labor contractors, car wash, studio teachers and talent agents). (Lab. Code §§ 96, 98.3, 1193.6, 3710.1.)

penalties and determine if the proposed penalties effectively minimize the economic advantages employers gain by non-compliance. Only penalties that create "an effective disincentive for employers to engage in unlawful and anticompetitive business practices" achieve PAGA's purpose. (Sen. Bill. No. 796 (2003-2004 Reg. Sess.) § 1(a).)

In addition, as discussed more fully below, courts should consider other aspects of the settlement that may affect the settlement's fairness, adequacy, and reasonableness, including but not limited to the scope of the release, the risk of a reverse auction, and the disproportionate enrichment of named plaintiffs.

III. THE PROPRIETY OF THE PROPOSED SETTLEMENT IN THIS ACTION

Although the Labor Commissioner takes no position on the underlying dispute in this matter or the ultimate propriety of the settlement, she has identified the following aspects of the proposed settlement that merit closer scrutiny before the Court can assure itself that the settlement is consistent with the State's interest and PAGA's requirements.

A. SUFFICIENCY OF CIVIL PENALTIES

The parties have provided the Court their views on the underlying merits of this matter and the litigation risks. While a settlement in which a defendant agrees to classify its workers as employees and adhere to the requirements of the State's employee protections could ensure compliance with the law going forward and thereby factor into the court's evaluation of a settlement,[3] the proposed settlement does not provide for affirmative relief. The settlement's adequacy, therefore, can only be determined by examining whether, weighing all factors—including the merits of the claims—the proposed penalty amounts effectively promote PAGA's compliance and deterrence goals.

[3] As the Legislature recognized, "[a]lthough innovative labor law education programs and self-policing efforts by industry watchdog groups may have some success in educating some employers about their obligations under state labor laws, in other cases the only meaningful deterrent to unlawful conduct is the vigorous assessment and collection of civil penalties as provided in the Labor Code." (Stats. 2003, ch. 906, § 1.) Furthermore, as Judge Chen described, a PAGA settlement that resolves important questions regarding the status of workers, or contains substantial injunctive relief, "'augment[s] the state's enforcement capabilities, encourage[es] compliance with Labor Code provisions, and deter[s] noncompliance.' [Citations.]" (*O'Connor, supra.* 201 F.Supp.3d at pp. 1134-35.)

Here, the settlement compromises and releases penalties for 54 separate violations impacting over a million workers in California. However, the parties have not offered a robust and specific description of the maximum value of all individually-identified claims and the consequent penalties being released. Absent a description of the monetary exposure associated with each alleged violation, the Court cannot discharge its duty to determine whether a release of claims eliminates the competitive advantages an employer may improperly gain through non-compliance with the State's minimum labor standards. (*See Kullar, supra,* 168 Cal.App.4th at p. 133 [noting court cannot draw conclusions regarding the fairness and adequacy of the proposed settlement "if it is not provided basic information about the nature and magnitude of the claims in question and the basis for concluding that the consideration being paid for the release of those claims represents a reasonable compromise"]; *see also O'Connor v. Uber Technologies* (N.D. Cal. June 30, 2016, 13-CV-03826-EMC, 15-CV-00262-EMC) 2016 WL 3548370, at *7 ["The parties should provide an accurate assessment of the potential verdict value of the PAGA claim"].)

Moreover, the Labor Code provides for certain penalties in the amount of unpaid wages. (*E.g.*, Lab. Code §§ 558, 1197.1.) These penalties are distinct from the other penalties that can be collected through PAGA by virtue of the fact that these penalties are payable to the aggrieved employees. (Lab. Code §§ 558, subd. (a)(3), 1197.1, subd. (a)(3); *see also Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal.App.4th 1112, 1148.) Such wage-measured penalties, which are analogous to disgorgement, deter violations by disincentivizing the improper economic gain the non-compliant employer would otherwise receive.[4] Accordingly, in order to gauge the

[4] Where the penalty recoverable includes disgorgement of amounts required by the State's minimum labor standards, such as Labor Code sections 558 and 1197.1, review of a proposed settlement should necessarily include evaluation of the sufficiency of such disgorgement, which is not an assertion of private rights, but rather another method of enforcing the policies underlying California's minimum labor standards. (*See Eddleman v. U.S. Dept. of Labor* (10th Cir. 1991) 923 F.2d 782, 791 [enforcement proceeding by U.S. Department of Labor to liquidate unpaid wage claims was "but another method of enforcing the policies underlying the SCA [Service Contract Act]"], *modified on other grounds by Temex Energy, Inc. v. Underwood, Wilson, Berry, Stein & Johnson* (10th Cir. 1992) 968 F.2d 1003.) "[W]ithout this result [disgorgement], there would be an insufficient deterrent to improper conduct that is more profitable than lawful conduct." (*County of San Bernardino v. Walsh* (2007) 158 Cal.App.4th 533, 543; *see also Kokesh v.*

extent to which the proposed settlement fairly and adequately comports with PAGA's purpose, the Court should understand the approximate maximum value of these penalties as well and the rationale behind settling for different amounts. This information, however, has not been provided.

Finally, the Labor Commissioner further notes that PAGA puts the burden on the parties to present the facts and circumstances that would render a civil penalty unjust, arbitrary and oppressive, or confiscatory. The evaluation of whether the imposition of maximum penalties is unjust, arbitrary, oppressive, or confiscatory turns on the conduct at issue and the impact of the penalties in deterring ongoing violations. Because of this, a description of a proposed settlement as the largest assessment of civil penalties pursuant to PAGA is not dispositive of the adequacy of a settlement; nor is it dispositive to compare a case to other cases in which various penalty amounts were approved. What matters are the unique facts of the case at hand and the extent to which the proposed settlement can effectively promote the State's goals. (*See Cotter v. Lyft, Inc.* (N.D. Cal. 2016) 176 F.Supp.3d 930, 942 ["a trial court must assess the adequacy and reasonableness of a proposed settlement in light of unique facts of the case at hand, in light of the proposed settlement as a whole, and in light of the particular risks involved"].)

B. SCOPE OF RELEASE

The Labor Commissioner observes that the settlement represents that the State of California shall be deemed to have fully, finally, and forever waived, released, relinquished, and discharged the released parties from all PAGA claims known or unknown related to the claims being released. (Provision V.C.) Though it is common for parties in private class actions to release claims known or unknown, nothing in PAGA authorizes the parties to agree to a release of unpleaded claims on behalf of the State. While the Supreme Court has recognized that a judgment concerning specific allegations and claims in an action under PAGA may bind the State, the settlement's assumption that the State is bound by this broadly-worded release is inconsistent with PAGA's specific requirements and the State's broad law enforcement and remedial authority. Private parties may waive their own rights, but they may not waive the State's. To condone an

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Securities and Exchange Commission (2017) 581 U.S. ___ [137 S.Ct. 1130] [SEC's disgorgement action operates as a civil penalty].)

attempt to limit the State's authority to redress labor violations falling outside the scope of the pleaded allegations would violate public policy and PAGA's role in augmenting, rather than supplanting, the State's law enforcement capacity.

C. RISK OF REVERSE AUCTION

Where multiple plaintiffs bring separate claims against the same employer for the same or similar alleged violations of law, there is a risk of a "reverse auction" in which "the defendants pick the most vulnerable or compliant plaintiff with which to settle and bind all other suits." (*Cobarruviaz v. Maplebear, Inc.*, No. 15-CV-00697-EMC (N.D. Cal. Sept. 30, 2016) 2016 WL 5725076, at *2.) Because PAGA actions are a form of representative action, the concern may arise—as it does in class actions—that a settlement is the product of a reverse auction, or collusion or overreaching by the parties. (*See Glidden v. Chromalloy American Corp.* (7th Cir. 1986) 808 F.2d 621, 627 [settlement of representative actions, *e.g.*, a class action, "creates obvious dangers; the representative may have been a poor negotiator or may even be in cahoots with the defendant."]; *accord Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026 ["The dangers of collusion between class counsel and the defendant, as well as the need for additional protections when the settlement is not negotiated by a court designated class representative, weigh in favor of a more probing inquiry than may normally be required under Rule 23(e)."].) It is therefore incumbent on a court in PAGA actions to closely scrutinize the circumstances underlying PAGA settlements, even absent direct evidence of collusive conduct, just as it would with respect to class actions. (*Reynolds v. Beneficial Nat. Bank* (7th Cir. 2002) 288 F.3d 277, 283; *see also Crawford v. Equifax Payment Services, Inc.* (7th Cir. 2000) 201 F.3d 877, 882 [rejecting settlement when plaintiff and "his attorney were paid handsomely to go away; the other class members received nothing (not even any value from the $5,500 'donation') and lost the right to pursue class relief."].) The exercise of vigilance is especially critical given that, as previously discussed, a resolution of specifically-identified PAGA claims has preclusive impact on the State.

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D. DISPROPORTIONATELY ENRICHING NAMED PLAINTIFFS

Though class action representatives often are provided side payments in a settlement as "incentive awards," there appears to be no precedent for such awards in the context of a PAGA action. PAGA, like other qui tam actions, already creates an "incentive" to bring actions by allocating 25% of the civil penalties recovered to the plaintiff and the other aggrieved employees. (*See Baumann v. Chase Inv. Services Corp.* (9th Cir. 2014) 747 F.3d 1117, 1123 ["The employee's recovery is thus an incentive to perform a service to the state."].) PAGA thereby links the plaintiff's self-interest to the overall litigation; the more civil penalties collected, the more the aggrieved employees—including the PAGA plaintiff—are rewarded. Providing a separate payment to a PAGA plaintiff that is not tethered to the amount of civil penalties may dilute PAGA's designed incentive and introduce a potential conflict of interest between the named representative, other aggrieved employees, and the State.

Moreover, as recognized in class actions, substantial and disproportionate awards for named plaintiffs in exchange for the named plaintiffs' individual releases of all claims raise "grave problems of collusion." (*Women's Committee For Equal Employment Opportunity v. National Broadcasting Co.* (S.D.N.Y. 1977) 76 F.R.D. 173, 180 ["[W]hen representative plaintiffs make what amounts to a separate peace with defendants, grave problems of collusion are raised."].) Notably, the Labor Commissioner does not negotiate analogous incentive payments to specifically identified employees when pursuing enforcement actions. The downside of such awards—even those that are not tied to a release—"is that the payments lend themselves for use as side payments to induce named plaintiffs to go along with sweetheart deals." (*Kakani v. Oracle Corp.*, No. C 06-06493 WHA (N.D. Cal. June 19, 2007) 2007 WL 1793774, at *10.) Named plaintiffs "are incentivized, out of self-interest, to achieve the best possible result for the class" or, in this case, the aggrieved employees. (*Ibid.*) Accordingly, the separate awards to named plaintiffs in the proposed settlement—even in exchange for broader individual releases—merit the Court's careful review.

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IV. CONCLUSION

The Labor Commissioner appreciates the invitation to comment on the proposed settlement and draw the Court's attention to the issues identified above.

Date: June 16, 2017

Respectfully submitted,

OFFICE OF THE DIRECTOR
State of California, Department of Industrial Relations

By: _____
Dan L. Gildor

Counsel for Department of Industrial Relations Appearing Specially for the Labor Commissioner

Exhibit 8

Archived: Monday, September 8, 2025 3:55:13 PM
From: Nandrajog, Elaisha
Mail received time: Sat, 6 Sep 2025 04:16:12
Sent: Friday, September 5, 2025 9:16:14 PM
To: David Winston
Cc: Brigette Bahari Sandoval, Servando R.
Subject: RE: Urrutia vs. BLVD Residential - Meet and Confer for Motion for Preliminary Approval
Importance: Normal
Sensitivity: None

David – thanks for the call earlier today. I am confirming the below. Thanks, Elaisha

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From: David Winston <david@employmentlitigators.com>
Sent: Friday, September 5, 2025 1:16 PM
To: Nandrajog, Elaisha <enandrajog@spencerfane.com>
Cc: Brigette Bahari <brigette@employmentlitigators.com>
Subject: [EXTERNAL] Urrutia vs. BLVD Residential - Meet and Confer for Motion for Preliminary Approval

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Hi Elaisha,

Thanks for the Zoom conference earlier today. As discussed, Plaintiff will be filing a motion for preliminary approval of the proposed settlement. During the conference, we discussed that Defendant does not presently plan to oppose the Motion for Preliminary Approval. When you have a moment, do you mind sending me an email confirming?

Thank you,

David Winston

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