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 individually and on behalf of all others similarly situated.

**UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA**

JENNIFER PAE, individually and on behalf
 of all others similarly situated,

Plaintiff,

vs.

FOX RESTAURANT CONCEPTS, LLC
 d/b/a TRUE FOOD KITCHEN; a Arizona
 limited liability company; FRC TRUE
 FOOD SMP, LLC, a California limited
 liability company; FRC TRUE FOOD
 SDFV, LLC, a California limited liability
 company; FRC TRUE FOOD NBF, LLC, a
 California limited liability company; and
 DOES 1 through 25, inclusive,

Defendants

CASE NO. 2:16-cv-06965-DSF-FFM

[Assigned to the Hon. Dale S. Fischer,
 Courtroom 7D]

**NOTICE OF MOTION AND MOTION
 FOR FINAL APPROVAL OF CLASS
 ACTION SETTLEMENT**

[Filed concurrently with Plaintiffs' Motion
 for Attorneys' Fees, Costs, and Service
 Awards; Supporting Declarations; and
 [Proposed] Order]

Hearing Date: March 25, 2019
 Time: 1:30 p.m.
 Courtroom: 7D (1st Street Courthouse)

Complaint Filed: July 22, 2016
 Removal Date: September 16, 2016

TO ALL INTERESTED PARTIES AND THEIR ATTORNEYS OF RECORD:

Please take Notice that on March 25, 2019 at 1:30 p.m., or as soon thereafter as the matter can be heard in Courtroom 7D of the United States District Courthouse located at 350 West 1st Street, Los Angeles, California 90012, before the Honorable Dale S. Fischer, Plaintiffs Jennifer Pae and Alexandra Sheldon (“Plaintiffs”) will and hereby does move this Court for an Order Granting Final Approval of Class Action Settlement.

Plaintiffs’ Motion is based on this Notice and the accompanying Memorandum of Points and Authorities and exhibits thereto; the Declaration of Michael H. Boyamian and the respective exhibits; the Declaration of Thomas W. Falvey and the respective exhibits; the Declaration of Alex Hartounian and the respective exhibits; the Declaration of Armand R. Kizirian and the respective exhibits; the Proposed Order; this Court’s files and records; and any other evidence, briefing, or argument properly before this Court.

Plaintiffs respectfully request that the Court: (1) grant final approval of the proposed Settlement; (2) certify the Class for settlement purposes; (3) find that the Notice was the best practicable notice under the circumstances and satisfied all Constitutional and other requirements; (4) confirm Settlement Class Members who have submitted timely requests for exclusion; (5) confirm as final the Court's preliminary appointment of settlement Class Counsel; (6) confirm as final the Court's preliminary appointment of Jennifer Pae and Alexandra Sheldon as class representatives; (7) grant service enhancement awards to class representative Jennifer Pae in the amount of \$15,000.00 and class representative Alexandra Sheldon in the amount of \$10,000.00; (8) grant an award of attorneys' fees of \$221,306.53 (25 percent of the total settlement sum after employer’s share of payroll taxes are deducted), and litigation costs of \$21,417.38, for a total fee and expense award of \$242,723.91; (9) award the settlement administrator, CPT Group, \$23,500.00 for claims administration expenses; (10) dismiss the action pursuant to the terms and conditions of the Settlement Agreement; (11) retain jurisdiction over the

1 enforcement and implementation of the Settlement Agreement; and (12) issue related
2 orders as necessary.

3
4 Dated: February 19, 2019

Respectfully submitted,
BOYAMIAN LAW, INC.
LAW OFFICES OF THOMAS W. FALVEY
HARTOUNIAN LAW FIRM

7
8 By: /s/ Armand R. Kizirian
Armand R. Kizirian
9 Attorneys for Plaintiffs Jennifer Pae,
10 Alexandra Sheldon, and the Settlement
Class
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I. INTRODUCTION

Plaintiffs Jennifer Pae and Alexandra Sheldon (“Plaintiffs”) seek final approval of this Class Action Settlement, in which Defendants Fox Restaurant Concepts, LLC, FRC True Food SMP, LLC, FRC True Food SDFV, LLC, and FRC True Food NBFI, LLC (“Defendants” or “True Food Kitchen”) (Plaintiffs and Defendants together as the “Parties”) have agreed to pay \$900,000, on a non-reversionary basis, to settle claims of 2,580 individuals who were employed as non-exempt front-of-the-house employees in California at all of Defendants’ True Food Kitchen restaurants at any time from July 22, 2012 to December 4, 2018 (“Settlement Class Members”). The proposed settlement will provide an average gross recovery of approximately \$221.18 per class member, with the highest estimated gross award at \$1,515.81. The notice package was mailed on January 11, 2019. Declaration of Bryan Valdez On Behalf of CPT Group, Inc. with Respect to Notification and Settlement Administration (“Valdez Decl.”), ¶ 6. While the notice package was just mailed, Plaintiffs do not anticipate any objections or a significant number of opt-outs, and indeed, as of January 24, 2019, only one individual had opted out. Valdez Decl., ¶ 10. Plaintiffs will file a supplemental declaration from the third-party administrator closer to the final approval hearing date so that the Court is informed of the total number of opt-outs and/or objections that are filed.

The Settlement, which was reached as a result of arm’s-length negotiations with the assistance of respected mediator Steven J. Serratore, Esq., is eminently fair and reasonable and should be approved. By this unopposed motion, Plaintiffs request final approval of the proposed Settlement, which was preliminarily approved by this Court on December 4, 2018, including a final determination that the Settlement is in good faith and fair to the settlement class.

In the concurrently filed Motion for Final Approval of Attorneys’ Fees, Costs, and Enhancement Awards (“Motion for Attorneys’ Fees”), Plaintiffs also seek, among other things, an award of attorneys’ fees in the amount of \$221,306.53 (1/4 of the gross settlement after the employer’s share of payroll taxes are deducted); litigation costs of

1 \$21,417.38, claims administration costs of \$23,500; and enhancement awards for the
2 named Plaintiffs Class Representatives of \$15,000 for Jennifer Pae and \$10,000 for
3 Alexandra Sheldon. After deducting the requested fees and costs, the Net Settlement
4 amount to be distributed to Class Members, inclusive of payroll taxes, is estimated at
5 \$570,419.60. Valdez Decl., ¶ 13.

6 Class Counsel have achieved an excellent result in this litigation, embodied in the
7 Settlement Agreement. Final approval is warranted because this is a fair and positive
8 result for the Class Members who worked for Defendants at their True Food Kitchen
9 restaurants, as evidenced by their extremely positive response to the settlement. As of
10 January 24, 2019, no Class Member objected to the settlement and only one has opted out,
11 signifying overwhelming approval by Class Members. Valdez Decl., ¶ 10. All of the
12 Court's requirements for Notice to the Class, set forth pursuant to the Order Granting
13 Preliminary Approval, have been fully complied with. The conclusion that the Settlement
14 is a truly excellent result becomes more apparent in light of Defendants' defenses to
15 Plaintiffs' claims, as described in Plaintiffs' Motion for Preliminary Approval of Class
16 Action Settlement. Indeed, the Settlement strikes a balance between the perils of
17 continued litigation and fairly compensating Class Members. The Settlement is fair and
18 reasonable, and should be approved.

19 **II. CASE SUMMARY**

20 This class action suit was brought by Plaintiffs Jennifer Pae and Alexandra Sheldon,
21 as they sought to represent current and former front-of-the-house employees at
22 Defendants' California True Food Kitchen restaurants. Plaintiffs allege a variety of wage
23 and hour violations on the part of Defendants.

24 First, Plaintiffs allege that they were not properly provided with meal and rest
25 breaks by Defendants. Plaintiffs and Class Members were required to complete meal
26 break waiver forms, and were thereafter generally scheduled for six-hour shifts. If
27 Plaintiffs and Class Members worked no more than six hours, they would have been
28 entitled to one rest break. However, Defendants seldom, if ever, provided for a duty-free

1 rest break. Defendants would try and schedule as few front-of-the-house staff as possible
2 for any given shift. However, because scheduling for a shift necessarily occurs before the
3 shift itself, Defendants often would end up under-staffing shifts with front-of-the-house
4 employees, such as servers. Declaration of Michael H. Boyamian in Support of Final
5 Approval (“Boyamian Decl.”), ¶ 8; Declaration of Jennifer Pae in Support of Final
6 Approval (“Pae Decl.”), ¶¶ 4-6; Declaration of Alexandra Sheldon in Support of Final
7 Approval (“Sheldon Decl.”), ¶¶ 7-11.

8 When a shift was understaffed, Plaintiffs and Class Members would be expected to
9 work through their rest break. Even though it was never written explicitly by Defendants
10 in any employee manual, Plaintiffs and Class Members understood perfectly well that it
11 would be wholly inappropriate to, e.g., spend 10 minutes outside on a break when
12 customers were having their dishes go cold because there were not enough servers to
13 cover all tables. Pae Decl., ¶ 6; Sheldon Decl., ¶ 6.

14 Certain shifts also were scheduled for 8 hours. On such shifts, Plaintiffs and Class
15 Members would be required to take a 30-minute unpaid meal break. However, just as
16 with rest breaks, management would expect Plaintiffs and Class Members to assist during
17 their unpaid meal breaks, particularly if the restaurant was busy during that shift. Pae
18 Decl., ¶¶ 4-5; Sheldon Decl., ¶¶ 5, 7.

19 On shifts that went beyond their scheduled time of 6 or 8 hours, Plaintiffs and Class
20 Members would regularly be required to work off-the-clock. In the case of the six-hour
21 shift, Plaintiffs and Class Members would still have to keep working off-the-clock
22 because otherwise, their meal break waiver would no longer be effective at that point and
23 they simply could not keep working without incurring a meal break violation. Similarly,
24 Plaintiffs and Class Members could not keep working after eight hours because to do so
25 would require that employee to incur overtime hours - something that Defendants very
26 much wanted to avoid. Pae Decl., ¶¶ 4-6; Sheldon Decl., ¶¶ 5, 7, 10-11.

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1 Particularly at the end of their shifts after they had already clocked out, Plaintiffs
 2 and Class Members would be required to complete side work such as rolling silverware
 3 (wrapping napkins around cutlery), sweeping the dining room floor, restocking the service
 4 area or wiping down work counters, stocking and cleaning the cupboard, restocking
 5 condiments, restocking plates, and cleaning up. Pae Decl., ¶¶ 3-4; Sheldon Decl., ¶¶ 5,
 6 10.

7 Moreover, each True Food Kitchen restaurant was headed by a General Manager.
 8 Part of the General Manager's compensation was tied to the profitability of the restaurant.
 9 One metric measured by True Food Kitchen and that factored into the profitability of the
 10 restaurant was adherence to the labor budget. As a result, if a General Manager chose to
 11 schedule more staff members on each shift to ameliorate the above under-staffing issues,
 12 he or she risked exceeding the labor budget, impacting profitability, and thus ultimately
 13 hurting his or her own pay. For this reason, among others, Defendants' local management
 14 was not particularly concerned if True Food Kitchen was not complying very well with
 15 California's wage and hour laws. Boyamian Decl., ¶ 9.

16 Finally, True Food Kitchen would not reimburse Plaintiffs and Class Members for
 17 their replacement aprons, True Food Kitchen t-shirts, and non-stick shoes that they would
 18 have to wear. Further, Plaintiffs and Class Members had to purchase an app called
 19 HotSchedules in order to access their schedules, but this expense was also not paid for by
 20 Defendants. Boyamian Decl., ¶ 10; Sheldon Decl., ¶ 10.

21 **III. SUMMARY OF THE TERMS OF THE SETTLEMENT**

22 The basic terms of the proposed settlement are as follows:

23 1. Defendants will pay a gross amount of \$900,000 with no reversion.
 24 Settlement Agreement at ¶ 16. The Joint Stipulation of Settlement and Release Between
 25 Plaintiffs and Defendants is attached as Exhibit "1" to the Declaration of Armand R.
 26 Kizirian in Support of Final Approval ("Kizirian Decl.").

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1 2. Plaintiffs seeks attorneys' fees in the amount of \$221,306.53 (25% of the
2 gross settlement after \$14,773.87 in employer-side payroll taxes are deducted) as well as
3 reimbursement of their costs and expenses of \$21,417.38, which will not be opposed by
4 Defendants. Settlement Agreement at ¶ 19; Kizirian Decl. ¶ 9.

5 3. The Settlement Administration costs through completion in the amount of
6 \$23,500. Settlement Agreement at ¶ 16; Valdez Decl., ¶ 12.

7 4. Plaintiffs seek service awards in the amount of \$15,000 for Jennifer Pae and
8 \$10,000 for Alexandra Sheldon for their role as Class Representatives, which will not be
9 opposed by Defendants. Settlement Agreement at ¶ 112.

10 5. The Release given by Settlement Class Members to participate in this
11 settlement does *not* include a California Civil Code § 1542 waiver of claims. The Class
12 Representative Plaintiffs, however, provide Defendants with a waiver of claims pursuant
13 to California Civil Code § 1542. Settlement Agreement, ¶¶ 24-25.

14 6. Notice packages were mailed to all Settlement Class Members via first class
15 mail on January 11, 2019. The deadline for Settlement Class Members to object or opt-
16 out, if they do not want to participate, is February 25, 2019. Valdez Decl. at ¶ 6. An
17 exemplar of the Notice of Class Action Settlement which was mailed to Settlement Class
18 Members on January 11, 2019 is attached as Exhibit A to the Declaration of Bryan Valdez
19 from CPT Group, Inc., the Settlement Administrator.

20 7. The settlement payments will be allocated as 20% for unpaid wages and 80%
21 for unpaid interest penalties. The Settlement Administrator will issue Form 1099-MISC
22 to all participating Settlement Class Members. Settlement Agreement at ¶ 17(g).

23 8. Settlement checks will be valid and negotiable for 180 days. If any uncashed
24 checks remain after 60 days, they will be voided, and the remaining funds disbursed to Bet
25 Tzedek. Settlement Agreement at ¶¶ 18, 22; Valdez Decl, ¶ 2, Ex. A (Notice at p. 3 (Part
26 B re: "What will I receive from the Settlement?"))).

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A. The Notice Process Encompassed Comprehensive Efforts to Reach Every Class Member and Ensure Maximum Opportunity for Class Members to Benefit and Recover Fair Allocations.

This Court approved the Notice Packet, which included the Notice of Class Action Settlement and optional Allocation Form. The Notice Packet was mailed by the Settlement Administrator to the last known address of all Settlement Class Members via First Class Mail on January 11, 2019. Valdez Decl., ¶ 6. The final deadline to submit the voluntary Allocation Forms, objections, or exclusions is February 25, 2019. Valdez Decl., ¶ 6. Class Counsel will also submit a supplemental report regarding any opt-outs or objections received after the end of the notice period, i.e. February 25, 2019, but before the final approval hearing presently set for March 25, 2019. As of January 24, 2019, there has been only one opt-out and zero objections to this class action settlement. Valdez Decl., ¶ 10.

Before sending out the Notices to the Settlement Class Members, CPT Group, Inc. ran the names and addresses it was provided from Defendants through the U.S. Postal System's National Change of Address Database ("NCOA") to ensure that as many Settlement Class Members as possible received the notice documents. Valdez Decl., ¶ 5. In addition, CPT Group, Inc. established a toll-free telephone number that Settlement Class Members could call with any questions they may have about the settlement. Valdez Decl., ¶ 6, Ex. A.

This manner of notice and outreach was reasonably calculated to provide notice to Settlement Class Members and complies with the requirements of the Court's Order Granting Preliminary Approval. The cost of the notice shall be part of the Settlement Administration costs, which are fixed at \$23,500 through completion, which shall be deducted from the Gross Settlement Amount.

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B. For Any Unclaimed Funds, Bet Tzedek Is an Appropriate Cy Pres Beneficiary.

As discussed above, settlement checks will be valid and negotiable for 60 days. Settlement Agreement at ¶ 22. Any unclaimed funds will be disbursed to the Employment Law Center. Settlement Agreement at ¶ 18; Valdez Decl, ¶ 2, Ex. A (Notice at p. 3 (Part B re: “What will I receive from the Settlement?”)). Bet Tzedek is an appropriate *cy pres* beneficiary with a “driving nexus” to the interests of the class both geographically and in its purpose. This is a case seeking redress under the California Labor Code for individuals whom Plaintiffs contend were not properly paid all the wages they were due. Bet Tzedek is an organization appropriately aligned with the interests of the class as the organization, through its Economic Justice program, “...provides workers direct representation in individual and class action cases, helps thousands of workers know their rights, assists trafficked laborers who were illegally denied earned wages...”. Kizirian Decl., ¶ 8; *see Dennis v. Kellogg Co.*, 697 F.3d 858, 865-67 (9th Cir. 2012).

IV. FINAL APPROVAL IS WARRANTED FOR A FAIR, ADEQUATE, AND REASONABLE SETTLEMENT SUCH AS THIS.

Federal law strongly encourages settlements in the context of class actions. *See, e.g., Franklin v. Kaypro Corp.*, 884 F.2d 1222, 1229 (9th Cir. 1989) (“overriding public interest in settling and quieting litigation” is “particularly true in class action suits”). When reviewing a motion for approval of a class settlement, the Court should give due regard to “what is otherwise a private consensual agreement negotiated between the parties,” and must therefore limit the inquiry “to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” *Officers for Justice v. Civil Serv. Comm’n*, 688 F. 2d 615, 625 (9th Cir. 1982).

To approve a proposed settlement of a class action under Federal Rule 23(e), the Court must find that the proposed settlement is “fair, adequate and reasonable,” recognizing that “it is the settlement taken as a whole, rather than the individual

1 component parts, that must be examined for overall fairness.” *Staton v. Boeing*, 327 F.3d
2 938, 960 (9th Cir. 2003) (quoting *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th
3 Cir. 1998)). Although Rule 23 provides no precise formula for making this
4 determination, the Ninth Circuit has identified several factors to be considered: (1) the
5 strength of the case; (2) the size of the claims and amount offered to settle them; (3) the
6 risk, expense, complexity and likely duration of further litigation; (4) the stage of the
7 proceedings, *i.e.*, whether the plaintiffs and their counsel have conducted sufficient
8 discovery to make an informed decision on settlement; (5) whether the class has been
9 fairly and adequately represented during settlement negotiations by experienced counsel;
10 and (6) the reaction of the class to the proposed settlement. *See id.* (noting that the
11 relative importance of each of these factors will depend on the circumstances of the case).
12 Here, all of the relevant factors weigh in favor of final approval.

13 The total settlement amount is \$900,000, which includes payment to Settlement
14 Class Members, the named Plaintiffs’ service awards, the costs of administration of the
15 settlement, and attorneys’ fees and costs. As discussed more fully below, these amounts
16 are eminently fair and reasonable under all of the relevant circumstances.

17 Should the Court not approve the Settlement, Plaintiffs’ Motion for Class
18 Certification and Defendants’ Motion for Partial Summary Judgment, which are fully
19 briefed, would be at issue for the Court’s determination. Despite Plaintiffs’ confidence in
20 their claims and the appropriateness of class certification, Plaintiffs nevertheless recognize
21 the very real risk that the Court may deny class certification or grant summary judgment
22 as to some claims. In addition, attorneys’ fees and litigation costs would increase
23 significantly if Plaintiffs were to litigate this action with a certified class and hold a class
24 action trial. Moreover, Defendants would likely appeal any adverse verdicts at trial. For
25 these reasons, as well as the reasons stated below, the Settlement is a fair and reasonable
26 outcome for the Settlement Class members.

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A. An Assessment of the Claims and Defenses Asserted, and Other Relevant Factors, Weigh Strongly in Favor of Approving the Settlement.

The settlement considers the strengths and weaknesses of both parties' respective positions. Plaintiffs allege that Defendants failed to properly compensate Class Members for all hours worked at the True Food Kitchen restaurants. Plaintiffs also allege that Defendants did not provide meal and rest breaks in conformity with California law due to chronic understaffing, and failed to reimburse all business expenses. Further litigation carries numerous risks and obstacles for Plaintiffs and Class Members. Boyamian Decl., ¶¶ 14-15.

First, Plaintiffs may not be able to certify a class of front-of-the-house employees under Rule 23(b). Rule 23(b) provides that class certification is appropriate where "...the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and...a class action is superior to other available methods...". Fed. R. Civ. P. 23(b)(3).

Plaintiffs can show through common evidence that Defendants typically scheduled Class Members for six hour shifts in line with their meal break waiver forms. Moreover, Plaintiffs can show that they and Class Members were clocking out from work at or near the sixth or even the eight-hour mark but continuing to work off-the-clock by either continuing to wait on tables or completing the required "side work" and then "cashing out." Plaintiffs submitted substantial evidence in this regard with their Motion for Class Certification. Boyamian Decl., ¶ 8.

However, in opposing Plaintiffs' Motion for Class Certification, Defendants submitted their own evidence which allegedly showed that Plaintiffs and Class Members were not working off the clock, or that the experiences of the front-of-the-house employees varied. If the Parties had not reached this settlement and the Court found Defendants' evidence to be credible, no class would be certified for off the clock work. Declaration of Alex Hartounian in Support of Final Approval ("Hartounian Decl."), ¶ 23.

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1 Similarly, Plaintiffs submitted evidence with their Motion for Class Certification
 2 that they and Class Members were also unable to take their rest breaks and meal breaks
 3 (when ostensibly provided) due to the amount of work that they were responsible for
 4 completing, the chronic understaffing at True Food Kitchen restaurants, and local
 5 management's financial incentive to keep their restaurants understaffed. Boyamian Decl.,
 6 ¶¶ 8-9. On all these points, Defendants cited contrary evidence. When Plaintiffs pointed
 7 to a policy of Defendants that supported their claims, Defendants would cite another.
 8 When Plaintiffs proffered various declarations of Class Members that were in accord with
 9 Plaintiffs' statements, Defendants submitted their own employee declarations.

10 As a result, while Plaintiffs are confident in their claims, it cannot be said that
 11 Defendants' presented no contrary evidence to the Court. Thus, in the absence of
 12 settlement, the Court's ruling on the pending Motion for Class Certification and
 13 Defendants' Motion for Partial Summary Judgment will come down to a credibility
 14 determination by the Court. Consequently, through the compromise of this settlement, the
 15 Parties are each assured of certainty with the outcome, and avoid, from Plaintiffs' and the
 16 Class's perspective, potentially losing all or some of their claims, and from Defendants'
 17 perspective, of this becoming a much more advanced suit. Hartounian Decl., ¶ 23.

18 In addition, with regard to Plaintiffs' claims for wage statement and waiting time
 19 penalties, both claims are derivative of Plaintiffs' primary off-the-clock and meal and rest
 20 break allegations. Thus, Plaintiffs would recover nothing for themselves, or the Class, if
 21 the underlying claims are unsuccessful. Boyamian Decl., ¶ 11.

22 Finally, with regard to waiting time penalties, Defendants might argue that there
 23 was a good faith dispute regarding whether Class Members were owed any wages at the
 24 time their employment ended. *See* Cal. Code Regs. Tit. 8, § 13520 (good faith dispute,
 25 based in law or fact, precludes award of waiting time penalties). Defendants might also
 26 contend that to the extent that they failed to pay any wages to Class Members, their failure
 27 was not willful within the meaning of California Labor Code § 203. *See Amaral v. Cintas*
 28 *Corp. No. 2*, 163 Cal. App. 4th 1157, 1201 (2008). In regards to wage statements,

Defendants might argue that the statute provides for penalties only if Plaintiffs prove that Defendants' violations were both knowing and intentional. Cal. Lab. Code § 226(e). Therefore, even assuming *arguendo* that Plaintiffs can establish a failure to pay wages, Plaintiffs may be unable to demonstrate that Defendants' failure to include overtime on their earnings statement was both knowing and intentional. Without this proof, Plaintiffs cannot recover penalties or fees under Section 226(e).

B. The Investigation Completed Weighs in Favor of Approving the Settlement.

Class Counsel conducted a thorough investigation into the relevant facts and legal claims before entering into this settlement with Defendants. Class Counsel closely reviewed the data provided by Defendants through the discovery process to assess liability and determine the amount of damages potentially available to putative class members. Boyamian Decl., ¶¶ 12-13, 17. Moreover, Plaintiffs themselves provided Class Counsel with detailed and comprehensive information in order to assist counsel in assessing the strengths and weaknesses of the claims at issue. Boyamian Decl., ¶ 20; Pae Decl. ¶¶ 10-12; Sheldon Decl., ¶¶ 2, 14-16. Class Counsel also contacted and extensively interviewed putative class members so as to have as much information as possible about the working conditions at True Food Kitchen. Boyamian Decl., ¶¶ 12, 24; Hartounian Decl., ¶ 19. Finally, Class Counsel utilized the services of an expert statistician in order to assist in their review of the documents provided by Defendants in advance of filing their Motion for Class Certification and attending mediation. Boyamian Decl., ¶¶ 17, 24.

Accordingly, at the time of settlement, Class Counsel had a wealth of information upon which to make an informed decision about the appropriate value at which to settle the claims against Defendants. Particularly as Plaintiffs' Motion for Class Certification and Defendants' Motion for Partial Summary Judgment had been fully-briefed by the time of the mediation, the Parties had sufficient information and extensive knowledge about the strengths and weaknesses of each other's cases to allow for negotiation of a fair settlement.

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C. Plaintiffs' and Defendants' Counsel Are Experienced, and the Settlement Is the Product of Serious, Informed, Non-Collusive and Good-Faith Negotiations.

This is not a case of collusion by counsel for the parties, but instead, a thoughtful, careful agreement to reach settlement of Class Members' claims by experienced counsel, operating at arms-length, who have weighed the strengths of the case and examined all issues and risks of litigation and endorse the proposed settlement. The view of the attorneys actively conducting this litigation "is entitled to significant weight" in deciding whether to approve the settlement. *Ellis v. Naval Air Rework Facility*, 87 F.R.D. 15, 18 (N.D. Cal. 1980), *aff'd* 661 F.2d 939 (9th Cir. 1980); *Fisher Bros. v. Cambridge Lee Indus., Inc.*, 630 F. Supp. 482, 488 (E.D. Pa 1985).

Class Counsel are very experienced in class actions, including wage and hour class actions, and have been successful in obtaining large dollar settlements on behalf of a class of persons. Declaration of Thomas W. Falvey ("Falvey Decl."), ¶ 3; Boyamian Decl., ¶ 4; Hartounian Decl., ¶¶ 8-11; Kizirian Decl., ¶ 4. In addition, Class Counsel are very experienced in labor and employment law cases. *Id.* In light of this experience, Class Counsel are experienced and qualified to evaluate the Class claims and to evaluate settlement versus trial, on a fully informed basis, and to evaluate the viability of the defenses.

Class Counsel are convinced that this settlement is in the best interest of the Class based on the negotiations and a detailed knowledge of the issues present in these actions. Boyamian Decl., ¶¶ 13-18. The length and risks of trial and other normal perils of litigation that may have impacted the value of the claims were all weighed in reaching the proposed settlement. The affirmative defenses asserted by the Defendants, the prospect of a potential adverse summary judgment ruling or denial of class certification, the difficulties of complex litigation, the lengthy process of establishing specific damages and various delays and appeals, were also carefully considered by Class Counsel in agreeing to the proposed settlement. Specifically, Class Counsel balanced the terms of the proposed settlement against the probable outcome of liability and the range of recovery at

1 trial. *Id.*

2 Counsel on both sides share the view that the Settlement is a fair and reasonable
3 compromise, taking into consideration the complexities of the case, the state of the law
4 and the uncertainties of class certification and litigation, and the excellent result for the
5 Class. Given the risks inherent in this litigation and the defenses asserted, the Settlement
6 is fair, adequate, reasonable and in the best interests of the class and one which supports a
7 grant of final approval.

8 The prospect of settlement of the case was discussed over the course of mediation
9 and follow-up conversations with the mediator. Negotiations were, at all times,
10 adversarial, non-collusive, in good faith, and at arm's length. *Id.* Thus, the Settlement
11 Agreement is the product of extensive and informed negotiations between counsel with
12 substantial litigation experience, who are fully familiar with the legal and factual issues in
13 this case, and who have experience litigating and settling complex and class action cases,
14 including employment cases, facilitated by experienced and respected mediator Steven J.
15 Serratore, Esq. *See Satchell v. Fed. Exp. Corp.*, 2007 WL 1114010, at *4 (N.D. Cal. Apr.
16 13, 2007) ("The assistance of an experienced mediator in the settlement process confirms
17 that the settlement is non-collusive."). Boyamian Decl., ¶¶ 13-18.

18 **D. The Class's Positive Response to the Settlement, to Which There Have Been**
19 **No Objections and Minimal Opt-Outs, Strongly Supports Final Approval.**

20 The Ninth Circuit and other federal courts have made clear that the number or
21 percentage of class members who object to or opt out of the settlement is a very
22 significant factor in determining whether to grant final approval. *See Mandujano v. Basic*
23 *Vegetable Prods., Inc.*, 541 F.2d 832, 837 (9th Cir. 1976); *see also In re Am. Bank Note*
24 *Holographics, Inc.*, 127 F. Supp. 2d 418, 425 (S.D.N.Y. 2001) ("It is well settled that the
25 reaction of the class to the settlement is perhaps the most significant factor to be weighed
26 in considering its adequacy") (internal quotation marks and citation omitted)); *Cody v.*
27 *Hillard*, 88 F. Supp. 2d 1049, 1059-60 (D.S.D. 2000) (approving the relevant settlement
28 in large part because only 3% of the apparent class had objected to the settlement); *In re*
Dun & Bradstreet Credit Servs. Customer Litig., 130 F.R.D. 366, 372 (S.D. Ohio 1990)

1 (approving the relevant settlement and affording “substantial weight” to the fact that
2 fewer than 5% of the class members elected to opt out of the settlement); *In re Art*
3 *Materials Antitrust Litig.*, 100 F.R.D. 367, 372 (N.D. Ohio 1983) (approving the
4 settlement and holding that the fact that none of the class members had objected and a
5 small percentage opted out of the settlement was “entitled to nearly dispositive weight”).

6 Here, no Class Member has objected to the settlement and less than 1% have opted
7 out. Valdez Decl. ¶ 10.

8 In sum, all of the relevant factors demonstrate that this is a fair, adequate and
9 reasonable settlement, and final approval is therefore appropriate.

10 **E. The Requested Attorneys’ Fees, Costs and Services Awards Are Reasonable**
11 **and Comparable to Those Routinely Awarded.**

12 In the present case, Plaintiffs’ counsel requests, and Defendants do not oppose, an
13 award of attorneys’ fees in the amount of one quarter of the gross settlement minus the
14 employer’s share of payroll taxes, as well as costs and enhancement awards to the named
15 Plaintiffs. As detailed in Plaintiffs’ concurrently filed Motion for Attorneys’ Fees, the
16 requested fees, costs and enhancement awards are well within the range typically awarded
17 by courts in comparable cases, and are more than justified given the results achieved by
18 Plaintiffs’ counsel.

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21 ///

V. CONCLUSION

The Parties have reached an agreement that disposes of the risks, costs and delay associated with further litigation, while allowing payments to class members on a fair and equitable basis. Defendants deny liability, but seek, through this settlement, to obtain closure to this litigation. No class member has objected to the settlement and less than 1% have opted out. As a result, Plaintiffs' respectfully request that the Court grant final approval to this class action settlement.

Dated: February 19, 2019

Respectfully submitted,
BOYAMIAN LAW, INC.
LAW OFFICES OF THOMAS W. FALVEY
HARTOUNIAN LAW FIRM

By: /s/ Armand R. Kizirian
Armand R. Kizirian
Attorneys for Plaintiffs Jennifer Pae,
Alexandra Sheldon, and the Settlement
Class

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Attorneys for Plaintiffs JENNIFER PAE, ALEXANDRA SHELDON
Individually and on behalf of all others similarly situated
(Additional Counsel for Plaintiffs Listed On Following Page)

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

JENNIFER PAE, individually and on behalf
of all others similarly situated,

Plaintiff,

vs.

FOX RESTAURANT CONCEPTS, LLC
d/b/a TRUE FOOD KITCHEN; a Arizona
limited liability company; FRC TRUE
FOOD SMP, LLC, a California limited
liability company; FRC TRUE FOOD
SDFV, LLC, a California limited liability
company; FRC TRUE FOOD NBFI, LLC, a
California limited liability company; and
DOES 1 through 25, inclusive,

Defendants.

ALEXANDRA SHELDON, on behalf of
herself and all other aggrieved employees
and the general public,

Plaintiffs,

vs.

FOX RESTAURANT CONCEPTS, LLC
d/b/a TRUE FOOD KITCHEN; a Arizona
limited liability company; FRC TRUE
FOOD SMP, LLC, a California limited
liability company; FRC TRUE FOOD
SDFV, LLC, a California limited liability
company; FRC TRUE FOOD NBFI, LLC, a
California limited liability company; and
DOES 1 through 25, inclusive,

Defendants.

Case No: 2:16-cv-06965-DSF-FFM

[Assigned to the Honorable Dale S.
Fischer (Courtroom 7D) for all
purposes]

CLASS ACTION

**DECLARATION OF MICHAEL
H. BOYAMIAN IN SUPPORT
OF PLAINTIFFS' MOTION
FOR FINAL APPROVAL AND
MOTION FOR ATTORNEYS'
FEES, COSTS, AND SERVICE
AWARDS**

[FILED CONCURRENTLY WITH
PLAINTIFFS' MOTION FOR
FINAL APPROVAL OF CLASS
ACTION SETTLEMENT AND
MOTION]

Date: March 25, 2019
Time: 1:30 p.m.
Courtroom: 7D

Action Filed: July 22, 2016

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15 Attorneys for Plaintiffs JENNIFER PAE, ALEXANDRA SHELDON
16 Individually and on behalf of all others similarly situated
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DECLARATION OF MICHAEL H. BOYAMIAN

I, Michael H. Boyamian, declare as follows:

1. I am an attorney licensed to practice in all the courts of the state of California and am a partner at Boyamian Law, Inc., counsel of record for Plaintiffs Jennifer Pae and Alexandra Sheldon (“Plaintiffs”) and Class Counsel in this action. I make this Declaration in and support of Plaintiffs’ Motion for Final Approval of Class Action Settlement, and Motion for Attorneys’ Fees, Costs, and Service Awards. All of the information set forth herein is based on my personal and firsthand knowledge and if called and sworn as a witness, I could and would competently testify thereto.

Legal Background and Experience in Class Action Lawsuits

2. I am a 2007 graduate of Whittier Law School. While in Law School, I served as the President of the Armenian Law Students Society and was a member of the Moot Court Honors Board. I was admitted to the California State Bar and to the Supreme Court of the State of California in June of 2008. I am a member of various professional organizations, including the California Employment Lawyers Association (CELA), the Consumer Attorneys Association of Los Angeles (CAALA), and the Armenian Bar Association. I have been named as a Southern California Super Lawyer - Rising Star from 2015 through 2018 by Los Angeles Magazine.

3. I was recruited to the Law Offices of Thomas W. Falvey by Mr. Thomas W. Falvey in December of 2012. I joined the firm in January of 2013 and continued to work as an attorney there until June of 2018. Prior to the Law Offices of Thomas W. Falvey, I worked at (now defunct) Khorrami Pollard Abir, LLP (later known as Khorrami, LLP or Khorrami Boucher Sumner Sanguinetti, LLP) (collectively referred to as “Khorrami”) from June 2011 to December 2012. At Khorrami, my areas of practice involved individual civil rights actions; class actions focusing on wage and hour claims and consumer rights and protection;

1 mass actions dealing with pharmaceutical drugs and defective medical devices;
2 individual wage and hour actions and actions brought under the Fair Employment
3 Housing Act. Prior to Khorrami, I worked at The Gillam Law Firm in Century
4 City, California from about January 2007 to June 2011. My focus at The Gillam
5 Law Firm was primarily centered on individual employment actions involving
6 wrongful termination, retaliation, discrimination, and wage and hour claims. At
7 The Gillam Law Firm and in 2009, I was also first exposed to class actions. In
8 particular, The Gillam Law Firm and the Law Offices of Thomas W. Falvey
9 co-counseled on a class action case involving an international transportation
10 company which resulted in a substantial recovery to thousands of school bus
11 drivers in California. That case was *McKinlay v. Durham School Services*, Los
12 Angeles Superior Court, Case No. BC425600. The successful prosecution of the
13 McKinlay action introduced Your Declarant to Mr. Falvey. After five and a half
14 years with the Law Offices of Thomas W. Falvey, I decided to form my own Labor
15 and Employment practice at Boyamian Law, Inc. Overall, I have been in
16 continuous practice for over ten years, and since then, I have exclusively
17 represented plaintiffs in labor and employment matters.

18 4. Since my tenure at the Law Offices of Thomas W. Falvey and
19 continuing to this day, I have served an integral part in prosecuting class action
20 cases and recovering outstanding wages and compensation for thousands of
21 workers and consumers in California. In particular, those cases - have included,
22 but not limited to, the following recent recoveries:

- 23 • *Mendez v. R+L Carries, Inc.*, Case No. C 11-2478 CW (N.D. Cal.,
24 2013), wage and hour class action involving California truck drivers,
25 which settled for \$9,500,000.
- 26 • *Meneses v. CVS Pharmacy, Inc., et al.*, Case No. BC 489739 (2014),
27 filed in Los Angeles County on behalf of pharmacists, which settled
28 for \$2,800,000.

- 1 • *Stovall-Gusman v. W.W. Grainger, Inc.*, Case No. 13-cv-02540-HSG
2 (N.D. Cal. 2015), which settled for \$715,000.
- 3 • *Leos v. FedEx*, Case No. 14-02864-ODW-AGR (C.D. Cal. 2015), a
4 class action for unpaid wages pursuant to the Living Wage
5 Ordinance, recently settled for \$385,000.
- 6 • *Cortes v Daley Foods*, Case No. BC 496955 and *Gutierrez v. Daley*
7 *Foods*, Case No. BC524915 (Los Angeles County Superior Court,
8 2015), wage and hour class action involving California Labor Code
9 violations relating to restaurant workers, settled for \$2.2 million.
- 10 • *Fuentes, et al. v. Macy's West Stores, Inc.*, Case No. CV
11 14-00790-ODW (FFMx) (C.D. Cal 2015) wage and hour class action
12 involving misclassification of independent contractors, which settled
13 for \$4 million.
- 14 • *Timothy J. Connell, et al, Klara Paksy, et al* and *Dale Bystrom, et al*
15 *v. CVS Pharmacy, Inc., et al.*, LASC Case Nos. BC523172,
16 BC523491, BC525991 (2016) wage and hour class action involving
17 Labor Code overtime violations on behalf of pharmacists (\$7,461,600
18 settlement).
- 19 • *Angil Sharobiem, et al v. CVS Pharmacy, Inc., et al.*, Case No.
20 2:13-cv-09426-GHK-FFM (C.D. Cal. 2016) wage and hour class
21 action involving Labor Code overtime violations on behalf of
22 pharmacists (\$2,937,600 settlement).
- 23 • *Rimanpreet Uppal v. CVS Pharmacy, Inc., et al.*, Case No.
24 3:14-cv-02629-VC (N.D. Cal. 2016) wage and hour class action
25 involving Labor Code overtime violations on behalf of pharmacists
26 (\$2,350,800 settlement).
- 27 • *Pursell v. Pacific Wings, LLC*, LASC Case No. BC522083 (2017)
28

wage and hour class action involving Labor Code off-the-clock, overtime, meal and rest break, and unreimbursed business expense violations on behalf of restaurant servers (\$1,300,000).

- *Phillips v. AccentCare, Inc., et al.*, Case No. CIVDS1620673 (2017) wage and hour class action involving Labor Code overtime violation on behalf of home health nurses and other home health professionals (\$1,500,000.00).
- *Hooper v. URS Midwest, Inc.*, Case No. CIVDS1607489 (2017) wage and hour class action involving Labor Code overtime violation on behalf of Car Haulers (\$2,900,000).
- *Tyrer v First Student, Inc.*, Case No. BC459305 (2017) wage and hour class action involving Labor Code overtime violations on behalf of school bus drivers (\$475,000 settlement).
- *Nunez v. CompuCom Systems, Inc.*, LASC Case No. BC618385 (2017) wage and hour class action involving Labor Code overtime, meal and rest break, and unreimbursed business expense violations on behalf of home-based service technicians (\$1,500,000).
- *Garcia v. Macy's West Stores, Inc., et al.*, Case No. 3:16-cv-04440-WHO (N.D. Cal. 2017) wage and hour class action involving misclassification of independent contractors (\$1,550,000 partial settlement).
- *Oard v. Daily Press, LLC, et al.*, Case No. 5:16-cv-02039-SVW-KK (C.D. Cal. 2018) wage and hour class action involving misclassification of independent contractor newspaper carriers (\$500,000 settlement).
- *Patrick Malone, et al. v. KAG West, LLC, et al.*, Alameda County Superior Court Case Nos. RG15784137 and RG16814354 (2019) wage and hour class and PAGA actions involving overtime and meal

1 and rest break violations for truck drivers (\$1,600,000 settlement).

- 2 • *Raymond Cressall, et al. v. Galpin Motors, Inc., et al.*, San
3 Bernardino County Superior Court Case No. CIVDS1809319 (2019),
4 wage and hour class action concerning overtime and meal and rest
5 break violations in re a commission-only compensation plan
6 (\$2,000,000).

7 5. In addition, I have also been certified as class counsel following two
8 contested class certification motions: *Tyrer v. First Student, Inc.*, L.A.S.C Case
9 No.: BC459305 (June 2014), *Chavez v. Teavana Corporation*, L.A.S.C. Case No.:
10 BC475921 (May 2014).

11 6. Your Declarant played an integral role in the prosecution of this
12 matter. Your Declarant was involved throughout the discovery process, reviewed
13 the data from Defendants through the discovery process and also provided to us by
14 the Class Representatives. It is from these documents that Plaintiffs calculated
15 what they and putative class members are presently owed by Defendants. Your
16 Declarant also took the deposition of Defendants' Designated Person Most
17 Knowledgeable under FRCP 30(b)(6), the deposition of Plaintiffs' former General
18 Manager, and interacted with numerous putative class members to prepare
19 declarations in conjunction with Plaintiffs' filed Motion for Class Certification.
20 Critically, the outreach efforts with the putative class secured corroboration and
21 support for the underlying class claims.

22 **History of this Litigation and Plaintiffs' Claims**

23 7. The class action was filed on July 22, 2016 against the named
24 Defendants. At the time of filing, the operative complaint sought to represent all
25 non-exempt, hourly employees at the three restaurants that were in place at the
26 time of Plaintiff Jennifer Pae's employment. Subsequently, on April 26, 2017,
27 Plaintiff Alexandra Sheldon filed her complaint in Los Angeles Superior Court
28 against Defendants alleging a singular cause of action for violations and penalties

1 under the California Labor Code. During the course of litigation, Your Declarant,
2 along with Plaintiffs' Counsel, determined that a class action cases against all non-
3 exempt employees would not be feasible given the variance in the job duties
4 performed by putative class members which Plaintiffs alleged triggered the Labor
5 Code violation. As a result, the action was then limited to just those non-exempt,
6 hourly employees who, like Plaintiffs, worked the "front of the house".

7 8. Plaintiffs' allege that Defendants violated California's wage and hour
8 laws in three principle ways. First, Plaintiffs allege that they were not properly
9 provided with meal and rest breaks by Defendants. The True Food Kitchen
10 restaurants were often understaffed and management would require the "front of
11 the house" employees to work through their meal and rest breaks. Similarly,
12 Plaintiffs and Class Members were also required to work after clocking out of
13 their shifts. While Plaintiffs and Class Members would generally cease
14 performing their core job duties when clocking out, they were nevertheless
15 required to do various side tasks, or "side work" by management. For example,
16 servers would stop waiting tables once they had clocked out, but would still be
17 required to help clean the restaurant and roll silverware before leaving the
18 workplace.

19 9. Encouraging this practice of working through meal and rest breaks
20 and continuing to work after having clocked out was the fact that True Food
21 Kitchen set a strict labor budget. Part of the local General Manager's
22 compensation was based on the restaurant's ability to stay within its assigned
23 budget. As a result, local management at True Food Kitchen was also incentivized
24 to cause or ignore wage and hour violations as to do otherwise would impact the
25 General Manager's own pay.

26 10. Finally, True Food Kitchen would not reimburse Plaintiffs and Class
27 Members for their replacement aprons, True Food Kitchen t-shirts, and non-stick
28 shoes that they were required to wear to work. Plaintiffs and Class Members also

1 had to purchase an app called HotSchedules in order to access their schedules, but
2 this expense was also not paid for by Defendants.

3 11. In addition to the above primary claims, Plaintiffs' suit involved
4 derivative claims for inaccurate wage statements and waiting time penalties. It is
5 worth noting that Plaintiffs and Class Members would not recover anything on
6 these derivative claims if Plaintiffs were unsuccessful in pursuing the underlying
7 wage and hour violations.

8 12. Hundreds - if not thousands - of pages of documentary evidence was
9 reviewed by Your Declarant to prepare for the case and to conduct a successful
10 examination of Defendants' witnesses. As stated above, Your Declarant also
11 corresponded with numerous putative class members. The experiences of putative
12 class members shared with Your Declarant and other members of the firm
13 certainly gave the framework for Plaintiffs to proceed with their lawsuit.
14 Furthermore, Plaintiffs' case also greatly benefitted from the production of time
15 punch data which exhibited meal break violations occurring during the relevant
16 class period.

17 13. On April 4, 2018, the Parties attended a full-day mediation with
18 experienced mediator, Steven J. Serratore. The Parties engaged in protracted
19 negotiations and were ultimately able to reach an agreement that was based
20 fundamentally upon the mediator's advice and guidance. While a settlement
21 figure was agreed upon by the Parties in the days after the mediation, negotiations
22 as to the specific terms of the agreement continued for several weeks thereafter.
23 The settlement was the result of arm's-length negotiations by experienced counsel
24 familiar with the applicable law, the facts of this case, and class action litigation.
25 At the time of the mediation, the Parties had already prepared and briefed
26 Plaintiffs' Motion for Class Certification and Defendants' Motion for Partial
27 Summary Judgment. As a result, Plaintiffs' Counsel, and indeed Defense Counsel,
28 understood very well the strengths and weaknesses of their respective position.

1 14. While the case has many strengths in favor of Plaintiffs, Your
2 Declarant would be remiss if he did not recognize the challenges in winning class
3 certification and liability. While Plaintiffs maintain that putative class members
4 were deprived of their statutory breaks on shifts, case law is clear that an
5 employer's only affirmative obligation is to notify its employees of California's
6 meal and rest break rules. For instance, Your Declarant came to learn that some
7 Class Members knowingly skipped breaks and willingly worked off the clock to
8 maximize on their ability to collect tips. Moreover, aside from liability Plaintiffs
9 would have to show sufficient commonality among the "front of the house"
10 employees to maintain this suit as a Class Action. Your Declarant is cognizant of
11 the fact that while numerous Class Members supported Plaintiffs' allegations
12 through declarations, no direct documentary evidence exists of a sufficiently high
13 placed manager within the True Food Kitchen organization instructing Class
14 Members to work off the clock or through meal and rest breaks. All of this was
15 taken into account by Your Declarant and Plaintiffs' Counsel in considering
16 whether to settle this matter based on the amount being offered by Defendants.

17 15. Your Declarant also appreciated the variance of experiences shared
18 by Class Members. Your Declarant learned that Class Members chose not to work
19 off-the-clock, were uninterested in cooperating with Your Declarant and his team,
20 have a vague recollection of being told to work off-the-clock by a former, rogue
21 manager, or never worked off-the-clock and got paid for working overtime. Your
22 Declarant is of the opinion that these distinctions provide Defendants additional
23 arguments to bolster their claim that individual issues predominate or that there
24 was no uniform *de facto* policy of failing to compensate Class Members for all
25 hours worked.

26 16. Accordingly, Plaintiffs were cognizant of the potential argument that
27 whether a class member's schedule permitted a break depended on facts unique to
28 each employee and each particular restaurant. As to the merits, post-*Brinker*
decisions have found that employers' liability springs not simply from a defective

1 policy or scheduling, but from proof that breaks were unlawfully denied.

2 17. I support the analysis provided in the concurrently filed Plaintiffs’
3 Motion for Final Approval and Motion for Attorneys’ Fees, Costs, and Service
4 Awards, recounting the background and events of this action, the contribution of
5 Plaintiffs, the investigation and discovery completed by parties, and Plaintiffs’
6 counsel’s calculation of the maximum potential liability and damages in this
7 action. Specifically, Your Declarant agrees that, over the six year Class Period of
8 this suit, there likely have been approximately 275 “front of the house” employees
9 working at True Food Kitchen restaurants in California on any given day. This
10 figure would have been much lower at the start of the Class Period, when True
11 Food Kitchen only had a few locations in the state, and would be quite a bit higher
12 now as they have been expanding during the last few years. In addition, the expert
13 statistician that Plaintiffs’ engaged in preparing for the Motion for Class
14 Certification found meal break violations on 9.1% of all shifts. I believe this
15 number is much lower than the true violation rate as Plaintiffs and Class Members
16 often stated that managers would alter time clock entries to mask meal break
17 violations. I also agree that the average wage for “front of the house” employees
18 over the six year Class Period would be approximately \$10 per hour. Class
19 Members were generally paid minimum wage - while the minimum wage has been
20 higher than this for the last year and half, when combined with the other four and a
21 half years of the Class Period, the average wage is likely to be approximately \$10
22 per hour.

23 18. The conclusion to be drawn from the above analysis is that neither
24 liability, nor damages was clear-cut - which is why the parties elected to settle this
25 matter. As shown, some of Plaintiffs’ claims are largely of indeterminate value.
26 Plaintiffs’ counsel had to apply appropriate discounts because of these
27 indeterminables even independent of the discounts necessitated by settling
28 pre-certification because they posed a real risk to recovery. Thus, this Settlement,
like most others, was the product of compromise. Nevertheless, the settlement

1 amount is fair and reasonable in light of the strengths and weaknesses of the case,
2 and in the best interests of Settlement Class Members.

3 **Class Representative Service Awards**

4 19. Plaintiff Jennifer Pae seeks a Class Representative service award of
5 \$15,000 and Plaintiff Alexandra Sheldon seeks a Class Representative award of
6 \$10,000. I am of the opinion that the service payments are reasonable and proper
7 and supported by the particular circumstances of this case and the applicable case
8 law. Defendants do not oppose these requests.

9 20. The service payments being sought here are also justified by the level
10 of participation of the Plaintiffs and the personal sacrifices they have made.
11 Plaintiffs were invaluable in assisting their counsel's prosecution of the case.
12 Plaintiffs participated in meetings with their counsel where they explained
13 Defendants' meal and rest break policies, their de facto off-the-clock practices, the
14 duties they performed, Defendants' practices as it relates to their overall
15 compensation structure, and the necessary, work-related expenses they incurred
16 while working at True Food Kitchen. They provided pay records and other
17 documents to their counsel that assisted them in understanding the potential claims
18 in the case. Plaintiffs also assisted counsel in their efforts to speak to with other
19 witnesses and Class Members.

20 **Hourly Rate, Lodestar, Work Expended**

21 21. My hourly rate is \$575.00. I believe this hourly rate to be justified in
22 light of my experience and the excellent results I have achieved in the past, as
23 detailed above, as well the rates I have been awarded in the past.

24 22. For example, on two occasions in 2014 and in 2015, I was approved
25 at a rate of \$475 per hour in the *Leos* and *Meneses* cases. Subsequently, I was
26 approved at a rate of \$550 in 2016 in *Garcia*. After not raising my attorneys' fees
27 for over two years, I raised my attorney fee rate per hour by \$25 for 2018.

28 ///

1 23. My total lodestar to date is \$141,910 (246.8 hrs. * \$575.00 per hour).
2 I anticipate having to expend an additional 10 hours on this case dealing with class
3 member issues regarding the settlement as well as traveling to and attending the
4 final approval hearing. Thus, my anticipated lodestar could exceed \$147,660.
5 Moreover, I note that neither I nor my co-counsel have received any attorneys'
6 fees to date in this matter as we have been representing Plaintiffs and the putative
7 class entirely on a contingency basis. I believe this to be an important
8 consideration as the Court assesses my lodestar and the total attorneys' fees to
9 award to Class Counsel. A true and correct copy of my timesheets are attached as
10 Exhibit "2" to this declaration, though are only submitted *in camera* for the
11 Court's review.

12 24. I have performed the following work on this case: (1) interviewed the
13 Plaintiffs and potential class members as well as reviewed documents (time
14 records, policies) as part of Plaintiffs' pre-litigation investigation; (2) heavily
15 researched applicable case law on California's meal and rest break requirements,
16 compensable time, and business expenses; (3) drafted the Motion for Class
17 Certification, Opposition to Motion for Partial Summary Judgment, and Reply in
18 Support of Motion for Class Certification; (4) assisted in drafting the Complaint;
19 (5) taken most of Defendants' depositions on behalf of Plaintiffs, including the
20 primary F.R.C.P. 30(b)(6) deposition; (6) interviewed class members; (8) analyzed
21 Defendant's payroll records; (9) worked with an expert statistician to determine the
22 wages, penalty, and interest owed to class members; (10) reviewed and edited the
23 mediation brief; (11) attended mediation; and (12) drafted, edited, the settlement
24 agreement, class notice, and motion for preliminary approval.

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Litigation Costs

25. In total, my office alone has incurred an aggregate of \$362.16 in unreimbursed costs and expenses in prosecuting this case. All of these costs and expenses were reasonable and necessary to bring this case to closure. Attached as Exhibit "1" is my office's invoice of costs.

I declare, under penalty of perjury of the laws of California and the United States, the foregoing to be true and correct. Executed this 19th day of February, 2019 in Glendale, California.

/s/ Michael H. Boyamian

Michael H. Boyamian

ATTESTATION

I hereby attest that the concurrence in the filing of this document has been obtained from Michael H. Boyamian of Boyamian Law, Inc., Attorneys for Plaintiffs.

DATED: February 19, 2019 BOYAMIAN LAW, INC.
LAW OFFICES OF THOMAS W. FALVEY
HARTOUNIAN LAW FIRM

By: /s/ Armand R. Kizirian
ARMAND R. KIZIRIAN
Attorneys for Plaintiffs, individually, and on
behalf of all others similarly situated

Exhibit “1”

Boyamian Law, Inc.

Memorandum of Costs re *Jennifer Pae, et al. v. Fox Restaurant Concepts, LLC, et al.*

Messenger and Delivery:

Best Tracers	\$90.00
GSO	\$36.42

Other:

Uber	\$19.54
Parking	\$30.00

Printing/Copying/Scanning/Postage:

Printing (Boyamian Law, Inc.).	\$186.20
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<u>TOTAL:</u>	\$362.16
----------------------------	----------

Exhibit “2”

Submitted for *in camera* review

BOYAMIAN LAW, INC.
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Attorneys for Plaintiff JENNIFER PAE,
Individually and on behalf of all others similarly situated

(Additional Counsel Listed on Following Page)

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

JENNIFER PAE, individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

FOX RESTAURANT CONCEPTS,
LLC d/b/a TRUE FOOD KITCHEN; a
Arizona limited liability company;
FRC TRUE FOOD SMP, LLC, a
California limited liability company;
FRC TRUE FOOD SDFV, LLC, a
California limited liability company;
FRC TRUE FOOD NBFI, LLC, a
California limited liability company;
and DOES 1 through 25, inclusive,

Defendants

Case No.: 2:16-CV-06965-DSF-FFM

[CLASS ACTION]

Assigned to Hon. Dale S. Fischer

**DECLARATION OF ALEX
HARTOUNIAN IN SUPPORT OF
FINAL FOR PRELIMINARY
APPROVAL OF SETTLEMENT**

[FILED CONCURRENTLY WITH
PLAINTIFFS' MOTION FOR FINAL
APPROVAL OF SETTLEMENT]

Date: March 25, 2019

Time: 1:30 p.m.

Location: 7D

Complaint Filed: 07/22/16

Removal Date: 09/16/16

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8 Attorneys for Plaintiff JENNIFER PAE,
9 Individually and on behalf of all others similarly situated
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1 I, Alex Hartounian, declare as follows:

- 2
- 3 1. I have personal knowledge of the following facts and, if called upon to testify,
- 4 could and will testify truthfully and competently as to them.
- 5 2. I am an attorney, duly licensed to practice in the Courts of the State of California
- 6 and New York, and a member of good standing of the state bar of both states.
- 7 3. I am the Managing Attorney for Hartounian Law Firm, P.C. and am one of the
- 8 attorneys of record in the instant litigation. I make this declaration in support of
- 9 Plaintiffs Jennifer Pae and Alexandra Sheldon in the matter of *Jennifer Pae v.*
- 10 *Fox Restaurant Concepts, LLC, et al.*, United States District Court (Central
- 11 District) Case Number 2:16-CV-06965-DSF-FFM.
- 12 4. I am a 2007 *Cum Laude* graduate of Pepperdine University School of Law.
- 13 While in Law School, I served on the Pepperdine Law Review, including as an
- 14 Associate Editor.
- 15 5. I was admitted to the California State Bar and to the Supreme Court of the State
- 16 of California in December 2007 and to the United States District Court for the
- 17 Central District of California in January of 2008. In September of 2010, I was
- 18 admitted to the New York State Bar and to the Supreme Court of the State of
- 19 New York.
- 20 6. I have been in continuous practice for over 10 years. I started my law firm in
- 21 2011 and, since then, my principal area of practice has been representing
- 22 plaintiffs in employment matters.
- 23 7. I am a member of the California Employment Lawyers Association (“CELA”),
- 24 which is a statewide organization of attorneys representing employees in
- 25 termination, discrimination, wage and hour, and other employment cases and
- 26 whose members protect and expand the legal rights of California’s workers
- 27 through litigation, education and advocacy. I have also served as a Co-Chair of
- 28 CELA’s Practice Management Committee since 2012.

- 1 8. My law firm currently practices almost exclusively employment law, including
2 discrimination, wrongful termination, wage/hour, harassment and class action
3 cases. In the last several years, my practice has been almost exclusively
4 dedicated to employment law.
- 5 9. I currently have numerous cases pending in various courts in the state of
6 California and, in the past, I have successfully litigated several employment
7 cases on behalf of plaintiffs in both state and federal courts in this state.
- 8 10. I have extensive wage and hour litigation experience, including litigating several
9 multi-plaintiff cases where my clients were paid improperly, not provided with
10 meal and rest periods or otherwise deprived of their rights under the California
11 Labor Code.
- 12 11. Our office handles employment cases almost always on a pure contingency basis
13 because most, if not all, individuals cannot afford to pay for our representation in
14 litigation on an hourly basis. Contingency work such as this is more risky
15 because my firm is only paid if the case settles or we prevail at trial or
16 arbitration. Even if we obtain a judgment or settlement on behalf of a Plaintiff,
17 there is always risk that a defendant will be unable to pay or refuse to pay, file
18 for bankruptcy, or hide assets. Our office prosecuted this matter on a
19 contingency fee basis.
- 20 12. My firm primarily handles single-plaintiff cases. We co-counseled with the
21 Boyamian Law, Inc. and the Law Offices of Thomas W. Falvey on this class
22 action because of their extensive experience with wage and hour class actions
23 such as the instant one.
- 24 13. My office and I, along with the Law Offices of Thomas W. Falvey and
25 Boyamian Law, Inc., undertook the representation of Plaintiff and the proposed
26 class in this litigation at great financial risk because we believed that employees
27 had been seriously wronged and that their rights had been violated. In
28 undertaking this representation, I also believed that there was a risk of not being

able to collect any potential award or judgment ultimately received in this case.

14. Because of the contingent nature of the case and the amount of time spent prosecuting this case, the representation of Plaintiffs precluded me from accepting other cases and working on other cases during the same time period. Employment cases are typically time and document intensive, especially class action cases, requiring many hours to properly evaluate, analyze and prepare for trial or hearing. As a small firm, these factors have a significant impact on our ability to accept other work and to litigate other cases. Also, because our firm typically, if not always, advances costs for these types of cases, this fact adversely impacts our small firm's finances. In our practice, agreeing to take a case will necessarily impede our ability to take another during the same time period. In this case, Plaintiff's counsel advanced all costs. Our firm advanced costs of \$202.01 in this case and in the related *Sheldon* case, including for deposition-related costs and electronic filing and service costs.

15. The risks of litigating class action cases are enormous. To date, I have not received any fees for my involvement in the prosecution of this case. I have personally expended 175.2 hours thus far on this case and the related *Sheldon* case. As my hourly rate is \$575, I have incurred \$100,740 in attorneys' fees to date. I believe that a 25% contingency fee for this case is absolutely appropriate. My timesheets, which also show my itemized costs, will be submitted *in camera* for the Court's review as Exhibit "1".

16. Plaintiff Jennifer Pae began working as a server at the True Food Kitchen restaurant in Santa Monica in March 2015 and worked for over a year in that role until April 2016.

17. Plaintiff Alexandra Sheldon also worked at True Food Kitchen's Santa Monica restaurant as a server, working there from October 2013 to July 2016.

18. This settlement covers both actions and covers the True Foods Kitchen restaurants located throughout the State of California.

1 19.The parties engaged in professional yet adversarial litigation throughout this
2 case, which took several years to litigate. Several depositions were taken and
3 thousands of pages of documents were exchanged and reviewed. Plaintiffs’
4 counsel telephoned hundreds of former employees to speak with them about
5 their experiences working for Defendants. I personally spoke to hundreds of
6 current and former employees about what it was like to work for Defendants.

7 20.The original complaint filed in this action in July of 2016 sought damages for
8 missed meal and rest breaks, refusal to pay for off-the-clock work, failure to pay
9 for all hours worked, failure to provide accurate and timely wage records, for
10 failure to indemnify for business expenses as well as related claims.

11 21.The claims were amended to include claims brought in a separate action by
12 Alexandra Sheldon under the Private Attorneys General Act (the “PAGA”), as
13 part of the settlement reached between the parties after extensive negotiations
14 and a full day of mediation with mediator Steve J. Serratore.

15 22.Employment lawsuits serve a significant public benefit in helping eradicate
16 illegal and improper practices in the workplace. In this case, based on our
17 efforts, the settlement value of this case of \$900,000.00 presents a truly positive
18 result for plaintiff and the proposed class.

19 23.Plaintiffs have a righteous case. We have spoken with numerous former
20 employees of Defendants and have widely confirmed that Plaintiffs’ allegations
21 here are meritorious. Nevertheless, because litigating a class action case through
22 trial presents significant risk and expense, both sides want to resolve this matter
23 fully and completely and have thus entered into the instant settlement agreement.

24 24.Indeed, even should the Court find Plaintiffs’ claims to be credible, as borne out
25 through the briefing for Plaintiffs’ Motion for Class Certification and
26 Defendants’ Motion for Partial Summary Judgment, this suit may still be
27 unsuccessful if the Court does not believe that sufficient commonality exists
28 among Class Members to warrant class certification. Thus, for these reasons, the

1 settlement reached by the Parties is eminently fair, reasonable, and adequate, and
2 should be given preliminary approval by the Court.

3
4 I declare under penalty of perjury according to the laws of the United States of
5 America and the state of California that the foregoing is true and correct and based
6 on my personal knowledge.

7
8 Executed on February 19, 2019 in Pasadena,
9 California.

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Alex Hartounian

Exhibit “1”

Submitted for *in camera* review

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Individually and on behalf of all others similarly situated

(Additional Counsel Listed on Following Page)

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

JENNIFER PAE, individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

FOX RESTAURANT CONCEPTS,
LLC d/b/a TRUE FOOD KITCHEN; a
Arizona limited liability company;
FRC TRUE FOOD SMP, LLC, a
California limited liability company;
FRC TRUE FOOD SDFV, LLC, a
California limited liability company;
FRC TRUE FOOD NBFI, LLC, a
California limited liability company;
and DOES 1 through 25, inclusive,

Defendants

Case No.: 2:16-CV-06965-DSF-FFM

[CLASS ACTION]

Assigned to Hon. Dale S. Fischer

**DECLARATION OF JENNIFER
PAE IN SUPPORT OF
PLAINTIFFS' MOTION FOR
FINAL APPROVAL OF CLASS
ACTION SETTLEMENT AND
MOTION FOR ATTORNEYS'
FEES, COSTS, AND SERVICE
AWARDS**

[FILED CONCURRENTLY WITH
PLAINTIFFS' MOTION FOR FINAL
APPROVAL AND MOTION FOR
ATTORNEYS' FEES, COSTS, AND
SERVICE AWARDS]

Date: March 25, 2019

Time: 1:30 p.m.

Location: 7D, First Street Courthouse

Complaint Filed: 07/22/16

Removal Date: 09/16/16

**DECLARATION OF JENNIFER PAE IN SUPPORT OF PLAINTIFFS' MOTION FOR
FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND MOTION FOR
ATTORNEYS' FEES, COSTS, AND SERVICE AWARDS**

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8 Attorneys for Plaintiff JENNIFER PAE, ALEXANDRA SHELDON,
9 Individually and on behalf of all others similarly situated

DECLARATION OF JENNIFER PAE

I, Jennifer Pae, declare as follows:

1. I am over the age of 18 years. I am one of the Class Representatives in the above-captioned action of *Jennifer Pae v. Fox Restaurant Concepts, LLC, et al.*, CDCA Case No. 2:16-CV-06965-DSF-FFM. The following facts are within my personal knowledge, and if called as a witness, I could and would be qualified to testify thereto. I am making this Declaration in support of Plaintiffs' Motion for Final Approval of Class Action Settlement and Motion for Attorneys' Fees, Costs, and Service Awards.

2. I am a former employee of Fox Restaurant Concepts, LLC d/b/a True Food Kitchen, Inc. ("True Food Kitchen"). I worked an average of approximately 5-6 days per week. I worked all types of shifts at True Food Kitchen. However, near the end of my time with the company, I was most often scheduled for the dinner shift which was 4:00 p.m. to closing time. My end time was not fixed, management would decide when we were supposed to clock out. Most typically, I would be asked to clock out around 10:30 p.m., or as late as close to midnight.

3. I had a substantial amount of side work to complete before I could leave for the day. Even though a manager would announce that we had to clock out, we still could not leave immediately. Instead, our managers would want us to do things like filling empty condiment bottles, polishing glassware, cleaning the restrooms, cleaning the beverage sections, emptying pitchers, cleaning kitchen countertops, cleaning the bars, cleaning the point of sale systems, arranging plateware and napkins, rolling silverware, cleaning the banquettes, refilling salt and pepper shakers, wiping down tables, checking for and removing gum from underneath tables and chairs, wiping and polishing corridors, and taking out the trash. Finally, after all the side work was complete and a closer had signed off on my side work, I would find a manager in order to cash out my tips and leave.

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4. Aside from being told by my managers to clock out at a certain time, I was also expected to go off-the-clock when I reached the point of being on the clock for six hours. True Food Kitchen did not want me working beyond six hours so I would not have to take a meal break at closing. At the same time, during busier periods or days, my work would not be complete by the six-hour mark. Through no fault of my own, the restaurant simply would be really busy some days. Managers could try and anticipate staffing needs for the day, but they often fell short. I also believe that management was always under the gun from corporate to keep costs down – that meant scheduling as a few people as possible. In addition, True Food had a policy and expectation of exceptional customer service. I was always responsible for my tables, and would still be held responsible even if I was on a meal break in the event something went wrong. As a result, I and the other servers were under tremendous pressure to always take an active role with our tables, even if we were supposedly on a meal break. This policy also contributed to our inability to take rest breaks. In summary, it was impossible to take proper meal and rest breaks while providing the superb customer service that management demanded of us. True Food Kitchen was very clear, customer service was not to be compromised, and it was our ability to take meal and rest breaks that suffered as a result of this deliberate choice by True Food Kitchen.

5. If I reached six hours, I had to clock out. But at the same time, I was not allowed to tell managers that someone else had to deal with my closing duties. It was my responsibility. True Food Kitchen had these conflicting policies – I was not allowed to remain on the clock for more than six hours and yet at the same time I was not allowed to simply stop working and go home if I reached that six hour threshold. The result was that my managers required me to stay and keep working off-the-clock. Especially if I was one of the last servers there, a closer might flag me down to address whatever the issue was. Neither closers nor managers were interested in whether I had already clocked out and was done for the day – I was

1 simply expected to complete the task. All of this wasn't something that was unique
2 to me, but the approach management took with all of us at the Santa Monica True
3 Food Kitchen.

4 6. Moreover, I was not able to take 10-minute rest breaks. The restaurant
5 was simply too busy, True Food Kitchen did not staff enough servers that we could
6 stop working for a 10-minute stretch. There was always some request pending,
7 some table that had to be checked up on, some manager that was looking to talk to
8 me, I couldn't stop working for a 10-minute break. The idea was that there was
9 always something to do, something that should be done sooner rather than later, and
10 so we could not stop for a full 10 minutes. In essence, True Food Kitchen
11 effectively had policies and practices in place such that servers and other front of
12 the house employees could not take proper meal and rest breaks, and would be
13 required to spend some portion of their day working off the clock.

14 7. I understood that the way in which True Food Kitchen was treating us
15 was wrong and must be unlawful. In May 2016, I contacted Alex Hartounian of the
16 Hartounian Law Firm to explain how the company had been treating me and to
17 discuss my rights. Soon thereafter, I spoke with and then met Alex Hartounian, and
18 also attorneys Thomas W. Falvey, Michael H. Boyamian, and Armand R. Kizirian
19 at Mr. Hartounian's office. We discussed True Food Kitchen's policies extensively,
20 especially their practices with off-the-clock work and a lack of meal and rest breaks.
21 They explained to me what starting a class action lawsuit would involve and
22 particularly, what would be required of me as a class representative.

23 8. By the end of our meeting, I knew the risks that I would be taking by
24 filing a class action lawsuit, and I knew that this would take up a lot of my time—
25 something that I did not take lightly. I knew it wouldn't just be about me, but that
26 my fellow former co-workers would be relying on me to represent them as the class
27 representative. I knew that True Food Kitchen had treated me and my co-workers
28 badly, and I didn't want the company to get away with treating us that way. True

1 Food Kitchen wasn't my first restaurant job, I had worked at a couple other
2 restaurants prior to True Food Kitchen. I understood very well that (1) True Food
3 Kitchen was clearly very successful, being completely packed on numerous days,
4 and (2) they could easily afford to hire more staff to make sure all employees
5 properly took meal and rest breaks and were not required to work off-the-clock. I
6 was offended that a company of this size and with this many resources wouldn't
7 even do the *minimum* required by law for its employees. I told my lawyers to press
8 ahead and move forward with the suit.

9 9. As a class representative, I understood that I was expected to represent
10 and even champion the other True Food Kitchen workers ahead of myself. I
11 understood that the way the company failed to provide me with all of my meal and
12 rest breaks and how they made me work off the clock was exactly how they had
13 treated everyone else. Before we filed suit, my lawyers explained to me in specific
14 detail the risks, responsibilities and duties of being a class representative. I was
15 100% committed.

16 10. I understood it was my responsibility to actively participate in the
17 lawsuit to safeguard the interests of my co-workers. I did so to the best of my
18 ability, as I wanted to help my lawyers secure a good result for all of us True Food
19 Kitchen workers. The time commitment for this lawsuit has been significant. It
20 hasn't simply been a matter of doing work on weekends or evenings to assist my
21 lawyers. I have had to spend a substantial amount of time during the day on
22 weekdays in assisting my attorneys, meeting with them, and being prepared for and
23 then attending my deposition. This has interfered with own work as a self-
24 employed personal trainer. I have had to cancel appointments and have lost
25 business because my lawyers have needed me, whether for my deposition,
26 mediation, or just because an in-person meeting was required.

27 11. Throughout this case I have spoken to my lawyers frequently, and
28 stayed in even closer contact when dealing with specific issues, such as providing a

1 declaration for our Motion for Class Certification, preparing for my deposition,
2 attending mediation, and reviewing the settlement agreement. I have provided my
3 lawyers with all of the paperwork that I had been given by the company and that
4 was still in my possession. My attorneys often had questions for me about True
5 Food Kitchen and about my work during their investigation of the case, especially
6 as they geared up for the Motion for Class Certification. They spent hours talking
7 to me, not just about my specific experiences, but what policies and procedures of
8 True Food Kitchen I knew of that applied to all of the other restaurant employees.
9 Moreover, my lawyers also asked me to review documents related to the case. I
10 made sure that I promptly responded to their requests. I also had many
11 conversations with my lawyers over the phone concerning various issues. I would
12 speak with my attorneys as they learned new facts which they felt necessary for me
13 to know, and for me to help them further understand these facts.

14 12. I have spent a significant amount of time and energy in helping my
15 lawyers investigate, prosecute, and settle this case. I have spent over 90 hours on
16 the following tasks:

- 17 a. Being interviewed in detail by my lawyers regarding working
18 conditions at True Food Kitchen, and particularly about the topics I
19 spoke about above, i.e. meal and rest breaks and off the clock work;
- 20 b. Searching for and collecting every relevant document I had and turning
21 it over to my lawyers;
- 22 c. Regularly talking with my lawyers and giving them the names of co-
23 workers who would confirm what I was telling them and the names of
24 managers and supervisors responsible for True Food Kitchen's
25 policies;
- 26 d. Regularly receiving and responding to e-mails and phone calls from
27 my lawyers;

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- e. Spending substantial time with my lawyers in order to prepare for my deposition and then attending my deposition;
- f. Meeting with my attorneys before they filed their Motion for Class Certification, to brainstorm and create a list of the employees I felt had the best information that would be most helpful to this lawsuit, and providing that information to my lawyers;
- g. Providing my lawyers with a list of former co-workers, along with their contact information, and pointing out those who were likely to be supportive of the case, who might be biased in favor of True Food Kitchen, and so forth;
- h. Traveling numerous times to meet with my lawyers for various meetings, including my deposition prep, my deposition itself, and the mediation of this matter;
- i. Receiving the Settlement Agreement and talking about it with my attorneys.

13. Having filed this lawsuit, I feared – and still fear – that my name is on a public document and that future employers might find out that I sued my former employer. I worry that this can have and indeed already has had a negative impact on my employment prospects. Even after this case is fully dealt with, I will always have to truthfully answer when asked by a prospective employer if I was involved in this lawsuit. I believe the fact that this lawsuit exists, is public, and has my name on it has limited my ability to find work opportunities because prospective employers can easily find it and scrutinize me for having filed it. These are risks that I carefully considered before filing suit. I agreed to serve as a class representative in spite of these risks because I thought it was wrong that True Food Kitchen made us work without pay and prevented us from taking the breaks that we had the right to take. It seemed fundamentally unfair to me the way in which True Food Kitchen had treated its employees – I wanted to do something about it and did.

1 14. As part of the written contract I signed when I hired the Law Offices of
2 Thomas W. Falvey and the Hartounian Law Firm, and later Boyamian Law, Inc., to
3 represent me, I understood and agreed that these three law firms would be dividing
4 any attorneys' fees that they secured as part of my lawsuit between them.

5 15. I have not entered into any undisclosed agreements nor have I received
6 any undisclosed compensation in this case. In addition, I do not have, nor have I
7 ever had, any relationship beyond that of attorney-client with the attorneys
8 representing me in this lawsuit. I do not have, nor have I ever had, a business,
9 familial, social, or other relationship with any of the lawyers or law firms who are
10 presently representing me, or have formerly represented me, in this litigation.
11 Further, none of the lawyers or law firms who are presently representing me or have
12 formerly represented me in this litigation have ever previously represented me in
13 any matter other than this suit. The only compensation I expect and hope to receive
14 is my share of the settlement fund as a Class Member, plus whatever amount the
15 Court decides is an appropriate service award for the work I did, the sacrifices I
16 made, and the significant risks that I took on behalf of my fellow servers and other
17 True Food Kitchen colleagues.

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

20 Executed on December 17, 2018, in Glendale, California.

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23 Jennifer Pae
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Individually and on behalf of all others similarly situated

(Additional Counsel Listed on Following Page)

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

JENNIFER PAE, individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

FOX RESTAURANT CONCEPTS,
LLC d/b/a TRUE FOOD KITCHEN; a
Arizona limited liability company;
FRC TRUE FOOD SMP, LLC, a
California limited liability company;
FRC TRUE FOOD SDFV, LLC, a
California limited liability company;
FRC TRUE FOOD NBFI, LLC, a
California limited liability company;
and DOES 1 through 25, inclusive,

Defendants

Case No.: 2:16-CV-06965-DSF-FFM

[CLASS ACTION]

Assigned to Hon. Dale S. Fischer

**DECLARATION OF ALEXANDRA
SHELDON IN SUPPORT OF
PLAINTIFFS' MOTION FOR
FINAL APPROVAL OF CLASS
ACTION SETTLEMENT AND
MOTION FOR ATTORNEYS'
FEES, COSTS, AND SERVICE
AWARDS**

[FILED CONCURRENTLY WITH
PLAINTIFFS' MOTION FOR FINAL
APPROVAL AND MOTION FOR
ATTORNEYS' FEES, COSTS, AND
SERVICE AWARDS]

Date: March 25, 2019

Time: 1:30 p.m.

Location: 7D, First Street Courthouse

Complaint Filed: 07/22/16

Removal Date: 09/16/16

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15 Individually and on behalf of all others similarly situated
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DECLARATION OF ALEXANDRA SHELDON

I, Alexandra Sheldon, declare as follows:

1. I am over the age of 18 years. I am one of the Class and PAGA Representatives in *Jennifer Pae and Alexandra Sheldon v. Fox Restaurant Concepts, LLC*, et al., CDCA Case No. 2:16-CV-06965-DSF-FFM. Initially, I had filed my own PAGA suit in Los Angeles Superior Court, *Alexandra Sheldon v. Fox Restaurant Concepts*, et al., LASC Case No. BC659173. However, my PAGA state court action was combined with Ms. Pae's federal suit for settlement purposes. The following facts are within my personal knowledge, and if called as a witness, I could and would be qualified to testify thereto. I am making this Declaration in support of Plaintiffs' Motion for Final Approval of Class Action Settlement and Motion for Attorneys' Fees, Costs, and Service Awards.

2. I declare that I have no interests that are adverse to the members of this class and that I am similarly situated to the other class members of the class by common interests. My claims are typical to the claims of the class, I possess the same interests as other members of this class and I have suffered the same injury as the other members of this class. I have willingly assisted the lawyers prosecuting this class action by performing any task they ask of me.

3. As a class and PAGA representative, I represented and even championed the other True Food Kitchen workers ahead of myself. From talking to other employees, I understood that the way the company failed to provide me with all of my meal and rest breaks and how they made me work off the clock was exactly how they had treated everyone else.

4. When I started working at Fox Restaurant Concepts, LLC d/b/a True Food Kitchen, Inc. ("True Food Kitchen"), I had recently graduated from Chapman University in Orange, CA earning a Bachelors Degree in Communication and Minor in Film Studies. I moved to Los Angeles and was trying to work in the entertainment industry. My employment at True Food

1 Kitchen's Santa Monica location was from approximately November 2013 to July
2 2016. During my almost three-year employment, I had experienced a turnover of
3 over 17 Floor Managers and four General Managers. I was a veteran employee, and
4 a lead server who mostly worked 5-6 days a week. However, towards the last
5 couple of months during my employment, I worked less shifts a week. In addition to
6 being a food and beverage server, management promoted me to a corporate trainer
7 for the Santa Monica location. Since my work experiences at True Foods were not
8 included in the depositions and not available to the court, my attorneys have advised
9 me to include them in this statement.

10 5. The company posted my shifts on Hot Schedules. I would not be
11 able to see my shifts unless I purchased the Hot Schedules App. Once I began
12 work, I could keep working for over six hours, eight hours, or even longer before
13 taking a break because we were constantly busy. My managers would regularly
14 keep me working even after I had clocked out of my shift. For example, I was
15 often told by my managers to start rolling the silverware and finish side work.
16 When I worked, there was not an end time posted on Hot Schedules and was
17 decided by my managers.

18 6. In addition, 10-minute rest breaks did not exist at True Food Kitchen.
19 The restaurant was simply too busy. True Food Kitchen did not staff enough
20 servers where we could simply stop working for a 10-minute rest break. There was
21 always some tables that had to be checked up on, some manager that wanted to talk
22 with me, food or beverages that had to be sent out, or some kind of request pending.
23 I couldn't stop working for a 10-minute break. The culture of True Food Kitchen that
24 was enforced on the employees was there was always something to do, something that
25 should not be put off, and so we could not stop for a full 10 minutes. The restaurant
26 had a locker area where employees could store their personal items. I saw on a few
27 occasions my co-workers trying to take a break next to the lockers. When managers
28 saw them standing by the lockers, they would be verbally

1 reprimanded or written up for standing around. Rest breaks were simply not
2 something that True Food Kitchen employees were allowed to take. There may
3 have been a time once where I was allowed to take 10 minutes to rest because
4 the restaurant was closed.

5 7. On most days where I was required to stay beyond six hours, I was
6 supposed to take a meal break. However, the restaurant would be too busy for me to
7 actually take a meal break. I could not stop working because there would not be an
8 available employee who could provide service to my tables. I was also told to
9 not "Break Violate." "Break Violating" would occur when an employee working a
10 shift of over 6 hours did not clock out for a meal break in the POS System before
11 the 5th hour of work. Nevertheless what happened to me and other employees in
12 that 5th hour was that we would generally transfer our assigned tables under
13 another employee's log-in number. Some employees like myself had even
14 memorized other employee's log-in numbers or saved them in our phones, so you
15 could just do it quickly. This allowed me to not actually sit down to take a break but
16 to keep on working, serving my tables, and ordering items in the POS System.
17 When we did not succeed in transferring our tables, I would "Break Violate" in the
18 POS System. However, managers would have to adjust my time entries to make it
19 look like I had taken a meal break when in fact I had not. It did not matter if I
20 actually sat down and took a break, all that management cared about was that I did
21 not "Break Violate" in the POS System because it would be more difficult for them.

22 8. The worst time to work there was summer and winter holidays
23 because nobody took a break, most employees were working doubles, and
24 everyone was exhausted.

25 9. Occasionally when a well-established employee was so fatigued and
26 exhausted they would have a melt-down. Finally then did the Management would
27 step up to pretend they cared. Things would change for a day or two and
28 management would allow employees take breaks. However, it was in begrudging

1 manner. Management liked to point the blame at the employee and say they failed
2 to ask for their help. However, I have had multiple times when I asked for help
3 taking a break and it was just brushed over as not a priority because we were so
4 busy.

5 10. Aside from being told by my managers to clock out at a certain time, I
6 was also expected to go off-the-clock when I reached the six-hour mark in my shift.
7 True Food Kitchen did not want me working beyond six hours in slower months so I
8 would not have to take a meal break at closing. At the same time, during busier
9 periods, my work would not be complete by the 6-hour mark. Through no fault of my
10 own, there would still be a significant amount of work to complete at the supposed
11 end of my shift because the restaurant was sometimes very busy or even just busier
12 than expected. I also believe that management was always under pressure from
13 corporate to keep costs down – that meant scheduling as few people to help as
14 possible. It inevitably meant there would frequently be days where the restaurant did
15 not have enough front of the house employees on duty.

16 11. If it was closing time or the morning shift was over and I had reached six
17 hours and had not clocked out in the POS system for a meal break, I had to clock out
18 from my shift. But at the same time, I was not allowed to announce that someone else
19 had to deal with my closing duties. It was my responsibility. True Food Kitchen had
20 these conflicting policies – I was not allowed to remain on the clock for more than six
21 hours and yet at the same time I was not allowed to simply stop working and go home
22 if I reached that six hour mark. The result was that my managers required me to stay
23 and keep working off-the-clock. Especially if I was one of the last servers there, a
24 closer might flag me down to address whatever the issue was. Neither closers nor
25 managers were interested in whether I had already clocked out and was done for the
26 day – I was simply expected to complete the task.

27 All of this wasn't something that was unique to me, but the approach management
28 took with all of us at the Santa Monica True Food Kitchen and as far as I know in

1 having spoken with colleagues, something present at all True Food
2 Kitchen restaurants.

3 12. My involvement in this matter started in the summer of 2016. On
4 September 27, 2016, I had a lengthy phone conversation with Mr. Alex
5 Hartounian about my experience working at True Food Kitchen. At the end of the
6 phone conversation, Mr. Hartounian emailed me to schedule a meeting on
7 September 30, 2016 at his office in La Crescenta, California.

8 13. Since I drove from my home, I had to take the day off to meet with Mr.
9 Hartounian. (I had recently moved back home to Orange County in April 2016). In my
10 initial meeting with Mr. Hartounian, Mr. Boyamian, and Mr. Falvey (there
11 could have been others but I can't remember who) I discussed in great detail and
12 length my almost three-year work experiences at True Food Kitchen. The meeting
13 lasted a long time because the lawyers had a lot of questions on how True Food
14 Kitchen operates.

15 14. Since I was not informed to keep track of my hours, I can only provide
16 an estimate of my work hours on behalf of the class. I spent over 100 hours
17 working on this case on behalf of the entire class as a PAGA representative and
18 supporting Ms. Pae's class action:

- 19 a. Four separate trips from Orange County to my attorney's offices in La
20 Crescenta and Pasadena.
- 21 b. 60 Hours- Meeting former and current employees to discuss their
22 experience at True Foods and if they would be involved in the
23 lawsuit. Ten meetings each at least six hours. Three of these
24 employees made contact with my attorneys because of my efforts.
- 25 c. 17 hours- Gathering and scanning documents, lengthy phone
26 conversations with my attorneys outside of my initial meeting with
27 them, extensive meetings in Los Angeles with class members to
28 discuss information I found so that we could tell our attorneys,

researching PAGA in order to understand it, helping develop a strategy as to what documents and information to obtain for this case, strategy suggestions, review documents related to the case, researched/reviewing the settlement agreement, and researched/wrote my own declaration. I made sure that I promptly responded to my attorneys' requests.

- d. 10 hours- Multiple phone calls to former and current employees at True Food Kitchen who could possibly write a Declaration.
- e. 5 hours- Continuously researching on my own 1-2 hours every couple of months to organize to prioritize new class members on the calling lists, research managers/employees, clarify any questions my attorneys had about the operations of True Food Kitchen.
- f. 5 hours- Driving to Sherman Oaks two times in order to try to casually drop in to see a former employee at his new place of work.
- g. 2 hours- Emailing former and current employees asking them to email back my attorneys because a lot of the letters came back with the notation "not known at this address". Six class members contacted the attorneys that I know of.
- h. An hour- Calling Hot Schedules corporate office to get my old account active.

15. I suggested and gave my attorneys the contact information of two employees who wrote a Declaration for the Motion for Class Certification. I explained their work situations and how they worked similar shifts to me.

16. Because I was a higher-ranking employee who consistently kept in contact with other employees I was able to provide an inside view of how management operated, which was very helpful to our case:

- a. I shared direct language from True Foods management that exemplified the bad culture of True Food Kitchen which was used

1 during a deposition of one of defendant's managers.

- 2 b. I believe my involvement significantly contributed to the lawsuit
3 and ultimate settlement. As a corporate trainer I gained a unique
4 perspective of True Food Kitchen's management. I shared with my
5 attorneys that our managers are trained in San Diego and some came
6 from Newport Beach locations enhanced the posture that working
7 during meal breaks would be a problem at those locations too. It did
8 not matter which location we worked because working at True Food
9 Kitchen meant we would experience the same illegal practices. True
10 Food Kitchen was one entity with the same company policies. 13
11 out of the total 18 Declarations for the Motion to Class Certification
12 are from employees at the Newport Beach and San Diego locations.
13 I know that nine former and current employees made contact with
14 my attorneys because of my efforts.
- 15 c. True Food Kitchen managers in Santa Monica told specific employees
16 to meet at Flower Child (Fox Concepts restaurant down the street)
17 without knowledge of the reason for the meeting. These employees
18 were blindsided by True Food Kitchen attorneys and asked to sign a
19 declaration supporting them. One of the employees who signed was
20 from Nepal, did not speak English, but still signed a declaration in
21 support of True Food Kitchen. I had not worked at True Food Kitchen
22 for months at this point but because I was working hard and staying
23 connected to other veteran employees, I was able to give my attorneys
24 a lot of inside information.

25 17. If you Google my name and True Food Kitchen, this case, a public
26 document, comes up which makes me in fear that this will forever have a negative
27 impact on my future employment. I support business and free enterprise. However,
28 I strongly felt that True Food Kitchen's business practices were illegal and should

1 be stopped. I, along with other employees, were required to work off the clock to
2 clean the restaurant after closing (e.g.: bleach beverage station, clean floors, and
3 clean restrooms, etc.) At times it was said and appeared while employed at True
4 Food Kitchen, they did not have a third-party cleaning crew.

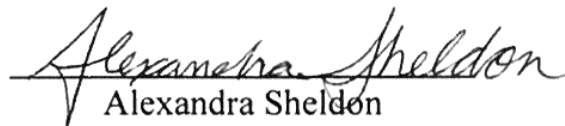
5 18. Because in many ways being a PAGA representative is a thankless
6 position, I believe it would have been very difficult to recruit a PAGA rep if I had
7 not stepped forward. Since I did step forward, the PAGA lawsuit significantly
8 contributed to True Food Kitchen agreeing to the settlement. I respectfully request
9 that the Court award me an enhancement payment in the amount of \$10,000.
10 Taking into consideration the 100 plus hours that I have dedicated to this case,
11 risks, and what I added to this case, I believe that this amount is reasonable.

12 19. As part of the written contract I signed when I hired the Law Offices of
13 Thomas W. Falvey and the Hartounian Law Firm, and later Boyamian Law, Inc., to
14 represent me, I understood and agreed that these three law firms would be dividing
15 any attorneys' fees that they secured as part of my lawsuit between them.

16 20. I have not entered into any undisclosed agreements nor have I
17 received any undisclosed compensation in this case. In addition, I am not related to
18 anyone associated with the Law Offices of Thomas W. Falvey, the Hartounian Law
19 Firm, and Boyamian Law, Inc.

20 I declare under penalty of perjury that under the laws of the State of
21 California and the United States of America that the foregoing is true and correct.

22 Executed on February 3, 2019, in Orange, California.

23
24 
25 Alexandra Sheldon
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28

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individually and on behalf of all others similarly situated.

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

JENNIFER PAE, individually and on behalf
of all others similarly situated,

Plaintiff,

vs.

FOX RESTAURANT CONCEPTS, LLC
d/b/a TRUE FOOD KITCHEN; a Arizona
limited liability company; FRC TRUE
FOOD SMP, LLC, a California limited
liability company; FRC TRUE FOOD
SDFV, LLC, a California limited liability
company; FRC TRUE FOOD NBFI, LLC, a
California limited liability company; and
DOES 1 through 25, inclusive,

Defendants

CASE NO. 2:16-cv-06965-DSF-FFM

[Assigned to the Hon. Dale S. Fischer,
Courtroom 7D]

**NOTICE OF MOTION AND MOTION
FOR ATTORNEYS' FEES, COSTS,
AND SERVICE AWARDS**

[Filed concurrently with Plaintiffs' Motion
for Final Approval of Class Action
Settlement; Supporting Declarations; and
[Proposed] Order]

Hearing Date: March 25, 2019
Time: 1:30 p.m.
Courtroom: 7D (1st Street Courthouse)

Complaint Filed: July 22, 2016
Removal Date: September 16, 2016

TO ALL INTERESTED PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on March 25, 2019, at 1:30 p.m., or as soon thereafter as the matter may be heard in Courtroom 7D of the United States District Courthouse located at 350 West 1st Street, Los Angeles, California 90012, before the Honorable Dale S. Fischer, Plaintiffs Jennifer Pae and Alexandra Sheldon (“Plaintiffs”) will and hereby do move this Court for an Order approving Class Counsel’s attorneys’ fees and litigation costs, third-party administrator expenses, and Class Representative service awards.

Specifically, Class Counsel requests that the Court (a) grant final approval of a fee request of \$221,306.53 (one-fourth of the total \$900,000 settlement, after deducting \$14,773.87 in employer-side payroll taxes from this gross amount); (b) approve reimbursement of litigation costs in the amount of \$21,417.38; (c) approve reimbursement of settlement administration costs of \$23,500; (d) and grant Plaintiffs service awards in the amount of \$15,000 for Jennifer Pae and \$10,000 for Alexandra Sheldon, all in accordance with the terms of the Settlement Agreement between Plaintiffs and Defendants Fox Restaurant Concepts, LLC, FRC True Food SMP, LLC, FRC True Food SDFV, LLC, and FRC True Food NBF, LLC (“Defendants” or “True Food Kitchen”) (Plaintiffs and Defendants together as the “Parties”) that the Court preliminarily approved by order dated December 4, 2018 (ECF No. 78).

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1 The Motion is based on the Memorandum of Points and Authorities in Support
2 Thereof; the Declarations (and exhibits thereto) of Michael H. Boyamian, Thomas W.
3 Falvey, Alex Hartounian, Armand R. Kizirian, Plaintiffs Jennifer Pae and Alexandra
4 Sheldon in support of the motion, oral argument of counsel, the complete files and
5 records in the above-captioned action, and such additional matters as the Court may
6 consider.

7 Dated: February 19, 2019

Respectfully submitted,

8 BOYAMIAN LAW, INC.
9 LAW OFFICE OF THOMAS W. FALVEY
10 HARTOUNIAN LAW FIRM

11 By: /s/ Armand R. Kizirian
12 Armand R. Kizirian
13 Attorneys for Plaintiffs Jennifer Pae,
14 Alexandra Sheldon, and the Settlement
15 Class
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I. INTRODUCTION

Plaintiffs Jennifer Pae and Alexandra Sheldon (“Plaintiffs”) brought this action against Defendants Fox Restaurant Concepts, LLC, FRC True Food SMP, LLC, FRC True Food SDFV, LLC, and FRC True Food NBFI, LLC (“Defendants” or “True Food Kitchen”) (Plaintiffs and Defendants together as the “Parties”) alleging that they and the other putative class members, who all worked as front-of-the-house employees at Defendants’ California True Food Kitchen restaurants, were not compensated for all hours worked, were not provided with proper meal and rest breaks, and were not reimbursed for business expenses, all in accordance with California’s wage and hour laws. Defendants deny Plaintiffs allegations and maintain that Plaintiffs and Class Members were compensated for all hours worked, did not generally have reimbursable business expenses, and were provided with meal and rest breaks in accordance with California’s wage and hour laws.

Despite the risk and uncertainty associated with Plaintiffs’ claims, described in detail in Plaintiffs’ motions for final and preliminary approval of class action settlement, Plaintiffs reached a \$900,000.00, non-reversionary, settlement with Defendants that will provide timely monetary relief to approximately 2,580 Class Members.

Having secured this Settlement, Plaintiffs seek an award of attorneys’ fees in the amount of \$221,306.53, a quarter of the settlement fund after accounting for the employer’s share of payroll taxes, and itemized litigation costs in the amount of \$21,417.38. Plaintiffs also seek claims administration expenses and service awards for the Representative Plaintiffs in the amount of \$15,000 for Jennifer Pae and \$10,000 for Alexandra Sheldon as Amended Joint Stipulation of Class Action Settlement and Release (the “Settlement”), attached as Exhibit “1” to the Declaration of Armand R. Kizirian in Support of Plaintiffs’ Motion for Final Approval (“Kizirian Decl.”). Defendants do not oppose these proposed payments.

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1 As set forth herein, the fee award sought falls well within the range of
2 reasonableness under the facts and circumstances of this case. Similarly, the requested
3 costs (and additional costs from this point forward, for which recovery is not sought)
4 were actually and reasonably incurred in the course of the litigation. Based on the
5 foregoing, Plaintiffs respectfully request that the Court approve these amounts in full.

6 **II. BACKGROUND**

7 The Settlement in this case was a direct result of Class Counsel's litigation of the
8 case, as summarized below.

9 This action was filed on July 22, 2016. Plaintiff Jennifer Pae filed a proposed class
10 action alleging various wage and hour violations in the Los Angeles County Superior
11 Court against all Defendants. This action was removed to the Central District of
12 California on September 16, 2016. Plaintiff Alexandra Sheldon filed a separate PAGA-
13 only action on April 26, 2017 in Los Angeles County Superior Court. After the Parties
14 reached a global settlement in principle of the claims from both suits earlier this year, the
15 complaint in this action was amended to add Plaintiff Alexandra Sheldon as a Class
16 Representative, and to add her PAGA claims to this suit. The operative First Amended
17 Complaint with both Plaintiffs Pae and Sheldon was filed on July 10, 2018.

18 Plaintiffs' Counsel has conducted a thorough investigation into the relevant facts
19 and legal claims. Plaintiffs have propounded and responded to written discovery.
20 Plaintiffs have taken depositions of both individual managers and those designated by
21 Defendants as their F.R.C.P. Rule 30(b)(6) witnesses. Plaintiffs analyzed Defendants'
22 voluminous time punch records with the assistance of an expert statistician. Plaintiffs
23 spoke to dozens of Class Members and gathered declarations from those who were
24 willing. Prior to reaching this settlement, Plaintiffs moved for class certification and
25 opposed Defendants' Motion for Partial Summary Judgment. This settlement was
26 reached before the Court issued its ruling on class certification and summary judgment.
27 Declaration of Michael H. Boyamian ("Boyamian Decl."), ¶¶ 13, 17, 24.

28 ///

1 Mediation was conducted with respected neutral Steven J. Serratore, on April 4,
2 2018. Counsel for the Parties fully briefed their positions to the mediator. Even after a
3 full day of extensive arms-length negotiations by the Parties, they were unable to reach a
4 settlement. Only through continued negotiations in the days after the mediation did the
5 Parties reach the settlement in principal which ultimately lead to the final agreement.
6 Boyamian Decl., ¶ 13.

7 Class Counsel have: investigated the facts and evidence and filed the Complaint;
8 litigated extensively the issue of jurisdiction for this matter; contacted numerous putative
9 class members and filed a Motion for Class Certification; prepared for and opposed a
10 Motion for Partial Summary Judgment; engaged in meet and confer conferences to
11 resolve discovery disputes; conducted significant outreach efforts to interact with Class
12 Members to ensure they were aware of this suit and are receiving settlement notice
13 documents; reached a substantial resolution with Defendants resulting in significant relief
14 for Class Members; engaged in a mediation on April 4, 2018 which ultimately proved
15 successful; engaged in continuous settlement negotiations with a very favorable result to
16 the class.

17 **III. ARGUMENT**

18 **A. Class Counsel Are Entitled to Recover their Reasonable Fees and Costs** 19 **Under Both The Lodestar and Percentage-Of-Recovery Methods**

20 Where a settlement produces a common fund for the benefit of the entire class,
21 courts have discretion to employ either the lodestar method or the percentage-of-recovery
22 method. *See In re Mercury Interactive Corp.*, 618 F.3d 988, 992 (9th Cir. 2010) (citing
23 *Powers v. Eichen*, 229 F.3d 1249, 1256 (9th Cir. 2000)). Under both the lodestar and
24 percentage-of-recovery methods, Plaintiffs' request for \$221,306.53 in attorneys' fees is
25 reasonable and should be approved.

26 Since Plaintiffs' claims are based on substantive California law, California law
27 provides the basis for their entitlement to an award of attorneys' fees. *Sandoval v.*
28 *Roadlink United States Pac., Inc.* (C.D. Cal. Oct. 9, 2011) 2011 U.S. Dist. LEXIS

1 130378, *29; *Mangold v. California Public Utilities Comm’n* (9th Cir. 1995) 67 F.3d
2 1470, 1478; *Vizcaino v. Microsoft Corp.* (9th Cir. 2001) 290 F.3d 1043, 1047. The
3 applicable California statutes under which Class Counsel are entitled to recover fees and
4 costs are Code of Civil Procedure section 1021.5 and Labor Code sections 218.5, 226(e),
5 1194 and 2802. Settlement, ¶ 19.

6 When assessing whether the percentage requested is reasonable, courts look to
7 factors such as: (a) the results achieved; (b) the risk of litigation; (c) the skill required, (d)
8 the quality of work; (e) the contingent nature of the fee and the financial burden; and (f)
9 the awards made in similar cases. *Vizcaino*, 290 F.3d at 1047; *Six Mexican Workers v.*
10 *Arizona Citrus Growers*, 904 F.2d 1301 (9th Cir. 1990).

11 The present lawsuit meets the criteria set forth above as follows: First, this lawsuit
12 has resulted in the enforcement of important rights affecting the overall public interest.

13 As set forth in the Labor Code:

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

20 Labor Code § 90.5(a).

21 Specific to the rights in this case, Plaintiffs allege that Defendants committed wage
22 abuse by failing to properly provide Class Members with all overtime wages, minimum
23 wages, meal and rest periods, and reimbursement of expenses in connection with their
24 work for True Food Kitchen – to which they should have been entitled.

25 Second, the lawsuit here has also conferred a significant benefit on a defined group
26 of current and former California True Food Kitchen front-of-the-house employees. The
27 Settlement confers a significant monetary benefit on approximately 2,580 Class Members
28 who will have the opportunity to receive a settlement payment. Indeed, the resolution of
this action before certification, much less trial, means that many Class Members will not
have to testify against their employer, thereby potentially exacerbating tensions between
currently-employed Class Members and True Food Kitchen.

1 In addition, the Labor Code also provides for attorneys' fees based on Plaintiffs'
2 claims in this case. Lab. Code §§1194, 218.5, 226(e), 2802. Since Plaintiffs have
3 prevailed in obtaining a significant settlement amount, vindicating the rights for a class of
4 workers to be compensated for unpaid wages, Class Counsel is entitled to an award of
5 reasonable attorneys' fees.

6 Counsel bore the financial burden of litigating for over two and a half years on a
7 contingency basis. Since July 2016, Class Counsel has not received any compensation or
8 reimbursement for their efforts in prosecuting the action on behalf of the Class, and have
9 advanced all expenses. Boyamian Decl., ¶ 23; Declaration of Thomas W. Falvey ("Falvey
10 Decl."), ¶ 3; Declaration of Alex Hartounian ("Hartounian Decl."), ¶ 11. Given the
11 substantial litigation work expended in this matter, specifically, having: (1) Class
12 Counsel have: investigated the facts and evidence and filed the Complaint; (2)
13 extensively litigating the issue of jurisdiction; (3) contacting numerous putative class
14 members and preparing and filing a Motion for Class Certification; (4) preparing for and
15 opposing a Motion for Partial Summary Judgment; (5) engaging in meet and confer
16 conferences to resolve discovery disputes; (6) conducting significant outreach efforts to
17 interact with Class Members to ensure they were aware of this suit and are receiving
18 settlement notice documents; (7) reaching a substantial resolution with Defendants
19 resulting in significant relief for Class Members; (8) engaging in a mediation on April 4,
20 2018 which ultimately proved successful; (9) engaging in continuous settlement
21 negotiations with a very favorable result to the class.

22 The significant outlay of monetary and personnel resources has been completely at
23 risk and wholly dependent upon obtaining a substantial recovery for the Class. *See In re*
24 *In re Heritage Bond Litig.*, No. 02-ML-1475-DT, 2005 WL 1594403, *21 ("[T]he Court
25 notes that Plaintiffs' counsel proceeded entirely on contingency basis, while paying for
26 all expenses incurred. There was no guarantee of any recovery, and thus, counsel was
27 subjected to considerable risk of no compensation for time or no reimbursement for
28 expenses.") It has been a long-recognized principle that an attorney merits a significantly

1 larger fee when the compensation is contingent, rather than being fixed on a time or
2 contractual basis. *See Vizcaino*, 290 F.3d at 1048-51. Here, the contingent nature of the
3 representation warrants approval of the fee request.

4 **B. Class Counsel Are Entitled to an Award of Attorneys' Fees Because the**
5 **Litigation Recovered a Certain and Calculable Fund for the Class.**

6 In addition to the foregoing basis for attorneys' fees, California and federal courts
7 have long recognized that when counsel's efforts result in the creation of a common fund
8 that benefits a class, counsel have an equitable right to be compensated from that fund as
9 a whole. *See, e.g., Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478 (the United
10 States Supreme Court "has recognized consistently that a litigant or a lawyer who
11 recovers a common fund . . . is entitled to a reasonable attorney's fee from the fund as a
12 whole"); *Serrano v. Priest* (1977) 20 Cal.3d 25, 35 (*Serrano III*) ("...one who expends
13 attorneys' fees in winning a suit which creates a fund from which others derive benefits,
14 may require those passive beneficiaries to bear a fair share of the litigation costs.")
15 (internal citations omitted).

16 The common fund doctrine rests on the understanding that attorneys should
17 normally be paid by their clients, and that unless attorney's fees are paid out of the
18 common fund, those who benefit from the fund would be unjustly enriched. *Boeing*, 444
19 U.S. at 478. To prevent this unfair result, courts assess attorney's fees against the entire
20 fund, thereby spreading the cost of those fees among all those who benefitted. *Id.*;
21 *Serrano III*, 20 Cal.3d at 35.

22 Because there is a defined and clearly traceable monetary benefit to the class, the
23 Court can base an award of attorneys' fees on the class members' benefit through the
24 common fund approach. A common fund results when "the activities of the party
25 awarded fees have resulted in the preservation or recovery of a certain or easily
26 calculable sum of money-out of which sum or 'fund' the fees are to be paid." *Serrano*
27 *III*, 20 Cal.3d at 34 (*Serrano III*). Under the common fund method of calculating
28 attorneys' fees, the fees are calculated "based on a percentage of the benefit bestowed

1 upon the class.” *Schiller v. David’s Bridal Inc.* (E.D. Cal. 2012) 2012 U.S. Dist. LEXIS
2 80776, at * 43. Since Class Counsel’s litigation of the case resulted in a total benefit to
3 the class of the benefit of a payment of \$900,000.00, this amount is considered the
4 common fund.

5 This litigation resulted in the “recovery of a certain or easily calculable sum of
6 money,” (*Serrano III*, 20 Cal.3d at 35), for the benefit of the plaintiff class—namely, a
7 non-reversionary settlement fund of \$900,00.00 for Defendants’ front-of-the-house
8 employees working at their California True Food Kitchen restaurants. Because none of
9 the Class Members have paid fees to Class Counsel for their efforts during the litigation,
10 equity requires them to pay a fair and reasonable fee, based on what the market would
11 traditionally require, as if they had hired private counsel to litigate their cases
12 individually. *Boeing*, 444 U.S. at 478-82. Class Counsel is therefore entitled to fees
13 from the settlement fund as a whole.

14 **C. The Fee Amount Allocated by the Settlement is Well Within the Range**
15 **of Reasonableness Under The Percentage of the Fund Method.**

16 Class Counsel is requesting an award of fees in the amount of \$221,306.53 (25
17 percent of the settlement fund after deducting \$14,773.87 for the employer’s share of
18 payroll taxes).

19 A request for one-quarter of the common fund is very much justified based on the
20 facts and circumstances of the present action, particularly the substantial amount of
21 litigation that has occurred between the Parties and the fact that Plaintiffs are *not*
22 requesting an upward adjustment from this circuit’s benchmark rate. Ninth Circuit cases
23 discuss the benchmark rate of 25% as the starting point for common fund fee analysis.
24 *See Six Mexican Workers*, 904 F.2d at 1311. The district court may adjust this rate when
25 circumstances warrant a higher or lower percentage. *Id.* Assessing an appropriate fee
26 based on a percentage of the fund involves in part, the following factors: results obtained
27 for the class, risks of litigation, including the risk of loss and, in the event of success,
28 delay in payment to the class.

1 Fee awards made in similar cases warrant the requested fees made herein.
2 *See, e.g., In re Pac. Enterprises Sec. Litig.* (9th Cir. 1995) 47 F.3d 373, 378-79 (affirming
3 fee award of one-third of settlement); *In re Heritage Bond Litig.*, 2005 WL 1594403 at
4 *19 (C.D. Cal. June 10, 2005) (33 1/3% of \$27.83 million); *Singer v. Becton Dickinson*
5 *and Co.*, No. 08-CV-821-IEG (BLM), 2010 WL 2196104, *8 (S.D. Cal. June 1, 2010)
6 (approving an attorneys' fees award of 33.33% of the common fund, and noting "the
7 request for attorneys' fees in the amount of 33.33% of the common fund falls within the
8 typical range of 20% to 50% awarded in similar cases"); *Knight v. Red Door Salons, Inc.*,
9 (N.D. Cal. 2009) 2009 U.S. Dist. LEXIS 11149, *17 (observing that class action fee
10 awards average around one-third of the recovery) (citations omitted); *Schiller*, 2012 U.S.
11 Dist. LEXIS 80776 at *41 (awarding attorneys' fees of one-third of the settlement
12 amount of \$518,245); *Estrella v. Freedom Fin. Network, LLC* (N.D. Cal. Oct. 1, 2012),
13 CV 09-03156 SI, 2012 WL 4645012, at *3 (awarding \$633,333 from \$1.9 million
14 settlement fund); *Stuart v. Radioshack Corp.* (N.D. Cal. Aug. 9, 2010) C-07-4499 EMC,
15 2010 WL 3155645, at *6 (awarding one-third of settlement fund in wage and hour class
16 action and noting that "[t]his is well within the range of percentages which courts have
17 upheld as reasonable in other class action lawsuits").

18 Despite Plaintiffs' request here to designate one-quarter of the common fund for
19 attorneys' fees, California state courts have recognized that much higher fee awards, i.e.
20 in the amount of approximately one-third of the common fund, are reasonable in similar
21 cases. In 2008, the Court of Appeal in *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43,
22 66 reiterated this basic rule: "Empirical studies show that, regardless whether the
23 percentage method or the lodestar method is used, fee awards in class actions average
24 around one-third of the recovery." *See also In Re Activision Secs. Litig.*, 723 F. Supp
25 1373, 1375 (N.D. Cal. 1989) (Patel, J.) ("[W]hatever method is used and no matter what
26 billing records are submitted... the result is an award that almost always hovers around
27 30% of the fund created by the settlement.").

28 ///

D. The Time Expended By Counsel Was Necessary To Achieve the Results in this Case

The fees sought are actually substantially *less* than Class Counsel's lodestar; while numerous courts have recognized the Court's authority to award a multiplier on counsel's lodestar, no multiplier is requested here. Boyamian Decl., ¶ 23 [Lodestar for Michael H. Boyamian at \$141,910]; Kizirian Decl., ¶ 6 [Lodestar for Armand R. Kizirian at \$150,795]; Falvey Decl., ¶ 3 [Lodestar for Thomas W. Falvey at \$140,000]; Hartounian Decl., ¶ 15 [Lodestar for Alex Hartounian at \$100,740 – all Plaintiffs' Counsel together at \$533,445 (\$141,910 + \$150,795 + \$140,000 + \$100,740)]. *Fischel v. Equitable Life Assur. Soc'y of U.S.*, 307 F.3d 997, 1008 (9th Cir. 2002) (district court should "apply a risk multiplier ... when (1) attorneys take a case with the expectation that they will receive a risk enhancement if they prevail, (2) their hourly rate does not reflect that risk, and (3) there is evidence that the case was risky."); *see also Vizcaino*, 290 F.3d at 1051 & n.6 (affirming lodestar multiplier of 3.65 in light of complexity and risk of case and surveying 34 class common fund settlements to find that 83% of multipliers were in the 1x- to 4x- range); *Elliott v. Rolling Frito-Lay Sales, LP*, No. SACV 11-01730 DOC, 2014 WL 2761316, at *9-10 (Carter, J.) (1.73 multiplier in class wage & hour settlement); *Fernandez v. Victoria's Secret Stores, LLC*, 2008 WL 8150856, at *16 (C.D. Cal. 2008) (approving 1.82 multiplier).

In determining Class Counsel's lodestar for purposes of the instant Settlement and fee request, Class Counsel have taken into account the fact that this settlement encompasses all of True Food Kitchen's California front-of-the-house employees. From the filing of the Complaint, on July 22, 2016, until now, all of the work done by Class Counsel benefited (and was necessary to litigate the claims of) Settlement Class Members.

Class Counsel have had to litigate class certification, summary judgment, the issue of the Court's jurisdiction, and have engaged in substantial discovery. Throughout this time, Class Counsel have remained in significant contact with Class Members, negotiated

1 a substantial settlement, and are now shepherding this case to its conclusion with the
2 class action settlement process. *See, e.g.*, Boyamian Decl. ¶ 24; Kizirian Decl. ¶ 6.
3 Consequently, the amount of work that Class Counsel has put into this case was
4 reasonably necessary, given that the lawsuit was filed on July 22, 2016, and counsel thus
5 have been working on this case with thousands of Class Members for almost two and a
6 half years in the midst of this substantial litigation. *In re Bluetooth Headset Products*
7 *Liab. Litig.*, 654 F.3d 935, 941 (9th Cir. 2011); *Vizcaino*, 290 F.3d at 1050.

8 **E. The Amount of Costs Sought is Reasonable.**

9 Plaintiffs also request reimbursement from the common fund for out-of-pocket
10 expenses incurred by Class Counsel during this litigation, in the amount of \$21,417.38.

11 Class Counsel are entitled to recover “those out-of-pocket expenses that would
12 normally be charged to a fee paying client.” *Harris v. Marhoefer* (9th Cir. 1994) 24 F.3d
13 16, 19. It is appropriate to reimburse Class Counsel for such expenses from the common
14 fund.

15 The Settlement provides for the recovery of costs not to exceed \$30,000.
16 Settlement, ¶ 19. In their declarations filed in support of this motion, Class Counsel has
17 detailed the costs and expenses totaling to the amount sought. To date, Class Counsel has
18 incurred over \$21,417.38 in litigation costs and expenses, and will incur additional costs
19 through the conclusion of this matter. Falvey Decl., ¶ 3 (Law Offices of Thomas W.
20 Falvey – \$20,853.21); Boyamian Decl., ¶ 25 (Boyamian Law, Inc. – \$362.16);
21 Hartounian Decl., ¶ 14 (Hartounian Law Firm, P.C. – \$202.01). All of these costs were
22 necessary in connection with the prosecution of this litigation and were expended for the
23 benefit of the class. Class Representatives also seek reimbursement of the third-party
24 claims administrator expenses (CPT Group, Inc.) in the amount of \$23,500. Declaration
25 of Bryan Valdez On Behalf of CPT Group, Inc., ¶ 12.

26 Courts routinely reimburse plaintiff’s counsel for the costs incurred in prosecuting
27 cases on a contingent fee basis. *See In re Businessland Sec. Litig.*, Case No. 90-20476
28 RFP, slip. op. at p. 4 and cases cited therein (N.D. Cal. 1991); *In re GNC Shareholder*

1 *Litig.* 668 F.Supp. 450, 452 (W.D. Pa. 1987). The recovery of costs is to include all out
2 of pocket costs not part of overhead which are typically billed to a client. *Bussey v.*
3 *Affleck*, 225 Cal.App.3d 1162, 1166 (1990), overruled on other grounds. All of the
4 categories of costs sought here by Class Counsel are typically billed to a client.
5 Therefore, Class Counsel should be fully reimbursed for all out-of-pocket litigation
6 expenses.

7 **F. The Payment to the Class Representatives Is Reasonable and Routinely**
8 **Awarded by Courts**

9 Plaintiffs seek a service award of \$15,000 for Plaintiff Jennifer Pae and \$10,000
10 for Plaintiff Alexandra Sheldon. Class Counsel is of the opinion that the incentive award
11 is reasonable and proper and supported by the particular circumstances of this case and
12 the applicable case law. Defendants do not oppose this request.

13 Courts have long acknowledged that active litigants are entitled to be compensated
14 for bearing the risk and time to represent others. *Lo Re v. Chase Manhattan Corp.*, 19
15 F.E.P. Cas. (BNA) 1366 (S.D.N.Y. 1979). Where class representatives are provided with
16 special compensation as part of a class settlement, the Court should ensure that it is fair
17 and reasonable. However, “[i]t is the complete package, taken as a whole, rather than the
18 individual component parts, that must be examined.” *Officers for Justice v. Civil Service*
19 *Commission of San Francisco*, 688 F.2d 615, 628 (9th Cir. 1982).

20 Indeed, incentive awards “are not uncommon and can serve an important function
21 in promoting class action settlements.” *Sheppard v. Consol. Edison Co. of N.Y., Inc.*
22 U.S.D.C. Case No. 94-CV-0403 (JG), 2002 U.S. Dist. LEXIS 16314, *16 (S.D.N.Y. Aug.
23 1, 2002); *In re Southern Ohio Correctional Facility*, 175 F.R.D. 270, 272-273, fn. 3 (S.D.
24 Ohio 1997) (“[c]ourts routinely approve incentive awards to compensate named plaintiffs
25 for the services they provided and the risks they incurred during the course of the class
26 action litigation”), and cases cited therein.

27 The modest incentive payments to the Class Representatives are intended to
28 recognize their time and efforts on behalf of the Class. “Courts routinely approve

1 incentive awards to compensate named plaintiffs for the services they provide and the
2 risks they incurred during the course of the class action litigation.” *Ingram v. The Coca-*
3 *Cola Co.*, 200 F.R.D. 685, 694 (N.D. Ga. 2001); *see also* Complex Manual § 30.42,
4 n.763 (noting that such awards “may sometimes be warranted for time spent meeting with
5 class members or responding to discovery”). In the *Coca-Cola* case, the Court approved
6 incentive awards of \$300,000 to each named plaintiff in recognition of the services they
7 provided to the class by responding to discovery, participating in the mediation process
8 and taking the risk of stepping forward on behalf of the class. *Ingram*, 200 F.R.D. at 694;
9 *see also Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 300 (1995) (approving
10 \$50,000 participation award).

11 The incentive awards being sought here are justified. Plaintiffs Jennifer Pae and
12 Alexandra Sheldon have been very active in assisting Class Counsel throughout this
13 litigation. Declaration of Jennifer Pae (“Pae Decl.”), ¶¶ 9-12; Declaration of Alexandra
14 Sheldon (“Sheldon Decl.”), ¶¶ 13-16. Both Plaintiffs spent numerous hours speaking
15 with Class Counsel explaining the circumstances of their work and all manner of facts
16 concerning True Food Kitchen’s policies and practices. *Id.* Moreover, Plaintiffs made
17 sacrifices that were not required of regular Class Members. Plaintiff Pae, a personal
18 trainer, would cancel appointments and therefore lose business whenever she had to meet
19 with Class Counsel, be it for deposition preparation, attending her deposition, or
20 otherwise. Pae Decl., ¶ 10. Plaintiff Sheldon, having moved to Orange County, would
21 have to spend considerable time in traveling to Class Counsel’s offices in Los Angeles
22 County whenever an in-person meeting was required. Sheldon Decl., ¶ 13.

23 Plaintiff Pae’s deposition was eventually noticed by Defendants and she had to
24 take the time to both prepare with Class Counsel and to spend her day at deposition. Pae
25 Decl., ¶¶ 10, 12. Plaintiff Sheldon gave up much of her free time to speak and meet with
26 other Class Members, urge them to cooperate with Class Counsel, and to provide Class
27 Counsel with their contact information. Sheldon Decl., ¶ 14-16. Both Plaintiffs were
28 instrumental in securing this settlement for all Class Members. Without them, this

1 litigation would not have been initiated, and it is through their diligent efforts that Class
2 Counsel had such a wealth of information throughout the suit and at mediation that made
3 this settlement possible.

4 Moreover, it must be noted that the Plaintiffs came forward in order to vindicate
5 the rights of other Class Members despite personal fears of retaliation from their current
6 and/or subsequent employers. Pae Decl., ¶¶ 8-9; Sheldon Decl., ¶ 10. In this age, it is
7 not uncommon for employers to conduct background investigations of prospective
8 employees to determine if they have ever been involved in lawsuits with previous
9 employers and indeed, this is a risk that Plaintiffs Pae and Sheldon took that was not
10 required of everyday Class Members. Pae Decl., ¶ 13; Sheldon Decl., ¶ 17.

11 Thus, by stepping forward and lending their names to this lawsuit, the
12 Representative Plaintiffs have risked future employment opportunities and have born
13 risks that absent Class Members have not. Finally, Plaintiffs Pae and Sheldon are
14 providing Defendants with general releases with California Code of Civil Procedure
15 section 1542 waivers, a much broader release than what other Class Members are
16 providing. Settlement Agreement, ¶ 25. For all of these reasons, Plaintiffs as Class
17 Representatives should be given the requested service awards.

18 ///

23 ///

28 ///

1 **IV. CONCLUSION**

2 For the foregoing reasons, Plaintiffs respectfully request that, at the time the Court
3 rules on Plaintiffs' Motion for Final Approval of Class Action Settlement, the Court also
4 enters an Order approving the award of attorneys' fees in the amount of \$221,306.53,
5 costs in the amount of \$21,417.38, third-party administrator costs of \$23,500, and service
6 awards of \$15,000 to Class Representative Jennifer Pae and \$10,000 to Class
7 Representative Alexandra Sheldon, pursuant to the terms set forth in the Settlement.

8
9 Dated: February 19, 2019

Respectfully submitted,

10 BOYAMIAN LAW, INC.
11 LAW OFFICE OF THOMAS W. FALVEY
12 HARTOUNIAN LAW FIRM

13 By: /s/ Armand R. Kizirian
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15 Attorneys for Plaintiffs Jennifer Pae,
16 Alexandra Sheldon, and the Settlement
17 Class
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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

JENNIFER PAE, individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

FOX RESTAURANT CONCEPTS,
LLC d/b/a TRUE FOOD KITCHEN; a
Arizona limited liability company;
FRC TRUE FOOD SMP, LLC, a
California limited liability company;
FRC TRUE FOOD SDFV, LLC, a
California limited liability company;
FRC TRUE FOOD NBFI, LLC, a
California limited liability company;
and DOES 1 through 25, inclusive,

Defendants

Case No.: 2:16-CV-06965-DSF-FFM

[CLASS ACTION]

Assigned to Hon. Dale S. Fischer

**DECLARATION OF ARMAND R.
KIZIRIAN IN SUPPORT OF
PLAINTIFFS' MOTION FOR
FINAL APPROVAL OF CLASS
ACTION SETTLEMENT AND
MOTION FOR ATTORNEYS'
FEES, COSTS, AND SERVICE
AWARDS**

[FILED CONCURRENTLY WITH
PLAINTIFFS' MOTION FOR FINAL
APPROVAL AND MOTION FOR
ATTORNEYS' FEES, COSTS, AND
SERVICE AWARDS]

Date: March 25, 2019

Time: 1:30 p.m.

Location: 7D, First Street Courthouse

Complaint Filed: 07/22/16

Removal Date: 09/16/16

**DECLARATION OF ARMAND R. KIZIRIAN IN SUPPORT OF PLAINTIFFS' MOTION
FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND MOTION FOR
ATTORNEYS' FEES, COSTS, AND SERVICE AWARDS**

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8 Attorneys for Plaintiff JENNIFER PAE, ALEXANDRA SHELDON,
9 Individually and on behalf of all others similarly situated

DECLARATION OF ARMAND R. KIZIRIAN

I, Armand R. Kizirian, declare as follows:

1. I am an attorney duly licensed to practice law in the State of California. I am a member in good standing of the State Bar of California, and the Central District of California. I am one of the attorneys of record in the instant litigation, and I make this declaration in support of Plaintiffs Jennifer Pae and Alexandra Sheldon in the matter of *Jennifer Pae v. Fox Restaurant Concepts, LLC, et al.*, CDCA Case No. 2:16-CV-06965-DSF-FFM. I submit this declaration in support of Plaintiffs' Motion for Final Approval of Class Action Settlement and Motion for Attorneys' Fees, Costs, and Service Awards.

2. I am of counsel to Boyamian Law, Inc., one of the firms representing Plaintiffs in this action. I am also the managing attorney of my own firm, Kizirian Law Firm, P.C., founded in 2018. I graduated from the U.C.L.A. School of Law in 2013 and was admitted to practice in California and the Central District later that year. I have been named a Super Lawyer Rising Star for 2019 by Thomson Reuters.

3. Since my admission to the bar, my practice has focused upon plaintiffs-side employment matters, especially wage and hour class and representative actions. I have litigated numerous off-the-clock, unpaid overtime, meal break, rest break, misclassification, and piece-rate cases. In addition, my practice has also encompassed individual employment actions such as for wrongful termination and retaliation.

4. I have been intricately involved in a significant number of wage and hour and consumer class and representative matters since I began practicing several years ago. Many of these cases have resulted in substantial recoveries for employees and consumers across California. Examples of these recoveries include the following matters:

///

- a. *Cortes v Daley Foods*, Case No. BC 496955 and *Gutierrez v. Daley Foods*, Case No. BC524915 (Los Angeles County Superior Court, 2015), wage and hour class action involving California Labor Code violations relating to restaurant workers, settled for \$2.2 million.
- b. *Fuentes, et al. v. Macy's West Stores, Inc.*, Case No. CV 14-00790-ODW (FFMx) (C.D. Cal 2015) wage and hour class action involving misclassification of independent contractors, which settled for \$4 million.
- c. *Leos v. FedEx*, Case No. 14-02864-ODW-AGR (C.D. Cal. 2015), a class action for unpaid wages pursuant to the Living Wage Ordinance, settled for \$385,000.
- d. *Timothy J. Connell, et al, Klara Paksy, et al and Dale Bystrom, et al v. CVS Pharmacy, Inc., et al.*, LASC Case Nos. BC523172, BC523491, BC525991 (2016) wage and hour class action involving Labor Code overtime violations on behalf of pharmacists (\$7,461,600 settlement).
- e. *Angil Sharobiem, et al v. CVS Pharmacy, Inc., et al.*, Case No. 2:13-cv-09426-GHK-FFM (C.D. Cal. 2016) wage and hour class action involving Labor Code overtime violations on behalf of pharmacists (\$2,937,600 settlement).
- f. *Rimanpreet Uppal v. CVS Pharmacy, Inc., et al.*, Case No. 3:14-cv-02629-VC (N.D. Cal. 2016) wage and hour class action involving Labor Code overtime violations on behalf of pharmacists (\$2,350,800 settlement).
- g. *Ian H. Stark, et al. v. CVS Pharmacy, Inc., et al.*, LASC Case Nos. BC476431, BC489738, BC501118, BC502723, BC526977, BC570812 (2016) wage and hour class action involving Labor Code travel time violations on behalf of pharmacists (\$2,000,000 settlement).

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- 1 h. *Phillips v. AccentCare, Inc., et al.*, Case No. CIVDS1620673 (2017)
2 wage and hour class action involving Labor Code overtime violation
3 on behalf of home health nurses and other home health professionals
4 (\$1,500,000.00).
- 5 i. *Pursell v. Pacific Wings, LLC*, LASC Case No. BC522083 (2017)
6 wage and hour class action involving Labor Code off-the-clock,
7 overtime, meal and rest break, and unreimbursed business expense
8 violations on behalf of restaurant servers (\$1,300,000).
- 9 j. *Hooper v. URS Midwest, Inc.*, Case No. CIVDS1607489 (2017) wage
10 and hour class action involving Labor Code overtime violation on
11 behalf of Car Haulers (\$2,900,000).
- 12 k. *Tyrer v First Student, Inc.*, Case No. BC459305 (2017) wage and hour
13 class action involving Labor Code overtime violations on behalf of
14 school bus drivers (\$475,000 settlement).
- 15 l. *Nunez v. CompuCom Systems, Inc.*, LASC Case No. BC618385 (2017)
16 wage and hour class action involving Labor Code overtime, meal and
17 rest break, and unreimbursed business expense violations on behalf of
18 home-based service technicians (\$1,500,000).
- 19 m. *Garcia v. Macy's West Stores, Inc., et al.*, Case No. 3:16-cv-04440-
20 WHO (N.D. Cal. 2017) wage and hour class action involving
21 misclassification of independent contractors (\$1,550,000 partial
22 settlement).
- 23 n. *Oard v. Daily Press, LLC, et al.*, Case No. 5:16-cv-02039-SVW-KK
24 (C.D. Cal. 2018) wage and hour class action involving
25 misclassification of independent contractor newspaper carriers
26 (\$500,000 settlement).
- 27 o. *Patrick Malone, et al. v. KAG West, LLC, et al.*, Alameda County
28 Superior Court Case Nos. RG15784137 and RG16814354 (2019) wage

and hour class and PAGA actions involving overtime and meal and rest break violations for truck drivers (\$1,600,000 settlement).

p. *Raymond Cressall, et al. v. Galpin Motors, Inc., et al.*, San Bernardino County Superior Court Case No. CIVDS1809319 (2019), wage and hour class action concerning overtime and meal and rest break violations in re a commission-only compensation plan (\$2,000,000).

5. For ease of reference, a true and correct copy of the previously submitted Joint Stipulation of Settlement and Release Between Plaintiffs and Defendants is attached hereto as Exhibit “1”.

6. I have thus far expended 335.1 hours on this matter. I believe a rate of \$450 is fair and reasonable based upon my experience and background as an attorney. A true and correct copy of my timesheets are attached as Exhibit “2” to this declaration, though are only submitted *in camera* for the Court’s review. Some of the more significant tasks I have undertaken on behalf of Plaintiffs for this matter are as follows:

- a. Prepared Plaintiffs’ Motion to Remand when this action was initially removed to federal court in 2016, and subsequently took the lead on drafting the several briefs ultimately submitted to the Court by Plaintiffs, propounding written discovery on this issue, and taking the Rule 30(b)(6) deposition of a human resources manager for Defendants in this regard;
- b. Conducted substantial class outreach and assisted with the declaration drafting process for Plaintiffs’ Motion for Class Certification in the summer of 2017;
- c. Propounded and responded to much of the discovery sent and received by Plaintiffs in this litigation, and negotiated with Defendants as to the scope of Plaintiffs’ discovery, e.g. the putative class data that would be produced;

- d. Assisted with drafting, particularly the supporting documents and evidentiary objections, with Plaintiffs' Motion for Class Certification, Reply in Support of Class Certification, and Opposition to Motion for Partial Summary Judgment;
- e. Drafted Plaintiffs' mediation brief and corresponding damages analysis for neutral Steven J. Serratore;
- f. Prepared Plaintiffs' Motion for Preliminary Approval of Class Action Settlement and its subsequent amendment; and
- g. Prepared Plaintiffs' Motion for Final Approval of Class Action Settlement, and Plaintiffs' Motion for Attorneys' Fees, Costs, and Service Award.

7. I support the analysis provided by my colleague, Michael H. Boyamian, in his concurrently filed declaration explaining the background and events of this action, the contribution of Plaintiffs, the investigation and discovery completed by the Parties, and Plaintiffs' Counsels' calculation of the maximum potential liability and damages in this action, and the risks of proceeding with a hearing on Plaintiffs' Motion for Class Certification and Defendants' Motion for Partial Summary Judgment.

8. Bet Tzedek is the Court-approved *cy pres* beneficiary in this action. Bet Tzedek is an appropriate *cy pres* beneficiary for this matter as this organization, through its Economic Justice program, "...provides workers direct representation in individual and class action cases, helps thousands of workers know their rights, assists trafficked laborers who were illegally denied earned wages...", as set forth on its website. The cited webpage is located at <https://www.bettzedek.org/our-services/economic-justice/>, last accessed on February 14, 2019.

9. Finally, based on the Court's feedback from the October 1, 2018 preliminary approval hearing, Plaintiffs' Counsel will seek their attorneys' fees from the Gross Settlement Amount minus the employer-side payroll taxes. Defense

1 Counsel has indicated to Plaintiffs' Counsel that the employer-side payroll taxes
2 will be \$14,773.87. As a result, the maximum attorneys' fees that Plaintiffs will
3 request approval of will be \$221,306.53, which is 25% of \$885,226.13, i.e. the
4 Gross Settlement Amount (\$900,000) minus the employer-side payroll taxes
5 (\$14,773.87).

6 I declare under penalty of perjury that under the laws of the State of
7 California and the United States of America that the foregoing is true and correct.

8 Executed on February 19, 2019, in Glendale, California.

9
10 /s/ Armand R. Kizirian
11 Armand R. Kizirian
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Exhibit “1”

MICHAEL H. BOYAMIAN, SBN 256107
ARMAND R. KIZIRIAN, SBN 293992
BOYAMIAN LAW, INC.
550 North Brand Boulevard, Suite 1500
Glendale, California 91203
Telephone: 818.547.5300
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Attorneys for Plaintiffs Jennifer Pae and Alexandra
Sheldon, and on behalf of all other similarly situated
and other aggrieved employees
(Additional Counsel Listed on Following Page)

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

JENNIFER PAE, individually and on behalf of
all others similarly situated,

Plaintiff,
vs.

FOX RESTAURANT CONCEPTS, LLC d/b/a
TRUE FOOD KITCHEN; a Arizona limited
liability company; FRC TRUE FOOD SMP,
LLC, a California limited liability company;
FRC TRUE FOOD SDFV, LLC, a California
limited liability company; FRC TRUE FOOD
NBFI, LLC, a California limited liability
company; and DOES 1 through 25, inclusive,

Defendants.

ALEXANDRA SHELDON, on behalf of herself
and all others aggrieved employees and the
general public,

Plaintiffs,

v.

FOX RESTAURANT CONCEPTS, LLC d/b/a
TRUE FOOD KITCHEN; a Arizona limited
liability company; FRC TRUE FOOD SMP,
LLC, a California limited liability company;
FRC TRUE FOOD SDFV, LLC, a California
limited liability company; FRC TRUE FOOD
NBFI, LLC, a California limited liability
company; and DOES 1 through 25, inclusive,

Defendants.

Case No. 2:16-CV-06965-DSF-FFM
Case No. BC659173

**JOINT STIPULATION OF
SETTLEMENT AND RELEASE
BETWEEN PLAINTIFFS AND
DEFENDANTS**

JUDGE: Assigned to the Honorable Dale S.
Fischer (Courtroom 7D) for all
purposes

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14 Attorneys for Plaintiffs
15 JENNIFER PAE and ALEXANDRA SHELDON
16 On behalf of themselves and all others similarly situated,
17 and the general public

18 Stephen R. Lueke, Bar No. 115906
19 slueke@fordharrison.com
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Attorneys for Defendants
Fox Restaurant Concepts LLC,
FRC True Food SMP LLC, FRC True Food SDFV
LLC AND FRC True Food NBF LLC

1 This Joint Stipulation of Settlement and Release (hereinafter "Stipulation of Settlement" or
2 "Settlement") is made and entered into by and between Plaintiffs Jennifer Pae and Alexandra Sheldon
3 ("Plaintiffs" or "Class Representatives"), individually and on behalf of aggrieved employees and all
4 others similarly situated ("Class Members"), and Defendants Fox Restaurant Concepts LLC, FRC
5 True Food SMP LLC, FRC True Food SDFV LLC, and FRC True Food NBF LLC (collectively
6 "Defendants").

7 This Settlement shall be binding on Plaintiffs and those persons they represent as Class
8 Members and as Private Attorney Generals for the State of California, as provided herein, and on
9 Defendants and their present and former parents, affiliated or related companies, shareholders,
10 officers, directors, employees, agents, attorneys, insurers, successors and assigns, and any individual
11 or entity which could be jointly liable with Defendants, and their respective counsel, subject to the
12 terms and conditions hereof and the Court's approval.

13 THE PARTIES STIPULATE AND AGREE as follows:

14 1. Plaintiffs and Defendants are collectively referred to herein as "the Parties."

15 2. On July 22, 2016, Plaintiff Jennifer Pae filed a proposed class action complaint in Los
16 Angeles County Superior Court (Case No. BC628004) against Defendants alleging eight (8) causes of
17 action for: (1) unpaid wages (Cal. Labor Code §§ 216, 1194); (2) failure to pay minimum wage (Cal.
18 Labor Code § 1194, et seq.); (3) failure to pay overtime compensation (Cal. Labor Code § 510); (4)
19 failure to pay meal and rest period compensation (Cal. Labor Code §§ 226.7, 512), (5) failure to
20 provide accurate itemized wage statements (Cal. Labor Code § 226), (6) waiting time penalties (Cal.
21 Labor Code § 203), (7) failure to reimburse business expenses (Cal. Labor Code §§ 2800 and 2802),
22 and (8) unfair business practices (Cal. Bus. & Prof. Code § 17200 et seq.). The complaint seeks to
23 recover unpaid wages, benefits, pre- and post-judgment interest, penalties, injunctive relief and/or
24 restitution, declaratory judgment that Defendants violated various provisions of the California Labor
25 Code, and attorneys' fees and costs. Defendants removed the case to District Court (Case No. 2:16-
26 CV-06965-DSF-FFM) ("The Pae Federal Action").

27 3. On April 26, 2017, Plaintiff Alexandra Sheldon filed a proposed representative action
28 under the California Private Attorneys General Act (PAGA) on behalf of all Aggrieved Employees

1 and the State of California -- alleging only claims under PAGA -- in Los Angeles County Superior
2 Court ("Court"), Case No. BC659173. The Sheldon Action asserts a singular cause of action for
3 penalties under PAGA for failure to properly pay wages, overtime and designated rates, failure to
4 provide meal and rest breaks, failure to timely pay wages at termination, failure to reimburse business
5 expenses, failure to pay reporting time pay, failure to provide and maintain compliant wage
6 statements, Section 558 penalties and other penalties authorized by PAGA ("the Sheldon State
7 Action").

8 4. For settlement purposes only, the Parties agree to the filing of a First Amended
9 Complaint ("the Complaint") to add Plaintiff Alexandra Sheldon as a named party and a Class
10 Representative, and to add a cause of action under PAGA based on the allegations raised in the
11 Sheldon Action. The Complaint shall also include any other theories or allegations raised in either the
12 Pae Federal Action or Sheldon State Action, but which were not specifically pleaded in either action.
13 A copy of the First Amended Complaint and Stipulation to be filed are attached hereto as Exhibit A.
14 With respect to the First Amended Complaint, the Parties' specifically agree as follows:

- 15 a. The First Amended Complaint and Stipulation will be simultaneously filed, with
16 Plaintiffs' Motion for Preliminary Approval to be filed in the Court within seven
17 (7) calendar days of the filing of the First Amended Complaint and Stipulation.
18 b. The Parties agree that Defendants are not required to respond to the First
19 Amended Complaint and that there shall be no waiver argument asserted against
20 Defendants for not responding to a pleading that the Parties agreed could be filed
21 only for purposes of effectuating this Settlement.
22 c. The Parties agree, for administrative purposes, to relate the Sheldon State Action
23 with the pending Pae Federal Action by filing of a Notice of Related case (also
24 included in Exhibit A), and to request the Sheldon State Action to relate the
25 matters for purposes of administering this Stipulation of Settlement.

26 5. Should the Court not approve the Settlement as provided in Paragraph 10, below, the
27 Parties specifically agree that the Parties and the associated litigation will return to the status quo.

28 6. Defendants deny all material allegations and assert affirmative defenses, but agree to

1 certify the classes described in this Joint Stipulation of Settlement and Release for settlement purposes
2 only.

3 7. Through arms-length, serious negotiations, the Parties have reached a global
4 Settlement of the Pae and Sheldon actions and now enter into this detailed, formalized settlement
5 agreement, subject to the Court's preliminary and final approval of Settlement.

6 8. For purposes of this Settlement, the "Settlement Class" and/or "Class Members" shall
7 consist of all persons employed as non-exempt front of the house employees in California at all of
8 Defendants' True Food Kitchen restaurant locations between July 22, 2012 and the Date of
9 Preliminary Approval of the Settlement, and who do not submit a valid Request for Exclusion (i.e.,
10 opt-out of the Settlement) as provided herein. The period between July 22, 2012 and the Date of
11 Preliminary Approval of the Settlement shall be referred to herein as the "Class Period."

12 9. The Parties stipulate, for settlement purposes only, to the conditional certification by
13 the Court of a Settlement Class (as defined in Paragraph 8, above) as to all claims asserted in the First
14 Amended Complaint, appointing the Plaintiffs as the class representatives, and appointing Plaintiffs'
15 counsel as class counsel. Defendants do not consent to, and do not advocate for, but shall not oppose,
16 the certification of the Settlement Class for settlement purposes only. In the event that this settlement
17 does not receive final approval from the Court (or if a final approval order is reversed on appeal), the
18 Parties' stipulation to class certification as part of the Settlement shall become null and void ab initio
19 and shall have no bearing on, and shall not be admissible in connection with, the issue of whether or
20 not certification would be appropriate in a non-settlement context, in the Pae Federal Action, Sheldon
21 State Action or in any other action or proceeding.

22 10. Should, for whatever reason: (i) the Court not finally approve the settlement as
23 provided herein; (ii) the Court does not issue a final judgment, as provided herein which becomes
24 final and not subject to any appeals; or (iii) the settlement does not become final for any other reason,
25 this Stipulation of Settlement shall be null and void and any order or judgment entered by the Court in
26 furtherance of this settlement shall be treated as void ab initio. In such event, the Parties hereto shall
27 be returned to their respective statuses as of the date and time immediately prior to the execution of
28 this Agreement, including without limitation the return of the Gross Settlement Sum (as defined in

1 Paragraph 17(c), below) paid by Defendants, and the Parties shall proceed in all respects as if this
2 Stipulation of Settlement had not been executed.

3 11. Defendants deny any liability or wrongdoing of any kind whatsoever associated with
4 the claims alleged in Plaintiffs' Complaint, and further deny that, for any purpose other than settling
5 the Pae Federal Action and the Sheldon State Action, either action is appropriate for class or
6 representative action treatment. With respect to Plaintiffs' claims, Defendants contend, among other
7 things, that they have complied with all applicable state, federal and local laws affecting Plaintiffs and
8 the Settlement Class regarding the payment of wages, overtime, business expenses, provision of wage
9 statements, and meal and rest break provisions.

10 12. It is the desire of the Parties to fully, finally and forever settle, compromise and
11 discharge all disputes and claims that were alleged in Plaintiffs' Complaints or that could have been
12 alleged. To achieve a full and complete release of Defendants, Plaintiffs, Class Counsel, and each
13 Class Member acknowledges that this Stipulation of Settlement is intended to include in its effect all
14 claims alleged in the Pae Federal Action and Sheldon State Action and all Released Claims against all
15 Released Parties (as defined herein) as of the date of the Court's final approval of this Settlement.

16 13. It is the intention of the Parties that this Stipulation of Settlement shall constitute a full
17 and complete settlement and release of all claims arising from or related to the allegations of the class
18 and representative action cases against Defendants, which release includes in its effect, Fox
19 Restaurant Concepts LLC, FRC True Food SMP LLC, FRC True Food SDFV LLC, and FRC True
20 Food NBF LLC, and all other present and former parents, affiliated or related companies,
21 shareholders, officers, directors, employees, agents, attorneys, insurers, and successors and assigns of
22 Defendants, and any individual or entity which could be jointly liable with Defendants.

23 14. Counsel for the Settlement Class have conducted a thorough investigation into the
24 facts of this class action case, including an extensive review of relevant documents and data, and have
25 diligently investigated Class Members' claims against Defendants. Based on their own independent
26 investigation and evaluation, Class Counsel are of the opinion that the Settlement with Defendants for
27 the consideration and on the terms set forth in this Stipulation of Settlement is fair, reasonable and
28 adequate and is in the best interest of Plaintiffs and the Settlement Class in light of all known facts and

1 circumstances, including the risk of significant delay, defenses asserted by Defendants, and numerous
2 potential appellate issues.

3 15. The Parties agree to cooperate and take all steps necessary and appropriate to
4 consummate this Settlement and to effectuate a judgment after all Settlement Awards have been paid
5 out in accordance with this Stipulation of Settlement.

6 16. This Settlement provides for mailing of Notice and payment of Settlement Awards to
7 all Class Members according to a specified formula as provided herein. The Gross Settlement
8 Amount under the Settlement, including all attorneys' fees; attorneys' costs; the enhancement award
9 to the Class Representatives; settlement administration costs; taxes (including payroll taxes) and other
10 applicable deductions and withholdings; interest; penalties (including pursuant to the Private
11 Attorneys General Act); and any other payments provided by this Settlement is Nine-Hundred-
12 Thousand-Dollars-Even (\$900,000.00). Defendants' employer payroll taxes on the sum allocated to
13 wages shall be included in the Gross Settlement Sum of \$900,000.00. It is understood and agreed
14 that Defendants' gross total liability under this Settlement shall not exceed \$900,000.00. It is further
15 understood and agreed that Defendants shall have no obligation to pay any person, entity or
16 organization more than its gross total liability under this Settlement as set forth above, which includes
17 the total amount of: (1) the Settlement Awards to the Settlement Class; (2) the attorneys' fees
18 approved by the Court; (3) the attorneys' costs approved by the Court; (4) the enhancement awards to
19 the Class Representatives approved by the Court; (5) the actual fees and expenses of the Settlement
20 Administrator; (6) payment to the State of California pursuant to the Private Attorneys General Act;
21 and (7) any applicable federal and state taxes associated with the Settlement Awards of the Settlement
22 Class.

23 TERMS OF SETTLEMENT

24 17. NOW THEREFORE, in consideration of the mutual covenants, promises and
25 agreements set forth herein, the Parties agree, subject to the Court's approval, as follows:

26 a. It is agreed by and among Plaintiffs and Defendants that this action and any
27 claims, damages or causes of action arising out of the disputes which are the subject of the Pae
28 Federal Action and the Sheldon State Action, be settled and compromised as between the Settlement

1 Class (including Plaintiffs) and Defendants, subject to the terms and conditions set forth in this
2 Stipulation of Settlement and approval by the Court.

3 b. Effective Date: The Settlement embodied in this Stipulation of Settlement
4 shall become effective when all of the following events have occurred: (i) this Stipulation of
5 Settlement has been executed by all Parties and by counsel for the Settlement Class and Defendants;
6 (ii) the Court has given preliminary approval to the Settlement; (iii) the Notice has been distributed to
7 the Settlement Class as provided herein, informing Class Members of the opportunity to receive a
8 cash Settlement Award, or to opt out of the Settlement Class by submitting a valid Request for
9 Exclusion; (iv) the Class Representatives have signed releases; (v) the Court has held a formal
10 fairness hearing and entered a final order and judgment certifying the Settlement Class subject to the
11 condition that the Court shall have and retain continuing jurisdiction over this action and over all
12 Parties and members of the Settlement Class to the fullest extent necessary or convenient to enforce
13 and effectuate the terms of this Settlement and all matters provided for therein; and (vi) (10) days after
14 the later of the following events: when the period for filing any appeal, writ or other appellate
15 proceeding opposing the Settlement has elapsed without any appeal, writ or other appellate
16 proceeding having been filed, or any appeal, writ or other appellate proceeding opposing the
17 Settlement has been dismissed finally and conclusively with no right to pursue further remedies or
18 relief; or any appeal, writ or other appellate proceeding has upheld the Court's final order with no
19 right to pursue further remedies or relief. The date defined and determined by this subparagraph shall
20 be called the "Effective Date."

21 c. Gross Settlement Amount, and Net Settlement Amount: to implement the
22 terms of this Settlement, Defendants agree to pay the Gross Settlement Amount of Nine-Hundred-
23 Thousand-Dollars-Even (\$900,000.00) ("Gross Settlement Sum"). Under no condition will
24 Defendants' liability for payments exceed the Gross Settlement Sum. At no time before the Effective
25 Date (as defined in Paragraph 17(b), above) shall Defendants have the obligation to segregate the
26 funds comprising the Gross Settlement Sum, and Defendants shall retain exclusive authority over and
27 responsibility for those funds until the Effective Date following final approval of this settlement. All
28 Settlement Awards for the Class Members, all attorneys' fees, costs, the enhancement award to the

1 Class Representatives, fees and expenses of the Settlement Administrator, employee and employer
2 payroll taxes and other applicable deductions and withholdings, and other payments provided by this
3 Settlement shall be paid out of the Gross Settlement Sum. The net settlement amount shall be
4 calculated by deducting all attorneys' fees and costs, the enhancement awards to the Class
5 Representatives, a payment to the State of California Labor Workforce Development Agency (the
6 "LWDA") pursuant to PAGA in the amount of Fifteen-Thousand-Dollars-Even (\$15,000), and the
7 actual fees and expenses of the Settlement Administrator ("Net Settlement Amount"). The Net
8 Settlement Amount shall be paid as Settlement Awards to the Class Members as set forth below. The
9 Settlement Awards will be calculated by the Settlement Administrator based on Defendants' records,
10 and paid out of the Net Settlement Amount as set forth below. The entire Net Settlement Amount
11 shall be paid out to Class Members, less applicable taxes and deductions. None of the Net Settlement
12 Amount will revert to Defendants, or be refunded, except on the limited basis as provided in
13 Paragraph 23. Defendants shall make payment to the Settlement Administrator of the Gross
14 Settlement Sum by way of a non-interest bearing escrow account set up and administered by the
15 Settlement Administrator (hereinafter "Escrow Account") no later than twenty one (21) calendar days
16 after the Effective Date (as defined under Paragraph 17(b), above).

17 d. Settlement Awards: The Payment Ratio and proportionate distribution will be
18 calculated for each Class Member based on the weeks worked during the Class Period; Defendants
19 will calculate the total weeks worked during the Class Period for all Class Members. The respective
20 weeks worked during the Class Period for each Class Member will be divided by the total weeks
21 worked for all Class Members during the Class Period, resulting in the Payment Ratio for each Class
22 Member. Each Class Member's Payment Ratio is then multiplied by the Net Settlement Amount to
23 determine his or her estimated Individual Settlement Award.

24 e. Disputes of Settlement Awards

25 (1) The Notice of Settlement (as described in Paragraph 20, below) will provide
26 that members of the Settlement Class who wish to dispute their weeks worked during
27 the Class Period must send a dispute to the Settlement Administrator not later than
28 thirty (30) calendar days from the date the Notice of Settlement is mailed by the

1 Settlement Administrator. Such person must follow the directions in the Notice of
2 Settlement, including preparing a statement setting forth the number of weeks
3 worked during the Class Period that such person believes in good faith is correct and
4 stating that the Class Member authorizes the Settlement Administrator to review the
5 Class Member's personnel file to determine such information and attaching any
6 relevant documentation in support thereof. The Class Member must also provide
7 any documentation he or she maintains to support their position. A dispute is deemed
8 "timely" if it meets the preceding requirements in this paragraph. A dispute is only
9 "valid" if it is (1) timely; (2) signed by the Class Member; and (3) provides reasons
10 for the dispute (with documentation if available). The Settlement Administrator will
11 decide any dispute.

12 (2) Upon timely receipt of any such challenge, the Settlement Administrator, in
13 consultation with Plaintiffs' Counsel and Defendants' Counsel, will review the
14 pertinent payroll records showing the dates the Class Member was employed, which
15 Defendants agree to make available to the Settlement Administrator and Plaintiffs'
16 Counsel. The Settlement Administrator will also review any documentation
17 provided by the Class Member.

18 (3) After consulting with Plaintiffs' Counsel and Defendants' Counsel, the
19 Settlement Administrator shall compute the number of weeks worked during the
20 Class Period to be used in computing the Class Member's pro rata share of the Net
21 Settlement Amount, if appropriate. In the event there is a disparity between the
22 dates a Class Member claims he or she worked during the Class Period and the dates
23 indicated by Defendants' records, Defendants' records will control unless
24 inconsistent with paycheck stub(s) (or bona fide copies thereof) provided by the
25 Class Member, in which case the paycheck stub(s) will control. The Settlement
26 Administrator's decision as to the total number of weeks worked during the Class
27 Period shall be final and non-appealable. The Settlement Administrator shall send
28 written notice of the decision on any such claim to the Class Member, to Plaintiffs'

Counsel, and Defendants' Counsel within ten (10) calendar days of receipt of the dispute.

(4) If a question is raised about the authenticity or completeness of a dispute, the Settlement Administrator will have the right to demand additional proof of the Class Member's identity or dispute information. The Settlement Administrator shall mail a Deficiency Notice to the Class Member for any irregularities in their disputes, which will provide the Class Members with no more than five (5) calendar days from the date the Deficiency Notice form is mailed by the Settlement Administrator to cure the deficiency. This 5-day period shall not be extended or waived by the Settlement Administrator except upon joint written approval of Plaintiffs' Counsel and Defendants' Counsel, or by the Court upon showing of good cause.

f. California Private Attorneys' General Act Allocation: The sum of Twenty-Thousand-Dollars (\$20,000.00) is allocated to Plaintiffs' claims under the California Private Attorneys General Act; Fifteen-Thousand-Dollars (\$15,000.00) of this amount will be paid out of the Gross Settlement Sum to the LWDA pursuant to the California Private Attorneys General Act 60 days after the Effective Date (as defined under Paragraph 17(b), above), and the remainder of Five-Thousand-Dollars (\$5,000.00) is part of the Net Settlement Amount.

g. Allocation and Taxability of Settlement Awards: The Parties have agreed that individual Settlement Awards payable to Class Members shall be allocated as follows: Twenty-Percent (20%) will be allocated to alleged unpaid wages for which IRS Forms W-2 will issue to Class Members; Eighty-Percent (80%) will be allocated to alleged unpaid interest and alleged unpaid penalties, for which IRS Forms 1099 MISC will issue to Class Members. Each Class Member's Settlement Award will be less the applicable payroll taxes and other applicable deductions and withholdings, and each Class Member shall be individually responsible for the employee's share of taxes attributable to receipt of any payments under this Settlement.

h. Settlement Awards Do Not Trigger Additional Benefits: All Settlement Awards to Class Members shall be deemed to be income to such Class Members solely in the year in which such awards actually are received by the Class Members. It is expressly understood and agreed

1 that the receipt of such Settlement Awards will not entitle any Class Member to additional
2 compensation or benefits under any company bonus, contest or other compensation or benefit plan or
3 agreement in place during the period covered by the Settlement, nor will it entitle any Class Member
4 to any increased retirement, 401(k) benefits or matching benefits, or deferred compensation benefits.
5 No deductions or contributions for 401(k) shall be made from the Settlement Awards. It is the intent
6 of this Settlement that the Settlement Awards provided for in this Agreement are the sole payments to
7 be made by Defendants to the Class Members in connection with this Settlement, and that the Class
8 Members are not entitled to any new or additional compensation or benefits as a result of having
9 received the Settlement Awards (notwithstanding any contrary language or agreement in any benefit
10 or compensation plan document that might have been in effect during the period covered by this
11 Settlement). Defendants and each of their present and former parent corporations and affiliates
12 retain the right to modify and/or amend the language of their employee benefit plans, employment
13 policies, and stock option plans, and to seek to have modified and/or amended the language of
14 any jointly trustee benefit plans, to make clear that any amounts paid as a result of this
15 Stipulation of Settlement are not considered by Defendants as compensation or wages, or
16 payments for "hours worked," as defined by the applicable plans and policies, and that no
17 additional contributions or benefits will be provided by Defendants by reason of the Settlement.

18 i. Attorneys' Fees and Attorneys' Costs: Subject to Court approval, attorneys'
19 fees and costs shall be paid to Class Counsel out of the Gross Settlement Sum to Class Counsel within
20 35 days after the Effective Date (as defined under Paragraph 17(b)). Attorneys' fees and costs are
21 discussed further below.

22 j. Class Representatives Enhancement Award: Subject to Court approval,
23 Defendants further agree not to oppose an application filed by Plaintiffs for individual enhancement
24 awards, to be paid out of the Gross Settlement Sum, for their service as Class Representatives as
25 determined by the Court. Defendants will not object to Class Counsel's application for Court
26 approval of these enhancement awards if the application is for amounts not to exceed an aggregate
27 amount of Fifteen-Thousand-Dollars-Even (\$15,000.00) for Plaintiff Pae and Ten-Thousand Dollars-
28 Even (\$10,000.00) for Plaintiff Sheldon as Class Representatives. It is understood that the

1 enhancement awards are in addition to any claimed individual Settlement Award to which the
2 Plaintiffs are entitled along with other Class Members. Defendants or the Settlement Administrator
3 will issue IRS Forms MISC 1099 for the individual enhancement awards to Plaintiffs for their service
4 as Class Representatives. The Court-approved enhancement awards will be paid to the Class
5 Representatives within 35 days after the Effective Date (as defined under Paragraph 17(b)). The
6 Class Representatives are discussed further below.

7 k. Settlement Administrator: The Settlement Administrator will be jointly
8 selected by the Parties by low bid or other mutual agreement, or such other Settlement Administrator
9 as may be mutually agreeable to the Parties, and subject to the Court's approval and appointment as
10 the administrator of this Settlement. The fees of the Settlement Administrator for work done shall be
11 paid from the Gross Settlement Amount. No person shall have any claim against Defendants,
12 Defendants' counsel, Plaintiffs, the Settlement Class, Plaintiffs' Counsel or the Settlement
13 Administrator based on distribution and payments made in accordance with this Stipulation of
14 Settlement. The Court-approved Settlement Administrator's expenses will be paid within 35 days
15 after the Effective Date (as defined under Paragraph 17(b)). The Settlement Administrator is
16 discussed further below.

17 l. Void of Agreement/Right to Rescission: If more than Ten Percent (10%) of
18 the Settlement Class opts out of the Settlement by submitting valid Requests for Exclusion as set forth
19 below and as summarized in the Notice of Pendency of Class Action and Proposed Settlement,
20 Defendants shall have the right in their sole, collective discretion to rescind and void the Settlement,
21 before final approval by the Court, by providing written notice to Class Counsel within ten (10)
22 business days after the Settlement Administrator furnishes the Parties with the number and percentage
23 of valid and timely Requests for Exclusion. The Settlement Administrator shall furnish this
24 information within seven (7) calendar days of the deadline to Request Exclusion. The Stipulation of
25 Settlement and the Parties' settlement shall become void seven (7) days after Defendants exercise
26 such right unless, during that period, the Parties agree in writing to a mutually acceptable resolution of
27 the issue set forth in the written notification and thereafter the Court approves such resolution. If
28 Defendants exercise their right under this Paragraph, they shall be solely responsible for all fees and

1 costs charged by the Settlement Administrator through the rescission period. The Parties and all
2 counsel shall not encourage any Class Member (or encourage anyone else to encourage any Class
3 Member) to object, opt-out, request exclusion from, or otherwise challenge the Settlement.

4 SETTLEMENT ADMINISTRATION

5 18. The Settlement Administrator will send notice of the Settlement to all Class Members
6 as discussed herein. The Settlement Administrator will calculate the Settlement Award amounts due
7 to Class Members in accordance with this Stipulation of Settlement. The Settlement Administrator
8 shall report, in summary or narrative form, the substance of its findings. Upon receipt of funds from
9 Defendants and as provided by the terms of the Settlement, the Settlement Administrator will issue
10 and send out the Settlement Awards to Class Members. The Settlement Administrator will also be
11 responsible for making appropriate tax payments and withholdings, payroll deductions and reporting
12 obligations. Tax treatment of the Settlement Awards will be as set forth herein, and in accordance
13 with state and federal tax laws. The Settlement Administrator will also be responsible for making
14 Court-approved payments for individual enhancement awards to the Class Representatives, attorneys'
15 fees and costs, payments to the LWDA, funds from uncashed settlement checks transferred to the *cy*
16 *pres* beneficiary approved by the Court, and administration expenses as described in this Stipulation
17 of Settlement. The Settlement Administrator will also be responsible for determining and resolving
18 any dispute by any Class Member as to any factor or issue regarding the computation of any such
19 Class Member's individual Settlement Award (as defined in Paragraph 17(d), above), and the
20 Settlement Administrator's decision on any such issue or dispute shall be final and binding. The
21 Settlement Administrator will also be responsible for resolving any disputes regarding membership in
22 the Settlement Class as defined in Paragraph 8 of this Stipulation of Settlement. All disputes relating
23 to the Settlement Administrator's performance of duties shall be referred to the Court, if necessary,
24 which will have continuing jurisdiction over the terms and conditions of this Stipulation of Settlement
25 until all payments and obligations contemplated by this Stipulation of Settlement have been fully
26 carried out.

27 ATTORNEYS' FEES AND COSTS

28 19. In consideration for settling this matter and in exchange for the release of claims by

1 the Settlement Class, and subject to final approval or modification by the Court, Class Counsel
2 attorneys' fees shall be subtracted from and paid out of the Gross Settlement Sum as approved by the
3 Court. Class Counsel will apply to the Court for an award granting Class Counsel attorneys' fees in
4 an amount not to exceed Twenty-Five Percent (25%) of the Gross Settlement Amount, that is, Two-
5 Hundred-Twenty-Five-Thousand-Dollars-And-Zero-Cents (\$225,000.00). Defendants will not object
6 to Class Counsel's application for attorneys' fees, so long as the application is for an amount not to
7 exceed Two-Hundred-Twenty-Five-Thousand-Dollars-And-Zero-Cents (\$225,000.00) for attorneys'
8 fees. Defendants will not object to a request for reasonable litigation costs, which are in addition to
9 the attorneys' fee award of 25% of the Gross Settlement Amount. Costs shall not exceed \$30,000.
10 The attorneys' fees and costs approved by the Court shall be paid out of the Gross Settlement Sum
11 within 45 days after the Effective Date (as defined under Paragraph 17(b)). With the exception of any
12 attorneys' fees costs and other expenses in this Stipulation of Settlement approved by the Court, the
13 Parties shall bear their own costs, expenses, and attorneys' fees incurred in connection with or arising
14 out of the Pae Federal Action and Sheldon State Action. Class Counsel's attorneys' fees and costs, as
15 approved by the Court, shall be paid out of the Gross Settlement Sum.

16 CLASS NOTICE

17 20. A Notice of Proposed Class Action Settlement, and Hearing Date for Final Court
18 Approval of Settlement ("Notice") in substantially the form attached hereto as Exhibit B, and as
19 approved by the Court, shall be sent by the Settlement Administrator to all Class Members by first
20 class mail; the Notice is incorporated by reference into this Stipulation of Settlement.

21 a. As soon as possible after preliminary approval of the Settlement by the Court,
22 and by no later than 14 days following preliminary approval, Defendants shall provide, subject to the
23 Parties' protective order entered in the Pae Federal Action, to the Settlement Administrator a
24 spreadsheet, which will list for each Class Member the Class Member's name, last-known address,
25 last-known telephone number, social security number, and number of weeks worked during the Class
26 Period. The social security numbers will be used only by the Settlement Administrator for the sole
27 purpose of effectuating the Settlement. This spreadsheet shall be based on Defendants' payroll and
28 other business records. The Settlement Administrator will run a check of the Class Members' address

1 against those on file with the U.S. Postal Service's National Change of Address Database. Within 30
2 calendar days of preliminary approval of this Settlement, or sooner if possible, the Settlement
3 Administrator will mail the Notice to all Class Members.

4 b. Prior to the mailing of the Notice, the Settlement Administrator will search for
5 updated addresses through the U.S. Postal Service's National Change of Address Database. Notices
6 returned to the Settlement Administrator as non-deliverable shall be re-mailed to the forwarding
7 address, if any, on the returned envelope; any returned envelopes with forwarding addresses will be
8 used by the Settlement Administrator to forward the Notice to Class Members. If no forwarding
9 address is provided, the Settlement Administrator will perform a computer search for a new address
10 using the Class Member's social security number and an additional skip tracing pursuant to its usual
11 and customary procedures. The Settlement Administrator shall notify Plaintiffs' Counsel and
12 Defendants' counsel of the identity of all members of the Settlement Class who (i) were re-mailed
13 Notice as a result of skip tracing and whose Notice was again returned, or (ii) could not be located
14 through reasonable efforts to provide Notice to the member of the Settlement Class. The
15 Settlement Administrator shall provide such notification within seven (7) days of such
16 unsuccessful searches or receipt of returned Notices. The Settlement Administrator shall further
17 provide the parties with a weekly status report regarding Notice to the Class, Objections and
18 Requests for Exclusion, if any.

19 c. Any individual who does not wish to be a Class Member may be excluded
20 (i.e., "opt out") by submitting a written Request for Exclusion to the Settlement Administrator within
21 45 calendar days of the date of mailing the Notice (there will be no opt-out postcard unless required
22 by the Court), stating: "I WISH TO BE EXCLUDED FROM THE SETTLEMENT IN THE TRUE
23 FOOD KITCHEN CLASS ACTION LAWSUIT. I UNDERSTAND THAT IF I ASK TO BE
24 EXCLUDED FROM THE SETTLEMENT, I WILL NOT RECEIVE ANY MONEY FROM THE
25 SETTLEMENT OF THIS LAWSUIT. IN ADDITION, BY REQUESTING EXCLUSION, I
26 WILL HAVE NO RIGHT TO OBJECT TO THE SETTLEMENT AND/OR BE HEARD AT
27 THE FINAL APPROVAL HEARING." ("Request for Exclusion"). The Request for Exclusion
28 must state the Class Member's full name, address, and last four digits of social security number. The

1 Request for Exclusion must be signed, dated and mailed by First Class U.S. Mail, or the equivalent, to
2 the Settlement Administrator. Any person who is eligible to and does submit a complete and timely
3 Request for Exclusion, shall, upon receipt by the Settlement Administrator, opt out of this Settlement,
4 shall be barred from participating in the Settlement, shall be barred from objecting to the Settlement,
5 and shall receive no benefits under the Settlement. Requests for Exclusion which are postmarked
6 after the deadline are invalid, must be rejected by the Settlement Administrator, and the person shall
7 become a member of the Settlement Class and be bound by the Settlement. Any person who submits
8 a valid Request for Exclusion is, upon receipt, barred from becoming a Class Member, is not entitled
9 to participate in the Settlement, and is barred from objecting to the Settlement. The Request for
10 Exclusion process is explained further in the Parties' proposed Notice at Exhibit B hereto.

11 d. Class Members can object to the terms of the Settlement before final approval
12 of the Settlement. To be eligible to object to the Settlement, Class Members must mail to the
13 Settlement Administrator a written objection. Any written objection must state each specific reason
14 in support of the Class Member's objection and any legal support for each objection. The objection
15 must state the Class Member's full name and address. To be valid and effective, any objections to
16 approval of the Settlement must be submitted to the Settlement Administrator no later than 45
17 calendar days from the mailing date of the Notice (the "Objection Deadline Date"). The Settlement
18 Administrator will e-mail a copy of any objections received forthwith to Class Counsel and
19 Defendants' Counsel. Class Counsel and Defendants' Counsel may file a response to the objection at
20 least ten (10) days before the Final Approval Hearing. No member of the Settlement Class shall be
21 entitled to be heard at the Final Approval Hearing (whether individually or through separate
22 counsel, at his or her own expense) or to object to the Settlement, and no written objections or
23 briefs submitted by any member of the Settlement Class shall be received or considered by the
24 Court at the Final Approval Hearing, unless written notice of the Settlement Class member's
25 intention to appear at the Final Approval Hearing, and copies of any written objections or briefs,
26 shall have been served on the Settlement Administrator on or before the Objection Deadline Date.
27 Members of the Settlement Class who fail to serve timely written objections in the manner
28 specified above shall be deemed to have waived any objections and shall be foreclosed from

1 making any objection (whether by appeal or otherwise) to the Settlement, or any aspect of the
2 Settlement.

3 e. Upon completion of these notice steps by the Settlement Administrator, the
4 Parties and the Settlement Administrator shall be deemed to have satisfied their obligations to provide
5 adequate and reasonable Notice to the Settlement Classes. All costs associated with the Notices are
6 part of, and included within and to be paid out of, the Gross Settlement Sum. Class Counsel shall
7 provide to the Court, subject to prior approval by Plaintiffs' and Defendants' counsel, at the time of
8 filing the motion for final approval, a declaration by the Settlement Administrator of due diligence,
9 proof of mailing, and results from mailing the Notice (including number of mailed notices, returned
10 notices, remailings, number and identity of requests for exclusion, number and identity of objections,
11 and the objections and responses thereto).

12 FINAL APPROVAL HEARING

13 21. The Notice shall contain a date, time and location for a "Final Approval Hearing."
14 The Final Approval Hearing shall be held on a date approved by the Court no earlier than: (a) ten
15 days after the last day for Defendants to exercise their right to void this Stipulation of Settlement;
16 and (b) ninety days after Defendants comply with the notice requirements pursuant to the Class
17 Action Fairness Act of 2005, 28 U.S.C. § 1715. The exact date, time and location of the Final
18 Approval Hearing shall be set forth in the Notice. At the Final Approval Hearing, Class Counsel
19 shall request the Court to grant final approval of the applications for attorneys' fees and costs and
20 the enhancement payments.

21 SETTLEMENT AWARD PROCESS

22 22. Within 45 days after the Effective Date (as defined under Paragraph 17(b)), the
23 Individual Settlement Award checks, paid from the Escrow Account, will be mailed to Class
24 Members. The Settlement Administrator will send one reminder notice to any Class Member who
25 has not cashed the Settlement Award checks 45 days following the date checks are mailed. All costs
26 associated with the mailing of Individual Settlement Awards and reminder notices are part of, and
27 included within and to be paid out of, the Gross Settlement Sum. Individual Settlement Award
28 checks shall remain valid and negotiable for 60 calendar days from the date of issuance and will be

1 cancelled by the Settlement Administrator if not cashed within that time. The checks provided to
2 Class Members shall prominently state the checks will expire in 60 calendar days, or alternatively,
3 such a statement may be made in a letter accompanying the check. Class Members shall be bound by
4 the Settlement regardless of whether they cash an Individual Settlement Award check. Any Class
5 Member who does not submit a valid Request for Exclusion shall remain included in the Settlement
6 Class, and shall be bound by the Settlement, regardless of whether such Class Member cashed a
7 Settlement Award check. Expired Settlement Award checks will not be reissued, unless otherwise
8 agreed by the Parties. Upon completion of its calculation of payments, the Settlement Administrator
9 shall provide Plaintiffs and Defendants with a report listing the amount of all payments to be made to
10 each Class Member (both gross amounts and net amounts after applicable deductions and
11 withholdings). Declaration from the Settlement Administrator of proof of payments, will be filed
12 with the Court and provided to Class Counsel and Defendants' Counsel 30 calendar days after the
13 Settlement Award checks are issued, provided the Settlement is Effective under Paragraph 17(b)
14 above.

15 23. Any unclaimed funds in the Settlement Administrator's account as a result of a failure
16 to timely cash a settlement check shall be handled by the Settlement Administrator and be issued to
17 the Los Angeles Regional Food Bank.

18 RELEASED CLAIMS

19 24. As of the Effective Date, and except as to such rights or claims as may be created by
20 this Stipulation of Settlement, each Class Member fully releases and discharges Defendants, and each
21 of their respective past, present and future owners, stockholders, parent corporations, related or
22 affiliate companies, subsidiaries, officers, directors, shareholders, employees, agents, principals,
23 heirs, representatives, accountants, attorneys, auditors, consultants, insurers and re-insurers, and
24 their respective successors and predecessors in interest, each of their company-sponsored
25 employee benefit plans of any nature (including, without limitation, profit-sharing plans, pension
26 plans, 401(k) plans, and severance plans) and all of their respective officers, directors, employees,
27 administrators, fiduciaries, trustees and agents, and any individual or entity which could be jointly
28 liable with Defendants ("Released Parties"), from all claims, causes of action, demands, rights,

liabilities, damages, restitution, penalties and other relief based on the allegations of wrongdoing which, based on the facts plead, were alleged in the operative complaint for violations of any state or federal laws (including but not limited to the California Labor Code (including, without limitation, California Labor Code sections 200, 201, 202, 203, 204, 210, 216, 221, 223, 225.5, 226, 226.3, 226.7, 510, 512, 516, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2800, 2802, 2804) and all applicable Industrial Welfare Commission wage orders, and the Fair Labor Standards Act (29 U.S.C. §§201, et seq.) ("FLSA"), California Industrial Welfare Commission Wage Orders, California's Unfair Business Practices law, Cal. Bus. & Prof. Code sections 17200, *et seq.*, and California's Private Attorney General Act ("PAGA"), Cal. Lab. Code §§ 2698, *et seq.*, or any other claims in law or equity, to the extent the claims, causes of action, damages, restitution, penalties, and other relief arose out of failure to pay minimum wage, overtime or other wages, including, without limitation, for time worked off-the-clock and any failure to pay any Section 226.7 premium wages, failure to pay reporting time pay, failure to provide meal and rest periods, failure to pay wages due at termination, failure to keep accurate payroll records or provide accurate itemized wage statements and failure to reimburse business expenses.

25. In addition to the release made in Paragraph 24, Plaintiff Pae and Plaintiff Sheldon make the additional following general release of all claims, known or unknown.

a. Plaintiffs release Defendants and all additional Released Parties, from all claims, demands, rights, liabilities and causes of action of every nature and description whatsoever, known or unknown, asserted or that might have been asserted, whether in tort, contract, or for violation of any state or federal statute, rule or regulation arising out of, relating to, or in connection with any act or omission by or on the part of any of the Defendants based on any transaction or occurrence that took place at any time prior to the date upon which this Agreement receives final approval. (The release set forth in this Paragraph shall be referred to hereinafter as the "General Release.")

b. With respect to the General Release, Plaintiffs stipulate and agree that upon the Effective Date, Plaintiffs shall be deemed to have, expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of section 1542 of the California Civil Code, or any other similar provision under federal or state law, which provides:

1 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES
2 NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF
3 EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE
4 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

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

8 PARTIES' AUTHORITY

9 26. The signatories hereto hereby represent that they are fully authorized to enter into this
10 Stipulation of Settlement and bind the Parties hereto to the terms and conditions thereof.

11 MUTUAL FULL COOPERATION

12 27. The Parties agree to fully cooperate with each other to accomplish the terms of this
13 Stipulation of Settlement, including but not limited to, execution of such documents and taking such
14 other action as reasonably may be necessary to implement the terms of this Stipulation of Settlement.
15 Within ten (10) court days of the Settlement becoming final and effective, to the extent the Pae
16 Federal Action and the Sheldon State Action remain pending after the Effective Date, the Parties
17 agree to file dismissals of the Pae Federal Action and the Sheldon State Action, with prejudice. The
18 Parties to this Stipulation of Settlement shall use their best efforts, including all efforts contemplated
19 by this Stipulation of Settlement and any other efforts that may become necessary by order of the
20 Court, or otherwise, to effectuate this Stipulation of Settlement and the terms set forth herein. As
21 soon as practicable after execution of this Stipulation of Settlement, Class Counsel shall, with the
22 assistance and cooperation of Defendants and their counsel, take all necessary steps to secure the
23 Court's final approval of this Stipulation of Settlement. Class Counsel shall further provide any and
24 all notices of the settlement and final judgment/order to the LWDA, as set forth in California Labor
25 Code section 2699(l)(2) and (3). Class Counsel shall further provide the Court and Defendants'
26 Counsel with proof of compliance with California Labor Code section 2699(l)(2) at the time Plaintiffs
27 file their Motion for Preliminary Approval, and proof of compliance with California Labor Code
28 section 2699(l)(3) within seven (7) calendar days of Plaintiffs providing notice to the LWDA of any

1 judgment or order providing for or denying an award of civil penalties pursuant to the California
2 Labor Code. The Court shall have final and binding authority to resolve any disputes between the
3 Parties in the course of preparing final Settlement documents and be compensated by the Parties, who
4 shall share the costs evenly, for any such work.

5 NO PRIOR ASSIGNMENTS

6 28. The respective Parties and their counsel represent, covenant and warrant that they
7 have not directly or indirectly assigned, transferred, encumbered or purported to assign, transfer or
8 encumber to any person or entity any portion of any liability, claim, demand, action, cause of action
9 or right herein released and discharged except as set forth herein.

10 NO ADMISSION

11 29. Nothing herein shall constitute any admission by Defendants of wrongdoing or
12 liability, or of the truth of any factual allegations in the complaints filed by Pae or Sheldon in any
13 forum. Nothing herein shall constitute an admission by Defendants that the any action brought by Pae
14 or Sheldon was properly brought as a class or representative action other than for settlement purposes.
15 To the contrary, Defendants have denied and continue to deny each and every material factual
16 allegation and alleged claim asserted by Pae and Sheldon in any forum. To this end, the settlement of
17 all claims and actions brought by Pae and Sheldon, the negotiation and execution of this Stipulation of
18 Settlement, and all acts performed or documents executed pursuant to or in furtherance of this
19 Stipulation of Settlement or the settlement are not, shall not be deemed to be, and may not be used as,
20 an admission or evidence of any wrongdoing or liability on the part of Defendants or of the truth of
21 any of the factual allegations alleged by Pae or Sheldon in any forum; and are not, shall not be
22 deemed to be, and may not be used as, an admission or evidence of any fault or omission on the part
23 of Defendants in any civil, criminal or administrative proceeding any court, administrative agency or
24 other tribunal.

25 ADMINISTRATION OF SETTLEMENT AND COMPLIANCE

26 30. The Court shall continuing jurisdiction to resolve any dispute which may arise with
27 regard to the terms and conditions of this Stipulation of Settlement as set forth herein.

28 ///

NOTICES

31. Unless otherwise specifically provided herein, all notices, demands or other communications given hereunder shall be in writing and shall be deemed to have been duly given as of the fifth business day after mailing by United States registered or certified mail, return receipt requested, addressed as follows:

To Plaintiffs and the Settlement Class:

To Defendants:

Michael H. Boyamian (michael@boyamianlaw.com)
Armand R. Kizirian (armand@boyamianlaw.com)
Boyamian Law, Inc.
550 North Brand Blvd., Suite 1500
Glendale, CA 91203
Telephone: 818.547.5300
Facsimile: 818.547.5678

Thomas W. Falvey (thomaswfalvey@gmail.com)
Law Offices of Thomas W. Falvey
550 N. Brand Blvd., Suite 1500
Glendale, CA 91203
Telephone: 818.547.5200
Facsimile: 818.500.9307

Alex Hartounian
Hartounian Law Firm
418 N. Fair Oaks Ave., Suite 202
Pasadena, CA 91102
Telephone: (818) 794-9675
Facsimile: (818) 459-6997
E-mail: alex@h-lf.com

Stephen R. Lueke
slueke@fordharrison.com
Daniel Chammas
dchammas@fordharrison.com
David L. Cheng
dcheng@fordharrison.com
FORD & HARRISON, LLP
350 South Grand Avenue, Suite 2300
Los Angeles, CA 90071
Telephone: (213) 237-2400
Facsimile: (213) 237-2401

CONSTRUCTION

32. The Parties hereto agree that the terms and conditions of this Stipulation of Settlement are the result of lengthy, intensive arms-length negotiations between the Parties, and this Stipulation of Settlement shall not be construed in favor of or against any party by reason of the extent to which any party or his, her or its counsel participated in the drafting of this Stipulation of Settlement.

CAPTIONS AND INTERPRETATIONS

33. Paragraph titles, headings or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend or describe the scope of this Stipulation of Settlement or any provision of it. Each term of this Stipulation of Settlement is

1 contractual and not merely a recital.

2 MODIFICATION

3 34. This Stipulation of Settlement may not be changed, altered or modified, except in
4 writing and signed by the Parties hereto and approved by the Court. This Stipulation of Settlement
5 may not be discharged except by performance in accordance with its terms or by a writing signed by
6 the Parties hereto.

7 INTEGRATION CLAUSE

8 35. This Stipulation of Settlement contains the entire agreement between the Parties
9 relating to the settlement transaction contemplated hereby, and all prior or contemporaneous
10 agreements, understandings, representations and statements, whether oral or written and whether by a
11 party or such party's legal counsel, are merged herein. No rights hereunder may be waived except in
12 writing.

13 BINDING ON ASSIGNS

14 36. This Stipulation of Settlement shall be binding upon and inure to the benefit of the
15 Parties and their respective heirs, trustees, executors, administrators, successors and assigns.

16 CLASS MEMBER SIGNATORIES

17 37. It is agreed that because the Class Members are so numerous, it is impossible or
18 impractical to have each Class Member execute this Stipulation of Settlement. The Notice of
19 Pendency of Class Action and Proposed Settlement, Exhibit B hereto, will advise all Class Members
20 of the binding nature of the release, and the release shall have the same force and effect as if this
21 Stipulation of Settlement were executed by each Class Member.

22 COUNTERPARTS

23 38. This Stipulation of Settlement may be executed in counterparts and by facsimile
24 signatures, and when each party has signed and delivered at least one such counterpart, each
25 counterpart, including email and PDF versions, shall be deemed an original and, when taken together
26 with other signed counterparts, shall constitute one Stipulation of Settlement binding upon and
27 effective as to all Parties.

28 ///

CALIFORNIA LAW

39. All questions with respect to the construction of this Stipulation of Settlement and the rights and liabilities of the Parties shall be governed by the laws of the State of California applicable to agreements to be wholly performed within the State of California.

OWN COUNSEL

40. Each party hereto acknowledges that he, she or it has been represented by counsel of his, her or its own choice throughout all of the negotiations which preceded the execution of this Stipulation of Settlement and in connection with the preparation and execution of this Stipulation of Settlement.

RETURN OF DOCUMENTS AND INFORMATION

41. Plaintiffs, the Settlement Class and Plaintiffs' Counsel agree that none of the documents and information provided to the Settlement Administrator by Defendant shall be used for any purpose other than prosecution of the Pae Federal Action or Sheldon State Action. No later than sixty (60) days after the payment of all settlement proceeds as described in this Stipulation of Settlement, the Settlement Administrator shall destroy or return to Defendants' counsel the original and all copies of any documents designated as confidential and subject to the Parties' protective order entered in the Pae Federal Action that Defendants produced or provided to Plaintiffs or Plaintiffs' Counsel, including any communications and electronic files and copies related to any documents designated as confidential and subject to the Parties' protective order. Should the Settlement Administrator elect to destroy documents designated as confidential and subject to the Parties' protective order, the Settlement Administrator shall certify under penalty of perjury that such documents have been destroyed. Notwithstanding the above, Plaintiffs' Counsel shall be entitled to keep one copy or the original of all Court filings, formal discovery, and correspondence filed or served in the Pae Federal Action or Sheldon State Action.

WAIVER OF RIGHTS

42. The parties hereto, including the Settlement Class, stipulate and agree that the consideration paid to the members of the Settlement Class pursuant to this Stipulation of Settlement compensates the Settlement Class for all wages, premiums and/or restitution due to

1 them arising out of the allegations of the Complaint, all penalties, all liability and any
2 compensation to which they may be entitled as a result of the alleged Labor Code violations,
3 Wage Order violations, and any related penalties. By granting preliminary and final approval of
4 the settlement, the Court will have reviewed this Stipulation of Settlement and concluded that the
5 members of the Settlement Class have been adequately compensated for all violations alleged in
6 the Complaint and remedies to which they otherwise may be entitled.

7 SEVERABILITY

8 43. In the event any covenant or other provision herein is held to be invalid, void or
9 illegal, the same shall be deemed severed from the remainder of this Stipulation of Settlement and
10 shall in no way affect, impair or invalidate any other covenant, condition or other provision
11 herein. If any covenant, condition or other provision herein is held to be invalid due to its scope
12 or breadth, such covenant, condition or other provision shall be deemed valid to the extent of the
13 scope or breadth permitted by law.

14 WAIVER OF RIGHT TO OBJECT

15 44. Plaintiff Pae and Plaintiff Sheldon agree to sign this Stipulation of Settlement and
16 by signing this Stipulation of Settlement are bound by the terms herein stated and further agree
17 not to request to be excluded from the Settlement Class and agree not to object to any of the terms
18 of this Agreement. Any such request for exclusion or objection shall therefore be void and of no
19 force or effect.

20 IMPLEMENTATION SCHEDULE

21 45. To effectuate the terms of the Settlement, the Parties hereby agree to the following
22 Implementation Schedule:

23 a.	Deadline for Defendants to submit Class 24 Member information to Settlement 25 Administrator	14 calendar days after Order Granting Preliminary Approval
26 b.	Deadline for Settlement Administrator to 27 mail the Notice to the Class Members	30 calendar days after Order Granting Preliminary Approval

c.	Deadline for Class Members to postmark any Requests for Exclusions	45 calendar days after mailing of the Notice to Class Members
d.	Deadline for Class Members to postmark any objections to the Settlement	45 calendar days after mailing of the Notice to Class Members
e.	Deadline for Class Counsel to file Motion for Final Approval of Settlement	28 calendar days before Final Approval Hearing
f.	Deadline for Class Counsel to file Motion for Attorneys' Fees, Costs and Enhancement Awards	28 calendar days before Final Approval Hearing
g.	Deadline for Class Counsel to file Settlement Administrator's Declaration of Due Diligence, Proof of Mailing of Notice, and Receipt of Objections to Settlement or Requests for Exclusion.	28 calendar days before Final Approval Hearing
h.	Deadline for Defendants to provide written notice of rescission of Settlement to Class Counsel (if applicable)	10 business days after the Settlement Administrator informs the Parties of the number of opt-outs, which shall occur 7 calendar days after the deadline to opt-out.
i.	Deadline for Defendants to pay the Gross Settlement Amount (if Settlement is Effective)	21 calendar days after the Effective Date (as defined under Paragraph 17(b))
j.	Deadline for Settlement Administrator to pay Court-approved attorneys' fees and costs to Class Counsel and Enhancement Award to Class Representative	35 calendar days after the Effective Date (as defined under Paragraph 17(b))
k.	Deadline for the Settlement Administrator to distribute Settlement Awards to Class	45 calendar days after the Effective Date (as defined under Paragraph 17(b))

	Members who did not submit a valid and timely Request for Exclusion	
l.	Deadline for the Settlement Administrator to distribute applicable PAGA fees to California	60 calendar days after the Effective Date (as defined under Paragraph 17(b))
m.	Deadline for the Settlement Administrator to send unclaimed funds to Los Angeles Regional Food Bank (if Settlement is Effective).	60 days after expiration of the Settlement Award checks

IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this Joint Stipulation of Settlement and Release between Plaintiffs and Defendants as of the date(s) set forth below:

PLAINTIFES AND CLASS REPRESENTATIVES

Dated: 7/30/18

PLAINTIFF JENNIFER PAE

By 
JENNIFER PAE

Dated: _____

PLAINTIFF ALEXANDRA SHELDON

By _____
ALEXANDRA SHELDON

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	Members who did not submit a valid and timely Request for Exclusion	
1.	Deadline for the Settlement Administrator to distribute applicable PAGA fees to California	60 calendar days after the Effective Date (as defined under Paragraph 17(b))
m.	Deadline for the Settlement Administrator to send unclaimed funds to Los Angeles Regional Food Bank (if Settlement is Effective).	60 days after expiration of the Settlement Award checks

IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this Joint Stipulation of Settlement and Release between Plaintiffs and Defendants as of the date(s) set forth below:

PLAINTIFFS AND CLASS REPRESENTATIVES

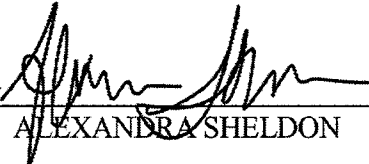
Dated: _____

PLAINTIFF JENNIFER PAE

By _____
JENNIFER PAE

Dated: 8/1/18

PLAINTIFF ALEXANDRA SHELDON

By 
ALEXANDRA SHELDON

////


////

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1 **CLASS COUNSEL**

2 Dated: 8/2/18

BOYAMIAN LAW, INC.
LAW OFFICES OF THOMAS W. FALVEY
HARTOUNIAN LAW FIRM

4 By 
5 THOMAS W. FALVEY
6 MICHAEL H. BOYAMIAN
7 ARMAND R. KIZIRIAN
8 ALEX HARTOUNIAN
Attorneys for Plaintiffs and Class Counsel

9 **DEFENDANTS**

10 Dated: _____

DEFENDANT FOX RESTAURANT
CONCEPTS, LLC

12 By _____
13 LEEZIE KIM
14 CHIEF LEGAL OFFICER

15 Dated: _____

FRC BALANCE LLC, as successor to
DEFENDANTS FRC TRUE FOOD SMP, LLC;
FRC TRUE FOOD SDFV, LLC; FRC TRUE
FOOD NBFI, LLC

18 By _____
19 JONATHAN PEREZ
20 GENERAL COUNSEL

1 CLASS COUNSEL

2 Dated: _____

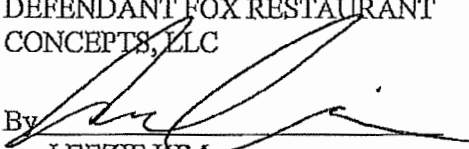
BOYAMIAN LAW, INC.
LAW OFFICES OF THOMAS W. FALVEY
HARTOUNIAN LAW FIRM

3
4
5 By _____
6 THOMAS W. FALVEY
7 MICHAEL H. BOYAMIAN
8 ARMAND R. KIZIRIAN
9 ALEX HARTOUNIAN
Attorneys for Plaintiffs and Class Counsel

10 DEFENDANTS

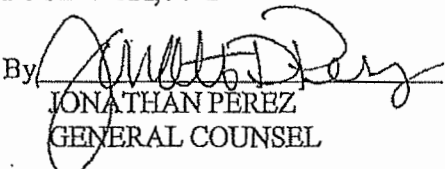
11 Dated: July 26, 2018

DEFENDANT FOX RESTAURANT
CONCEPTS, LLC

12 By 
13 LEEZIE KIM
14 CHIEF LEGAL OFFICER

15 Dated: July 26, 2018

FRC BALANCE LLC, as successor to
DEFENDANTS FRC TRUE FOOD SMP, LLC;
FRC TRUE FOOD SDFV, LLC; FRC TRUE
FOOD NBFI, LLC

16
17
18 By 
19 JONATHAN PEREZ
20 GENERAL COUNSEL
21
22
23
24
25
26
27
28

1 **DEFENDANTS' COUNSEL**

2
3
4 Dated: 7/26/18

FORD & HARRISON, LLP

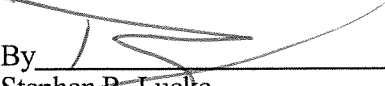
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Exhibit “A”

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Attorneys for Plaintiffs JENNIFER PAE, ALEXANDRA SHELDON,
individually and on behalf of all others similarly situated.

**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

JENNIFER PAE, individually,
ALEXANDRA SHELDON, individually,
and on behalf of all others similarly
situated, and the general public,

Plaintiffs,

vs.

FOX RESTAURANT CONCEPTS, LLC
d/b/a TRUE FOOD KITCHEN; a
Arizona limited liability company; FRC
TRUE FOOD SMP, LLC, a California
limited liability company; FRC TRUE
FOOD SDFV, LLC, a California limited
liability company; FRC TRUE FOOD
NBFI, LLC, a California limited liability
company; and DOES 1 through 25,
inclusive,

Defendants.

CASE NO.: 2:16-cv-06965-DSF-FFM
Assigned to Hon. Dale S. Fischer

[CLASS ACTION]

1. UNPAID WAGES (LABOR CODE §§ 216 and 1194);
2. FAILURE TO PAY MINIMUM WAGE (LABOR CODE § 1194 et seq.);
3. FAILURE TO PAY OVERTIME COMPENSATION (LABOR CODE § 510)
4. FAILURE TO FURNISH ACCURATE WAGE AND HOUR STATEMENTS (LABOR CODE § 226);

5. WAITING TIME PENALTIES (LABOR CODE §§ 201-203);
6. FAILURE TO PROVIDE MEAL & REST PERIODS (LABOR CODE § 226.7 and 512);
7. INDEMNIFICATION (LABOR CODE §§ 2800 and 2802);
8. UNFAIR COMPETITION (BUSINESS AND PROFESSIONS CODE § 17200, et seq.); and
9. PRIVATE ATTORNEYS GENERAL ACT OF 2004 (LABOR CODE § 2698 et seq.)

JURY TRIAL DEMANDED

1 Plaintiffs JENNIFER PAE and ALEXANDRA SHELDON (“Plaintiffs”),
2 individually, and on behalf of all similarly situated individuals, allege as follows:

3 **GENERAL ALLEGATIONS**

4 1. This is a proposed class action brought against Defendants FOX
5 RESTAURANT CONCEPTS, LLC d/b/a TRUE FOOD KITCHEN, a Arizona
6 limited liability, FRC TRUE FOOD SMP, LLC, a California limited liability
7 company, FRC TRUE FOOD SDFV, LLC, a California limited liability company,
8 FRC TRUE FOOD NBF, LLC, a California limited liability company, collectively
9 doing business as TRUE FOOD KITCHEN, and DOES 1 through 25, inclusive
10 (collectively, “Defendants” or “Company”), on behalf of Plaintiffs and all other
11 individuals who were employed as servers, waiters, waitresses, or any similarly
12 situated non-exempt, hourly positions (collectively, “Restaurant Employees”), at any
13 time during the four years preceding the filing of this action, and continuing while
14 this action is pending (“Class Period”), and who were denied the benefits and
15 protections required under the Labor Code and other statutes and regulations
16 applicable to employees in the State of California.

17 2. During the Class Period, Defendants:

- 18 a. failed to pay wages for all hours worked, including for hours
19 worked in excess of eight hours a day or forty hours a week, by
20 the Restaurant Employees;
- 21 b. failed to pay minimum wages due to the Restaurant Employees;
- 22 c. failed to pay overtime compensation due to the Restaurant
23 Employees who worked on the seventh consecutive day;
- 24 d. failed to provide the Restaurant Employees with timely and
25 accurate wage and hour statements;
- 26 e. failed to pay the Restaurant Employees compensation in a timely
27 manner upon their termination or resignation;

28 ///

- f. failed to maintain complete and accurate payroll records for the Restaurant Employees;
- g. failed to provide reporting time pay to Restaurant Employees in violation of the applicable Industrial Welfare Commission wage orders, and California Labor Code sections 204 and 1198;
- h. failed to provide meal periods and rest periods in accordance with and in violation of the applicable Industrial Welfare Commission wage orders, and California Labor Code sections 226.7 and 510.
- i. failed to pay the additional hour of pay for not providing meal periods and rest periods in accordance with and in violation of the applicable Industrial Welfare Commission wage orders, and California Labor Code sections 226.7;
- j.. failed to indemnify the Restaurant Employees for all necessary expenditures or losses;
- k.. wrongfully withheld wages and compensation due to the Restaurant Employees; and
- l.. committed unfair business practices in an effort to increase profits and to gain an unfair business advantage at the expense of the Restaurant Employees and the public;

3. The foregoing acts and other acts by Defendants - committed throughout California and Los Angeles County - violated numerous provisions of California law, including Labor Code §§ 200, 201, 202, 203, 204, 210, 216, 221, 223, 225.5, 226, 226.3, 226.7, 510, 512, 516, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2800, 2802, 2804, and 2698 et seq. and the applicable Wage Orders issued by the Industrial Welfare Commission (collectively, “Employment Laws and Regulations”), Business & Professions Code §§ 17200 et seq., the Private Attorneys General Act of 2004 (“PAGA”) and violated Plaintiffs’ rights and the rights of the Restaurant Employees.

JURISDICTION AND VENUE

4. This Court has jurisdiction over all causes of action herein pursuant to the California Constitution, Article VI, § 10, Code of Civil Procedure § 410.10 and Business and Professions Code § 17203.

5. Venue is proper in this Court under Code of Civil Procedure §§ 395 and 395.5 because Defendants operate in this County, Plaintiffs Jennifer Pae and Alexandra Sheldon reside in and/or worked in this county and the injuries that are the subject of this lawsuit arose in this county.

THE PARTIES

6. Plaintiff Jennifer Pae was employed by Defendants as a server/waitress within the last year, and was assigned to Defendants' restaurant located in Santa Monica, California.

Plaintiff resided in and performed duties in the County of Los Angeles during the last year preceding the filing of this action.

7. Plaintiff Alexandra Sheldon was employed by Defendants as a Server and Corporate Trainer at Defendants' Santa Monica restaurant location in Los Angeles County, California from on or about October 2013 to on or about July 2016. By letter dated February 2, 2017, Plaintiff Sheldon, on behalf of herself and the other aggrieved employees, gave written notice by certified mail to the Labor and Workforce Development Agency ("LWDA") and Defendants of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. Following expiration of the sixty-day administrative period, on April 26, 2017, Plaintiff Sheldon filed a proposed representative action under the California Private Attorneys General Act (PAGA) on behalf of all Aggrieved Employees and the State of California -- alleging only claims under PAGA -- in Los Angeles County Superior Court ("Court"), Case No. BC659173. For purposes of Plaintiff Sheldon's cause of action for PAGA penalties, the Relevant Time Period is February 2, 2016 to the present.

1 8. Defendants FOX RESTAURANT CONCEPTS, LLC (“FOX
2 RESTAURANTS”), FRC TRUE FOOD SMP, LLC (“SMP”), FRC TRUE FOOD
3 SDFV, LLC (“SDFV”), and FRC TRUE FOOD NBFI, LLC (“NBFI”), are, and at all
4 relevant times were, corporations conducting business in the State of California,
5 including the County of Los Angeles, as “True Food Kitchen.” The Company
6 operates several restaurant locations throughout California: El Segundo, Newport
7 Beach, San Diego, Pasadena, Palo Alto, Walnut Creek, and Santa Monica. At least
8 three of the restaurant locations were registered as separate entities with the
9 California Secretary of State’s website: San Diego (FRC True Food SDFV LLC);
10 Newport Beach (FRC True Food NBFI LLC); Santa Monica (FRC True Food SMP
11 LLC). FOX RESTAURANTS is alleged to be the owner or parent company of all
12 True Food Kitchen restaurant locations. Plaintiffs are informed and believe, and
13 based upon such information and belief, allege that FOX RESTAURANTS exercised
14 control over the operations of SMP, SDFV, NBFI, and other separate and affiliated
15 entities from its resources, food offerings and preparation, and management.

16 9. The degree of control exercised by FOX RESTAURANTS over SMP,
17 SDFV, NBFI, and separate and affiliated entities is enough to reasonably deem SMP,
18 SDFV, and NBFI as agents of FOX RESTAURANTS under traditional agency
19 principles. SMP, SDFV, and NBFI can legitimately be described as only a means
20 through which FOX RESTAURANTS acts and conducts its global business.
21 Defendants SMP, SDFV, and NBFI and FOX RESTAURANTS have such a unity of
22 interest and ownership that the separate personalities do not in reality exist and that
23 the corporate structure is just a shield for the alter ego of each other. Plaintiffs
24 therefore are informed and believe and thereupon allege FOX RESTAURANTS,
25 SMP, SDFV, NBFI, and other separate and affiliated entities, and each of them, were
26 their employer under California law, that Defendants herein did acts consistent with
27 the existence of an employer-employee relationship with Plaintiffs and that SMP,
28 SDFV, and NBFI was owned, controlled, directly or indirectly, by FOX

1 RESTAURANTS.

2 10. Plaintiffs are currently unaware of the true names and capacities of the
3 defendants sued in this action by the fictitious names DOES 1 through 25, inclusive,
4 and therefore sue those defendants by such fictitious names. Plaintiffs will amend
5 this Complaint to allege the true names and capacities of such fictitiously named
6 defendants when they are ascertained. Plaintiffs are informed and believe and based
7 thereon state that the persons sued herein as DOES are in some manner responsible
8 for the conduct, injuries and damages herein alleged.

9 11. Plaintiffs are informed and believe and based thereon allege that each
10 defendant sued in this action, including each defendant sued by the fictitious names
11 DOES 1 through 25, inclusive, is responsible in some manner for the occurrences,
12 controversies and damages alleged below.

13 12. Plaintiffs are informed and believe and based thereon allege that DOES
14 1 through 25, inclusive, were the agents, servants and/or employees of Defendants
15 and, in doing the things hereinafter alleged and at all times, were acting within the
16 scope of their authority as such agents, servants and employees, and with the
17 permission and consent of Defendants.

18 13. Plaintiffs are informed and believe and based thereon allege that
19 Defendants ratified, authorized, and consented to each and all of the acts and conduct
20 of each other as alleged herein. Each of the defendants were the agent and/or
21 employee of the others, and the conduct of each defendant herein alleged was
22 authorized and/or ratified by the others. The conduct of the Company was carried on
23 by and through its authorized agents, including owners, officers, directors, managers
24 and supervisors.

25 **FACTS**

26 14. Plaintiffs are individuals who resided in the County of Los Angeles,
27 during the four years preceding the filing of this action. Plaintiff Pae was employed
28 by Defendants as a Server in Los Angeles County within the last four years

1 preceding the filing of this action. Plaintiff Sheldon was employed by Defendants as
2 a Server and Corporate Trainer in Los Angeles County within the last four years
3 preceding the filing of this action.

4 15. During Plaintiffs' employment with Defendants, the Company did not
5 provide Servers, including Plaintiffs, with legally compliant meal periods and rest
6 breaks. With respect to rest breaks, Plaintiffs and other similarly situated Restaurant
7 Employees are not provided any training about statutory breaks under California law,
8 are not scheduled to take rest breaks, and in fact, rest breaks are not made available
9 to them. The Company's "Employee Handbook" does not even spell out basic
10 requirements of California's wage and hour laws, such as when to take statutorily
11 mandated meal periods and rest breaks. The Company's "Meal and Beverage
12 Policy" provides, in relevant part, "you are not allowed to eat on duty without
13 permission of a manager." Further, throughout the Relevant Time Period, Plaintiffs
14 and other Restaurant Employees were routinely denied the rest breaks they were
15 entitled to under California law, including: (a) failing to provide paid rest periods of
16 ten (10) minutes during which Plaintiffs and other similarly-situated Restaurant
17 Employees were relieved of all duty for each four (4) hours of work or major fraction
18 thereof; (b) failing to pay Plaintiffs and other Restaurant Employees one (1) hour of
19 pay at their regular rate of compensation for each workday that a rest period was not
20 permitted.

21 16. Defendants also have in place meal period waivers which allow
22 Restaurant Employees to waive their initial meal breaks if their work or "shift" is
23 scheduled for six hours or less. Restaurant Employees, like Plaintiffs, who typically
24 are scheduled to work for six hours are, in reality, working beyond six hours each
25 day and are not provided with statutory meal breaks. This is an unlawful company
26 practice in and of itself and in violation of the Employment Laws and Regulations.

27 17. Throughout their employments with Defendants, the Company also
28 forced Restaurant Employees, including Plaintiffs, to clock out at the end of their

1 shifts, or during their shifts, but instructed them to continue working off the clock to
2 complete their side work, i.e., cleaning tables, rolling silverware, restocking, etc.
3 Throughout their employments with Defendants, the Company also forced
4 Restaurant Employees, including Plaintiffs, to perform work during meal and rest
5 breaks, in order to complete their duties. These company practices are likewise
6 illegal and is in violation of the Employment Laws and Regulations. Defendants
7 also required Restaurant Employees, including Plaintiffs, to work before the
8 scheduled start of a work shift and perform such job duties while clocked out. Other
9 policies and/or practice include but is not limited to, the Company having Restaurant
10 Employees, including Plaintiffs, work “double shifts” during peak times in the year.
11 Specifically, Defendants directed Restaurant Employees, including Plaintiffs, to
12 clock out from the end of the first shift, wait in or around the restaurant’s premises,
13 and then almost immediately clock-in for the second shift. The Restaurant
14 Employees, including Plaintiff, who work “double shifts” routinely work over 8
15 hours in a day but are not compensated with any overtime pay for work beyond the
16 eighth hour.

17 18. Restaurant Employees, like Plaintiffs, are also told to clock out before
18 the completion of the sixth hour to avoid burdening the Company with a statutory
19 meal break obligation, thus causing them to work off-the-clock for that reason as
20 well. Further, Plaintiffs are informed and believe and based thereon allege that
21 Defendants: (a) Failed to provide Plaintiff with a first meal period of not less than
22 thirty (30) minutes during which she was relieved of all duty before working more
23 than five (5) hours; (b) Failed to provide Plaintiff with a second meal period of not
24 less than thirty (30) minutes during which they are relieved of all duty before
25 working more than ten (10) hours per day; and (c) Failed to pay Plaintiff and other
26 aggrieved employees one hour of pay at their regular rate of compensation for each
27 workday that a meal period was not provided.

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1 19. Restaurant Employees, like Plaintiffs, on occasion work seven
2 consecutive days without receiving the required overtime premium pay for all hours
3 worked on the seventh day as mandated by the applicable wage order. In other
4 words, when made to work more than six consecutive days in a row without a day's
5 rest, Plaintiffs like other similarly situated Restaurant Employees, are not paid
6 premium pay. Upon information and belief, Defendants had in place a "pay period"
7 which did not coincide with the schedules its Restaurant Employees actually worked.
8 Defendants' scheduling and payment practices are unequivocally unlawful as it is
9 designed to evade the payment of overtime. Accordingly, Defendants failed to pay
10 Plaintiffs and Restaurant Employees for all hours worked. Additionally, Defendants
11 improperly calculated the amount of overtime wages owed, and thus failed to pay
12 Plaintiffs all overtime wages due.

13 20. During Plaintiffs' employment with Defendants, Defendants failed and
14 refused to provide Plaintiff with timely and accurate wage and hour statements in
15 violation of the Employment Laws and Regulations, including the wage and hour
16 statements' failure to show all wages earned, all hours worked, or all applicable
17 rates. Moreover, Defendants did not maintain adequate records of all wages earned,
18 hours worked and breaks taken.

19 21. During Plaintiffs' employment with Defendants, Plaintiffs and
20 Restaurant Employees were required to purchase clothing unique to their
21 employment at the Company, or requiring Plaintiffs to maintain the clothing unique
22 to their employment at the Company, including, without limitation, ironing their
23 uniforms, but Defendants failed to indemnify Plaintiffs for all these necessary
24 expenditures or losses incurred by them in direct consequence of the discharge of
25 their duties, or for their obedience to the directions of Defendants. Similarly,
26 Plaintiffs were charged \$2.99 to access their schedules but was not reimbursed.

27 22. During Plaintiffs' employment with Defendants, Defendants wrongfully
28 withheld from Plaintiffs and failed to pay wages and other compensation due for all

1 hours worked, and as otherwise required per Employment Laws and Regulations.
2 Defendants willfully and knowingly failed to pay Plaintiffs and other Restaurant
3 Employees, upon termination of employment, all accrued compensation including,
4 but not limited to, payment of minimum wage compensation, overtime
5 compensation, missed meal and rest period compensation and for time spent
6 performing work off the clock at Defendants' direction.

7 23. Plaintiffs and other Restaurant Employees were required to report to
8 work only to be told by management that no work is available and not being
9 compensated establishes a reporting time pay violation by failing to pay those
10 employees reporting time pay (i.e. half of their usual or scheduled day's work, but in
11 no event less than two hours nor more than four hours, at the employee's regular rate
12 of pay).

13 24. To the extent that any Restaurant Employee, including Plaintiffs,
14 entered into any arbitration agreement with any Defendant, such agreement is void
15 and unenforceable. Any such agreement was one of adhesion, executed under
16 duress, lacked consideration and mutuality, and is otherwise void under both Labor
17 Code § 229 and the California Supreme Court case of *Armendariz v. Foundation*
18 *Health Psychare Services, Inc.* (2000) 24 Cal.4th 83.

19 **CLASS ACTION ALLEGATIONS**

20 25. All current and former Restaurant Employees who were employed by
21 Defendants in California during the Class Period, including Plaintiffs, are proposed
22 class members (henceforth, "Class Members").

23 26. The Restaurant Employees' duties and activities during their respective
24 working hours and each shift are known to and directed by Defendants, and are set
25 and controlled by Defendants.

26 27. During the Class Period, Defendants have routinely failed to provide
27 Restaurant Employees with legally compliant and mandated meal and rest breaks.

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1 28. During the Class Period, the Company refused to compensate
2 Restaurant Employees for all wages earned (“off-the-clock” work) and for all hours
3 worked including time during which Restaurant Employees were subject to
4 Defendants’ control and were suffered or permitted to work for the Company. The
5 Company failed and refused to pay Restaurant Employees for all hours worked,
6 including but not limited to time worked before, during, and after the official end
7 times of their shifts, and during their meal and rest periods.

8 29. During the Class Period, Defendants have failed and refused to provide
9 Restaurant Employees with timely and accurate wage and hour statements.

10 30. During the Class Period, Defendants have failed and refused to pay
11 accrued wages and other compensation earned and due immediately to Restaurant
12 Employees who were terminated, and Defendants have failed and refused to pay
13 accrued wages and other compensation earned and due within seventy-two hours to
14 Restaurant Employees who ended their employment.

15 31. During the Class Period, Defendants have failed and refused to maintain
16 complete and accurate payroll records for Restaurant Employees showing gross
17 hours earned, total hours worked, all deductions made, net wages earned, and all
18 applicable hourly rates in effect during each pay period and the corresponding
19 number of hours worked at each hourly rate.

20 32. During the Class Period, Defendants have failed and refused to
21 indemnify the Restaurant Employees for all necessary expenditures or losses
22 incurred by them in direct consequence of the discharge of their duties, or of their
23 obedience to the directions of Defendants.

24 33. During the Class Period, Defendants have wrongfully withheld and
25 failed to pay Restaurant Employees wages and other compensation earned and due
26 them for all hours worked and as otherwise required pursuant to the Employment
27 Laws and Regulations, including the payment of reporting time pay and the correct
28 amounts of overtime wages owed.

1 34. During the Class Period, Defendants have refused and failed to fully
2 compensate Restaurant Employees with reporting time pay.

3 35. Defendants' conduct violated the Employment Laws and Regulations.
4 Defendants' systematic acts and practices also violated, inter alia, Business &
5 Professions Code §§ 17200, *et seq.*

6 36. Plaintiffs also seek of all other compensation and all benefits required
7 pursuant to the Employment Laws and Regulations, plus penalties and interest, owed
8 to Restaurant Employees.

9 37. The duties and business activities of the Class Members were essentially
10 the same as the duties and activities of the Plaintiffs described above. At all times
11 during the Class Period, all of the Class Members were employed in the same or
12 similar job as Plaintiffs (as a non-exempt, front of the house Restaurant Employees
13 such as waiter, waitress, bartender, or server) and were paid in the same manner and
14 under the same standard employment procedures and practices as Plaintiffs.

15 38. During the Class Period, Defendants were fully aware that Plaintiffs and
16 the Class Members were performing "off-the-clock" unpaid work and not being paid
17 for all hours worked in violation of the provisions of the Labor Code.

18 39. Defendants' violations of the Employment Laws and Regulations were
19 repeated, willful and intentional.

20 40. Plaintiffs and the Class Members have been damaged by Defendants'
21 conduct.

22 41. While the exact number of Class Members is unknown to Plaintiffs at
23 the present time, based on information and belief, there are more than 40 such
24 persons. A class action is the most efficient mechanism for resolution of the claims
25 of the Class Members.

26 42. In addition, a class action is superior to other available methods for the
27 fair and efficient adjudication of this controversy because the damages suffered by
28 individual Class Members may be relatively small, and the expense and burden of

individual litigation would make it impossible for such Class Members individually to redress the wrongs done to them. Moreover, because of the similarity of the Class Members' claims, individual actions would present the risk of inconsistent adjudications subjecting the Defendants to incompatible standards of conduct.

43. Plaintiffs are currently unaware of the identities of all the Class Members. Accordingly, Defendants should be required to provide to Plaintiffs a list of all persons employed as Restaurant Employees in each of Defendants' California beginning four years prior to the filing of until the present, stating their last known addresses and telephone numbers, so that Plaintiff may give such Class Members notice of the pendency of this action and an opportunity to make an informed decision about whether to participate in it.

44. The proposed Class that Plaintiffs seek to represent is defined as follows:

All "front of the house" Restaurant Employees (including, but not limited to, the titles of "server", "waiter", "bartender", "waitress", or other similarly situated titles) who are or have been employed by Defendants in the State of California at any time from July 22, 2012 and continuing while this Action is pending.

45. There is a well-defined community of interest in the litigation and the proposed Class is easily ascertainable:

a. Numerosity: While the precise number of Class Members has not been determined at this time, Plaintiff is informed and believes that Defendants have employed in excess of 40 persons as Restaurant Employees in California during the proposed Class Period.

b. Commonality: There are questions of law and fact common to Plaintiff and the Class that predominate over any questions affecting only individual Class Members. These common questions of law and fact include, without limitation:

- i. Whether Defendants failed to compensate Plaintiffs and the Class Members for all hours worked;
- ii. Whether Defendants did not have any formal policies or procedures in place applicable to Plaintiffs and Class Members relating to meal and rest periods;
- iii. Whether Defendants failed to pay Plaintiffs and the Class Members overtime premium pay by designating a workweek which was out of sync with Class Members' work schedules in an effort to evade overtime pay, or otherwise correctly calculating overtime premium pay in accordance with California law.
- iv. Whether Defendants failed to pay Plaintiffs and the Class Members the required minimum wage for every hour where work was performed;
- v. Whether Defendants failed to provide Plaintiffs and the Class Members with accurate itemized statements;
- vi. Whether Defendants failed to provide meal and rest breaks for Plaintiffs and the Class Members;
- vii. Whether Defendant owe Plaintiffs and the Class Members reporting time pay;
- viii. Whether Defendants owe Plaintiffs and the Class Members waiting time penalties pursuant to Labor Code §203;
- ix. Whether Defendants engaged in unfair business practices under Business and Professions Code §17200;
- x. Whether Defendants owe Plaintiffs, Class Members, and the State of California penalties under the California Labor Code pursuant to the Private Attorneys General Act of

2004;

xi. The effect upon and the extent of damages suffered by Plaintiffs and the Class Members and the appropriate amount of compensation.

c. Typicality: Plaintiffs' claims are typical of the claims of the proposed Class. Plaintiffs and all Class Members sustained injuries and damages arising out of and caused by Defendants' common course of conduct in violation of law as alleged herein.

d. Adequacy of Representation: Plaintiffs are members of the proposed Class and will fairly and adequately represent and protect the interests of the Class Members. Counsel who represent Plaintiffs are competent and experienced in litigating large wage and hour and other employment class actions.

e. Superiority of Class Action: A class action is superior to other available means for the fair and efficient adjudication of this controversy. Questions of law and fact common to the proposed Class predominate over any questions affecting only individual Class Members. Each proposed Class Member has been damaged and is entitled to recovery by reason of Defendants' illegal policies and/or practices of failing to pay full and correct wages, including the minimum wage and overtime premium wages, as required by law. A class action will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system.

FIRST CAUSE OF ACTION

(Failure to Pay Compensation For All Hours Worked - Labor Code §§ 216 and 1194

By Plaintiffs Individually and on Behalf of All Class Members)

46. As a separate and distinct cause of action, Plaintiffs complain and reallege all of the allegations contained in this complaint, and incorporates them by reference into this cause of action as though fully set forth herein, excepting those allegations which are inconsistent with this cause of action.

1 47. Plaintiffs bring this action to recover unpaid compensation for all hours
2 worked, including for work over eight hours in a day and over forty hours in a
3 workweek.

4 48. Defendants' conduct described in this Complaint violates, among other
5 things, Labor Code §§ 204, 216, 218, 218.5, 218.6, 510, 1194, and 1198 and the
6 IWC Wage Orders.

7 49. Defendants failed to pay Plaintiffs and the Class Members for all of the
8 actual hours worked, including for work over eight hours in a day and over forty
9 hours in a workweek. Defendants knew or should have known that Plaintiffs and the
10 Class Members were working these hours.

11 50. Plaintiffs and the Class Members are also entitled to penalties pursuant
12 to Paragraph No. 20 of the applicable IWC Wage Order which provides, in addition
13 to any other civil penalties provided by law, any employer or any other person acting
14 on behalf of the employer who violates, or causes to be violated, the provisions of
15 the IWC Wage Order, shall be subject to a civil penalty of \$50.00 (for initial
16 violations) or \$100.00 (for subsequent violations) for each underpaid employee for
17 each pay period during which the employee was underpaid in addition to the amount
18 which is sufficient to recover unpaid wages.

19 51. As a result of Defendants' unlawful acts, Plaintiffs and the Class
20 Members have been deprived of compensation in an amount according to proof at
21 the time of trial, and are entitled to recovery of such amounts, plus interest thereon,
22 liquidated damages pursuant to Labor Code § 1194.2, and attorneys' fees and costs,
23 pursuant to Labor Code §§ 1194 and 2698, in an amount according to proof at the
24 time of trial. Plaintiff and the Class Members are also entitled to additional penalties
25 and/or liquidated damages pursuant to statute.

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SECOND CAUSE OF ACTION

(Failure to Pay Minimum Wages - Labor Code § 1194

By Plaintiffs Individually and on Behalf of All Class Members)

52. As a separate and distinct cause of action, Plaintiffs complain and reallege all of the allegations contained in this complaint, and incorporate them by reference into this cause of action as though fully set forth herein, excepting those allegations which are inconsistent with this cause of action.

53. At all relevant times, the IWC Wage Orders contained in Title 8 of the Code of Regulations (“Wage Orders”) applied to Plaintiffs in Plaintiffs’ capacity as employees of Defendants. The Wage Orders and California law provided, among other things, that Plaintiffs must receive minimum wage earnings for all hours worked.

54. During the Class Period, Defendants have routinely failed to pay Class Members, including Plaintiffs, the minimum wage required by the Employment Laws and Regulations for all hours worked.

55. The Class Members, including Plaintiffs, have been deprived of their rightfully earned minimum wages as a direct and proximate result of Defendants’ policies and practices and Defendants’ failure and refusal to pay said wages for all hours worked. The Class Members, including Plaintiffs, are entitled to recover the past wages owed to them, under the minimum wage laws, plus an additional equal amount as liquidated damages as permitted under the Wage Orders and California law, plus interest thereon and attorneys’ fees and costs pursuant to Labor Code §§ 1194 and 2698, in an amount according to proof at the time of trial.

THIRD CAUSE OF ACTION

(Failure to Pay Overtime Compensation - By Plaintiffs Individually and on Behalf of

All Restaurant Workers: California Labor Code §§ 510 and 1194)

56. As a separate and distinct cause of action, Plaintiffs complain and reallege all the allegations contained in this complaint, and incorporate them by

reference into this cause of action as though fully set forth herein, excepting those allegations which are inconsistent with this cause of action.

57. During the Class Period, Defendants have routinely required Restaurant Workers, including Plaintiffs, to work over eight hours in a day and over forty hours in a workweek. However, Defendants have failed and refused to pay the Restaurant Workers, including Plaintiffs, the overtime compensation required by the Employment Laws and Regulations.

58. The Restaurant Workers, including Plaintiffs, have been deprived of their rightfully earned overtime compensation as a direct and proximate result of Defendants' policies and practices and Defendants' failure and refusal to pay that compensation. The Restaurant Workers, including Plaintiffs, are entitled to recover such amounts, plus interest, attorney's fees and costs.

FOURTH CAUSE OF ACTION

(Failure to Furnish Accurate Wage and Hour Statements - Labor Code § 226
By Plaintiffs Individually and on Behalf of All Class Members)

59. As a separate and distinct cause of action, Plaintiffs complain and reallege all of the allegations contained in this complaint, and incorporate them by reference into this cause of action as though fully set forth herein, excepting those allegations which are inconsistent with this cause of action.

60. During the Class Period, Defendants have routinely failed to provide Class Members, including Plaintiffs, with timely and accurate wage and hour statements showing gross hours earned, total hours worked, all deductions made, net wages earned, and all applicable hourly rates in effect during each pay period and the corresponding number of hours worked at each hourly rate.

61. As a consequence of Defendants' actions, Class Members are entitled to all available statutory penalties, costs and reasonable attorneys' fees, including those provided in Labor Code § 226(e), as well as all other available remedies.

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FIFTH CAUSE OF ACTION

(For Waiting Time Penalties - Labor Code §§ 201-203

By Plaintiffs Individually and on Behalf of All Class Members)

62. As a separate and distinct cause of action, Plaintiffs complain and reallege all of the allegations contained in this complaint, and incorporate them by reference into this cause of action as though fully set forth herein, excepting those allegations which are inconsistent with this cause of action.

63. During the Class Period, Defendants failed to pay accrued wages and other compensation due immediately to each Class Member who was terminated, and failed to pay accrued wages and other compensation due within seventy-two hours to each Class Member, including Plaintiffs, who ended their employment.

64. Labor Code § 201 requires an employer who discharges an employee to pay compensation due and owing to said employee immediately upon discharge. Labor Code § 203 provides that if an employer willfully fails to pay compensation promptly upon discharge, as required by § 201, the employer is liable for waiting time penalties in the form of continued compensation for up to 30 work days.

65. Defendants, and each of them, willfully failed and refused, and continue to willfully fail and refuse, to timely pay compensation due to Class Members upon termination or resignation, as required by Labor Code § 201. As a result, Defendants, and each of them, are liable to Plaintiffs and all Class Members similarly situated for waiting time penalties, together with interest thereon, pursuant to Labor Code § 203, as well as all other available remedies, in an amount according to proof at the time of trial.

SIXTH CAUSE OF ACTION

(Failure to Provide Meal and Rest Periods - Labor Code §§ 226.7 and 512

By Plaintiffs Individually and on Behalf of All Class Members)

66. As a separate and distinct cause of action, Plaintiffs complain and reallege all of the allegations contained in this complaint, and incorporate them by

1 reference into this cause of action as though fully set forth herein, excepting those
2 allegations which are inconsistent with this cause of action.

3 67. During the Class Period, Defendants have failed to provide Restaurant
4 Employees, including Plaintiffs, legally compliant meal and rest periods during their
5 work shifts, and have failed to compensate Restaurant Employees, including
6 Plaintiff, for those meal and rest periods, as required by Labor Code § 226.7 and the
7 other applicable sections of the Employment Laws and Regulations.

8 68. The Restaurant Employees, including Plaintiffs, have been deprived of
9 their rightfully earned compensation for meal and rest periods as a direct and
10 proximate result of Defendants' policies and practices and Defendants' failure and
11 refusal to pay that compensation. The Restaurant Employees, including Plaintiffs,
12 are entitled to recover such amounts pursuant to Labor Code § 226.7(b), plus
13 interest.

14 **SEVENTH CAUSE OF ACTION**

15 (For Indemnification - Labor Code § 2802

16 By Plaintiff Individually and on Behalf of All Class Members)

17 69. As a separate and distinct cause of action, Plaintiffs complain and
18 reallege all of the allegations contained in this complaint, and incorporate them by
19 reference into this cause of action as though fully set forth herein, excepting those
20 allegations which are inconsistent with this cause of action.

21 70. Pursuant to Labor Code § 2802(a), an employer shall indemnify its
22 employees for all necessary expenditures or losses incurred by the employees in
23 direct consequence of the discharge of their duties, or of their obedience to the
24 directions of the employer, even though unlawful, unless the employee, at the time of
25 obeying the directions, believed them to be unlawful.

26 71. During the Class Period, the Class Members, including Plaintiff,
27 incurred necessary business-related expenses and costs that were not fully
28 reimbursed by Defendants, including and without limitations, clothing unique to

1 their employment, uniform maintenance expenses, and application software to access
2 work schedules.

3 71. During the Class Period, Defendants failed to reimburse the Class
4 Members, including Plaintiffs, for necessary business-related expenses and costs.

5 73. The Class Members, including Plaintiffs, are entitled to recover from
6 Defendants their business-related expenses and costs incurred during the course and
7 scope of their employment, plus attorneys' fees, costs and interest accrued from the
8 date on which the employee incurred the necessary expenditures.

9 **EIGHTH CAUSE OF ACTION**

10 (For Unfair Competition - Business & Professions Code § 17200, et seq.

11 By Plaintiffs Individually and on Behalf of All Class Members)

12 74. As a separate and distinct cause of action, Plaintiffs complain and
13 reallege all of the allegations contained in this complaint, and incorporate them by
14 reference into this cause of action as though fully set forth herein, excepting those
15 allegations which are inconsistent with this cause of action.

16 75. As a result of Defendants' unfair business practices, Defendants have
17 reaped unfair benefits and illegal profits at the expense of Class Members, including
18 Plaintiffs, and members of the public. Defendants should be made to disgorge their
19 ill-gotten gains and to restore them to Class Members, including Plaintiffs.

20 76. Defendants' unfair business practices violate the Unfair Competition
21 Laws and entitle Plaintiff to seek preliminary and permanent injunctive relief
22 including, but not limited to, orders that Defendants account for, disgorge and restore
23 to the Class Members, including Plaintiffs, the wages and other compensation
24 unlawfully withheld from them.

25 77. In addition to the actual damages caused by the unlawful conversion,
26 the Class Members, including Plaintiffs, are entitled to recover exemplary damages
27 for the sake of example and by way of punishing Defendants.

28 **NINTH CAUSE OF ACTION**

Civil Penalties Under The Private Attorneys General Act of 2004
(On Behalf of Plaintiff Sheldon and Other Aggrieved Employees Against All
Defendants)

77. Plaintiff Sheldon incorporates by reference the allegations set forth above.

78. As set forth above, Plaintiff Sheldon has complied with the procedures for bringing suit specified in California Labor Code Section 2699.3. By letter dated February 2, 2017, Plaintiff Sheldon, on behalf of herself and the other aggrieved employees, gave written notice by certified mail to the LWDA and to Defendants of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. During the sixty-day exhaustion period following transmittal of the February 2, 2017 letter, the LWDA did not advise Plaintiff Sheldon it intends to take action on Plaintiff's notice.

79. This action arises out of the allegedly unlawful labor practices of Defendants in California. Through this private attorneys general action, Plaintiff Sheldon represents herself, and other aggrieved employees of Defendants that were in California, against whom Defendants have allegedly committed labor law violations alleged herein. As a result of the allegedly unlawful conduct described herein, Plaintiff now seeks to recover civil penalties, including the value of unpaid wages, attorneys' fees and costs, pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code Sections 558 and 2698, et seq.

80. Labor Code Section 1198 makes it unlawful for an employer to employ an employee under conditions that violate the applicable Wage Order.

81. Plaintiff Sheldon is informed and believes that throughout the Relevant Time Period, Defendants have applied centrally devised policies and practices to Plaintiff and the other aggrieved employees with respect to wages, hours, and working conditions.

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1 82. Plaintiff Sheldon seeks to recover the PAGA civil penalties through a
2 representative action as permitted by PAGA and the California Supreme Court in
3 *Arias v. Superior Court* (2009) 56 Cal.4th 969. Therefore, Plaintiff Sheldon is not
4 required to seek class certification of the PAGA claims. *See also Brown v. Ralphs*
5 *Grocery Store*, (2011) 197 Cal.App.4th 489, 494.

6 Failure to Pay Minimum Wages and Designated Rates

7 83. At all relevant times, California Labor Code sections 1194, 1197 and
8 1197.1 provide that the minimum wage for employees fixed by the IWC is the
9 minimum wage to be paid to employees and the payment of a wage less than the
10 minimum so fixed is unlawful. Additionally, Code Section 1198 makes it unlawful
11 for an employer to employ an employee under conditions that violate the applicable
12 Wage Order.

13 84. Where any statute or contract requires an employer to maintain the
14 designated wage scale, Labor Code Section 223 makes it unlawful for an employer to
15 secretly pay a lower wage while purporting to pay the wage designated by statute or
16 by contract.

17 85. At all relevant times, Defendants maintained a policy and practice of
18 requiring Plaintiff and the other aggrieved employees to remain under Defendants'
19 control without paying therefore, which resulted in them earning less than the legal
20 minimum wage in the State of California for all hours worked. At all relevant times,
21 Defendants maintained a policy and practice of requiring Plaintiff Sheldon and the
22 other aggrieved employees to remain under Defendants' control without paying
23 therefor, which resulted in them earning less than the legal minimum wage in the
24 State of California for all hours worked.

25 86. Defendants' failure to pay Plaintiff Sheldon and other aggrieved
26 employees minimum wages and designated violates California Labor Code sections
27 223, 1182.12, 1194, and 1197. Plaintiff Sheldon and other aggrieved employees are

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entitled to recover civil penalties pursuant to sections 1197.1 and 2699(a), (f), and (g).

Failure to Pay Overtime Compensation

87. Labor Code Section 1194 provides that an employee receiving less than the legal overtime compensation is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

88. Labor Code Section 510(a) states: "Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee." Labor Code Section 510(a) further states: "Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee." Labor Code Section 510(a) further states: "[A]ny work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee."

89. Throughout the Relevant Time Period, Wage Order No. 5-2001 provided for payment of overtime wages equal to one and one-half (1 1/2) times an employee's regular rate of pay for all hours worked over eight (8) hours per day and/or forty (40) hours in a workweek, and/or for payment of overtime wages equal to double the employee's regular rate of pay for all hours worked in excess of twelve (12) hours in any workday and/or for all hours worked in excess of eight (8) hours on the seventh (7th) day of work in any one workweek.

90. Plaintiff Sheldon and other aggrieved employees were classified as non-exempt by Defendants and were therefore entitled to overtime compensation for all hours worked in excess of the hours and time specified in the Wage Order, statutes and regulations identified herein.

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1 91. As a matter of policy and/or practice, Plaintiff Sheldon and other
2 aggrieved employees were frequently required to performed work before and after
3 their scheduled shift as well as during meal and rest breaks. Such work includes but
4 is not limited to Defendants' practice and/or policy of having Restaurant Employees,
5 including Plaintiff, complete "side work" after they clock out from their shifts.
6 Other policies and/or practices include but is not limited to, the Company having
7 Restaurant Employees, including Plaintiff Sheldon, work "double shifts" during peak
8 times in the year. Specifically, Defendants directed Restaurant Employees, including
9 Plaintiffs, to clock out from the end of the first shift, wait in or around the
10 restaurant's premises, and then almost immediately clock-in for the second shift.
11 The Restaurant Employees, including Plaintiff Sheldon, who work "double shifts"
12 routinely work over 8 hours in a day but are not compensated with any overtime pay
13 for work beyond the eight hour.

14 92. Accordingly, Defendants failed to properly record the actual hours
15 worked by Plaintiffs and other aggrieved employees, and thus failed to pay overtime
16 wages for the actual amount of overtime hours worked.

17 93. Additionally, Defendants improperly calculated the amount of overtime
18 wages owing, and thus failed to pay Plaintiffs and other aggrieved employees all
19 overtime wages due.

20 Failure to Provide Meal and Rest Breaks

21 94. Labor Code Section 512 and Section 11 of the Wage Order impose an
22 affirmative obligation on employers to provide non-exempt employees with
23 uninterrupted, duty-free, meal periods of at least thirty (30) minutes for each work
24 period of five (5) or more hours, and to provide them with two uninterrupted, duty-
25 free, meal periods of at least thirty (30) minutes for each work period of more than
26 ten (10) hours.

27 95. Labor Code Section 226.7 and Section 11 of the Wage Order prohibit
28 employers from requiring employees to work during required meal periods and

1 require employers to pay non-exempt employees an additional hour of premium
2 wages on each workday that the employee is not provided with a required meal
3 period.

4 96. At relevant times during the applicable limitations period, Defendants
5 failed to provide Plaintiffs with an uninterrupted meal period of at least thirty (30)
6 minutes on each day that she worked five (5) or more hours, as required by Labor
7 Code Section 512 and the Wage Order, as a result of duties and schedules that do not
8 permit them to take all legally required meal periods. Plaintiff Sheldon is informed,
9 believes and thereon alleges that, at relevant times during the Relevant Time Period,
10 Defendants maintained a policy or practice of not providing the other aggrieved
11 employees with uninterrupted meal periods of at least thirty (30) minutes for each
12 five (5) hour work period, as required by Labor Code Section 512 and the Wage
13 Order, as a result of duties and schedules that do not permit them to take all legally
14 required meal periods.

15 97. At relevant times during the applicable limitations period, Defendants
16 failed to provide Plaintiffs with two uninterrupted meal periods of at least thirty (30)
17 minutes on each day that she worked ten (10) or more hours, as required by Labor
18 Code Section 512 and the Wage Order, as a result of duties and schedules that do not
19 permit them to take all legally required meal periods. Additionally, Defendants failed
20 to provide Plaintiffs with an uninterrupted meal period of at least thirty (30) minutes
21 within five (5) hours of her first meal period, as a result of duties and schedules that
22 do not permit them to take all legally required meal periods.

23 98. Plaintiff Sheldon is informed and believes and thereon alleges that, at
24 relevant times during the applicable limitations period, Defendants maintained a
25 policy or practice of not providing the other aggrieved employees with two
26 uninterrupted meal periods of at least thirty (30) minutes on each day that they
27 worked ten (10) or more hours, as required by Labor Code Section 512 and the Wage
28 Order, as a result of duties and schedules that do not permit them to take all legally

1 required meal periods. Additionally, Defendants maintained a policy or practice of
2 not providing the other aggrieved employees with an uninterrupted meal period of at
3 least thirty (30) minutes within five (5) hours of their first meal period, as a result of
4 duties and schedules that do not permit them to take all legally required meal
5 periods.

6 99. Section 12 of the Wage Order imposes an affirmative obligation on
7 employers to permit and authorize employees to take required rest periods at a rate of
8 no less than ten (10) minutes of net rest time for each four (4) hour work period, or
9 major portion thereof, that must be in the middle of each work period insofar as is
10 practicable.

11 100. Labor Code Section 226.7 and Section 12 the Wage Order prohibit
12 employers from requiring employees to work during required rest periods and
13 require employers to pay non-exempt employees an additional hour of premium
14 wages on each workday that the employee is not provided with the required rest
15 period.

16 101. At relevant times during the applicable limitations period, Defendants
17 failed to provide Plaintiff with a net rest period of at least ten (10) minutes for each
18 four (4) hour work period, or major portion thereof, as required by the Wage Order,
19 as a result of duties and schedules that do not permit Plaintiff to take all legally
20 required rest breaks.

21 102. Plaintiff is informed, believes and thereon alleges that, at relevant times
22 during the applicable limitations period, Defendants maintained a policy or practice
23 of not providing the other aggrieved employees with net rest periods of a least ten
24 (10) minutes for each four (4) hour work period, or major portion thereof, as required
25 by the Wage Order, as a result of duties and schedules that do not permit them to
26 take all legally required rest breaks.

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Failure to Pay Wages Upon Termination

103. Labor Code Section 201 provides that all earned and unpaid wages of an employee who is discharged are due and payable immediately at the time of discharge.

104. Labor Code Section 202 provides that all earned and unpaid wages of an employee who quits after providing at least 72-hours notice before quitting are due and payable at the time of quitting and that all earned and unpaid wages of an employee who quits without providing at least 72-hours notice before quitting are due and payable within 72 hours.

105. Labor Code Section 203 provides that the wages of an employee continue on a daily basis as a penalty for up to 30 days where an employer willfully fails to timely pay earned and unpaid wages to the employee in accordance with Labor Code Section 201 or Section 202.

106. Plaintiff is informed and believes that Defendants' failures to timely pay Plaintiff and the aggrieved employees all of their earned and unpaid wages, including unpaid minimum wage and overtime, and not being provided with rest and meal period premium wages, have been willful in that, at all relevant times, Defendants have deliberately maintained policies and practices that violate the requirements of the Labor Code and the Wage Order even though, at all relevant times, they have had the ability to comply with those legal requirements.

Failure to Reimburse Work-Related Expenditures

107. California Labor Code section 2802 requires that "an employer shall indemnify his or her employees 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...."

108. As a direct and proximate result of Defendants' policies and/or practices in violation of Labor Code §§ 2802 and 2804, and Section 9 of Wage Order 5, Plaintiff and the other aggrieved employees were damaged in sums, which will be

1 shown according to proof.

2 109. Plaintiff and the other aggrieved employees are entitled to attorneys'
3 fees and costs of suit pursuant to Labor Code § 2802(c) for bringing this action.

4 110. Pursuant to Labor Code § 2802(b), any action brought for the
5 reimbursement of necessary expenditures carries interest at the same rate as
6 judgments in civil actions. Thus, Plaintiff and the other aggrieved employees are
7 entitled to interest, which shall accrue from the date on which they incurred the
8 initial necessary expenditure.

9 111. As a direct and proximate result of the bad faith actions of Defendants,
10 Plaintiff and the other aggrieved employees have suffered damages due to these
11 violations of California law and seeks all damages allowed by law, according to
12 proof. Plaintiff and the other aggrieved employees seek all interest, fees, attorneys'
13 fees, and civil penalties to which she is entitled at law, including but not limited to
14 Labor Code Sections 218.5 and 218.6.

15 Failure to Provide and Maintain Complaint Wage Statements

16 112. Labor Code Section 1174 requires that every person employing labor in
17 this state shall keep (1) a record showing the names and addresses of all employees
18 employed and the ages of all minors; (2) at a central location in the state or at the
19 plants or establishments at which employees are employed, payroll records showing
20 the hours worked daily by and the wages paid to, and the number of piece-rate units
21 earned by and any applicable piece rate paid to, employees employed at the
22 respective plants or establishments; (3) such records in accordance with rules
23 established for this purpose by the commission, but in any case, on file for not less
24 than three years. This statute also prevents an employer from prohibiting an
25 employee from maintaining a personal record of hours worked, or, if paid on a piece-
26 rate basis, piece-rate units earned. Defendants have willfully failed to keep the
27 records required by Section 1174.

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1 113. Pursuant to California Labor Code Section 226(a), Plaintiff and the
2 other aggrieved employees were entitled to receive, semimonthly or at the time of
3 each payment of wages, an accurate itemized statement showing: (a) gross wages
4 earned; (b) net wages earned; (c) all applicable hourly rates in effect during the pay
5 period; and (d) the corresponding number of hours worked at each hourly rate by the
6 employee.

7 114. Defendants failed to provide Plaintiffs with accurate itemized
8 statements in accordance with California Labor Code Section 226(a) by providing
9 Plaintiffs with wage statements with inaccurate entries for hours worked,
10 corresponding rates of pay, and total wages earned as a result of the unlawful labor
11 and payroll practices described herein.

12 115. Plaintiff is informed and believes and thereon alleges that, at all relevant
13 times during the applicable limitations period, Defendants maintained a policy or
14 practice of not providing aggrieved employees with accurate itemized wage
15 statements by providing them with wage statements with inaccurate entries for hours
16 worked, corresponding rates of pay, total wages and deductions from wages earned
17 as a result of the unlawful labor and payroll practices described herein.

18 116. Plaintiff Sheldon is informed and believes and thereon alleges that
19 Defendants' failure to provide her and the aggrieved employees with accurate written
20 wage statements is knowing and intentional.

21 117. Plaintiff Sheldon is informed and believes and thereon alleges that
22 Defendants have the ability to provide her and the aggrieved employees with
23 accurate wage statements, but intentionally provide wage statements that they know
24 are not accurate.

25 118. As a result of being provided with inaccurate wage statements by
26 Defendants, Plaintiffs and the aggrieved employees have suffered an injury. Their
27 legal rights to receive accurate wage statements were violated and they were misled
28 about the amount of wages they had actually earned and were owed. In addition, the

1 absence of accurate information on their wage statements prevented immediate
2 challenges to Defendants' unlawful pay practices, has required discovery and
3 mathematical computations to determine the amounts of wages owed, has caused
4 difficulty and expense in attempting to reconstruct time and pay records, and/or has
5 led to the submission of inaccurate information about wages and amounts deducted
6 from wages to state and federal government agencies.

7 119. California Labor Code sections 2699(a) and (g) authorize an aggrieved
8 employee, on behalf of herself and other current or former employees, to bring a civil
9 action to recover civil penalties pursuant to the procedures specified in California
10 Labor Code Section 2699.3.

11 Reporting Time Pay Violation

12 120. IWC Wage Order 5-2001(5) and California Code of Regulations, title 8,
13 section 11050(5) require employers to pay employees for half of their usual or
14 scheduled day's work, but in no event less than two hours nor more than four hours,
15 at the employee's regular rate of pay, for each workday that an employee is required
16 to report to work and does report, but is not put to work, or is furnished less than half
17 of the employee's usual or scheduled day's work. California Labor Code section 1198
18 codifies the IWC's Wage Orders. Further, California Labor Code section 204(a)
19 requires employers to pay employees all wages earned, including reporting time
20 wages.

21 121. Defendants failed to pay Plaintiff and other aggrieved Restaurant
22 Employees reporting time pay in violation of the California Labor Code, IWC Wage
23 Order 5-2001, and the California Code of Regulations. Defendants would schedule
24 Plaintiff and Restaurant Employees to work and when they showed up to work,
25 Defendants would send them home for the day. Whenever this occurred, Defendants
26 did not pay Plaintiff and other aggrieved Restaurant Employees with any reporting
27 time pay.

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122. Thus, Defendants owe Plaintiff and other aggrieved Restaurant Employees the two to four hours of pay at their regular rates of pay which they were entitled to for the shifts where they reported to work but were furnished less than half of their usual or scheduled day's work or not compensated at all. As a result, Plaintiff and other aggrieved Restaurant Employees are entitled to recover reporting time pay dating back to February 2, 2016, plus reasonable attorneys' fees and costs of suit under California Labor Code sections 204 and 1198, and IWC Wage Order 5-2001(5).

Section 558 Penalties

123. The PAGA claims are also brought against Defendants pursuant to provisions of the labor code including § 558 which permits liability of persons or employers who violate or cause to be violated Labor Code and IWC regulations. California Labor Code Section 2699.

124. The PAGA states:

Notwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees...

125. One provision of law enforceable through PAGA is Labor Code § 558, which states the following:

(a) Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or 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 any 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...

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Penalties Authorized by PAGA

1 126. Pursuant to California Labor Code sections 2699(a) and (f), Plaintiff
2 and the other aggrieved employees of Defendants are entitled to, and seek to, recover
3 civil penalties for Defendants' violations of California Labor Code sections 200,
4 201, 202, 203, 226, 226.7, 512, 1174, 1198, and 2802, during the applicable
5 limitations period in the following amounts:

6 a. For violations of California Labor Code sections 200, 201, 202,
7 203, 226.7, and 2802, one hundred dollars (\$100.00) for each aggrieved employee
8 per pay period for each initial violation and two hundred dollars (\$200.00) for each
9 aggrieved employee per pay period for each subsequent violation (penalty amounts
10 established by California Labor Code Section 2699(f)(2));

11 b. For violations of California Labor Code Section 1197, one
12 hundred dollars (\$100.00) for each aggrieved employee per pay period for each
13 initial violation and two hundred dollars and fifty (\$250.00) for each aggrieved
14 employee per pay period for each subsequent violation regardless of whether the
15 initial violation is intentionally committed (penalty amounts established by
16 California Labor Code § 1197.1);

17 c. For violations of California Labor Code Sections 221 and 223
18 one hundred dollars (\$100.00) for each aggrieved employee for each initial violation
19 and two hundred dollars (\$200.00) for each aggrieved employee for each subsequent
20 or willful violation (penalty amounts established by California Labor Code §225.5);

21 d. For violations of California Labor Code Section 1174, five
22 hundred dollars (\$500.00) for each of Defendants' violations in addition to any other
23 penalties or fines permitted by law (penalty amounts established by California Labor
24 Code § 1174.5);

25 e. For violations of California Labor Code Section 226, two hundred
26 fifty dollars (\$250.00) per employee for initial violation and one thousand dollars
27 (\$1,000.00) per employee for each subsequent violation (penalty amounts established
28

by California Labor Code Section 226.3);

f. For violations of California Labor Code Section 1174, five hundred dollars (\$500) for each of Defendants' violations in addition to any other penalties or fines permitted by law (penalty amounts established by California Labor Code Section 1174.5);

g. For violations of California Labor Code section 512 and, Wage Order 5-2001 Sections 9, 11, and 12, fifty dollars (\$50.00) for each aggrieved employee for each initial violation for pay period for which the employee was underpaid in addition to an amount sufficient to recover unpaid wages and one hundred dollars (\$100.00) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover unpaid wages (penalty amounts established by California Labor Code Section 558).

h. For violations of California Labor Code Section 558, fifty dollars (\$50.00) for initial violation, fifty dollars (\$50.00) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover unpaid wages; for each subsequent violation, one hundred dollars (\$100.00) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.

127. Pursuant to California Labor Code Section 2699(g), Plaintiff Sheldon, on behalf of herself and the other aggrieved employees, is entitled to an award of reasonable attorneys' fees and costs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of the Class, pray for judgment against Defendants as follows:

1. For an Order certifying the First through Eight Causes of Action as a class action;
2. For an Order appointing Plaintiff's counsel as Class counsel;

3. For compensatory damages in an amount to be ascertained at trial;
4. For restitution in an amount to be ascertained at trial;
5. For punitive and exemplary damages in an amount to be ascertained at trial;
6. For all penalties pursuant to PAGA and allowed by law;
7. For prejudgment interest;
8. For reasonable attorneys' fees pursuant to Labor Code §§ 1194;
9. For costs of suit incurred herein;
10. For disgorgement of profits garnered as a result of Defendants' unlawful failure to pay wages, including overtime wages, earned; and
11. For such further relief as the Court may deem appropriate.

DATED: July 10, 2018

BOYAMIAN LAW, INC.
LAW OFFICES OF THOMAS W. FALVEY
HARTOUNIAN LAW FIRM

By: /s/ Armand R. Kizirian
ARMAND R. KIZIRIAN
Attorneys for Plaintiff Jennifer Pae,
individually and on behalf of all others
similarly situated

DEMAND FOR JURY TRIAL

Plaintiffs Jennifer Pae and Alexandra Sheldon, individually, and on behalf of all similarly situated individuals, demand jury trial of this matter.

DATED: July 10, 2018

BOYAMIAN LAW, INC.
LAW OFFICES OF THOMAS W. FALVEY
HARTOUNIAN LAW FIRM

By: /s/ Armand R. Kizirian
ARMAND R. KIZIRIAN
Attorneys for Plaintiff Jennifer Pae,
individually and on behalf of all others
similarly situated

Exhibit “B”

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Pae, Sheldon, et al. v. Fox Restaurant Concepts, LLC d/b/a True Food Kitchen, et al.
Case No. 2:16-cv-06965-DSF-FFM

NOTICE OF CLASS ACTION SETTLEMENT

To: All persons employed as non-exempt front of the house employees in California at all of Defendants' True Food Kitchen restaurant locations between July 22, 2012, until [the date of preliminary approval].

PLEASE READ THIS NOTICE CAREFULLY.

Pursuant to the Order of the United States District, Central District of California, entered on [REDACTED], 2018, **YOU ARE HEREBY NOTIFIED AS FOLLOWS:**

A proposed settlement (the "Settlement") has been reached among the parties in this class action pending in the United States District Court, Central District of California, brought on behalf of all individuals described above (the "Class"). The Court has preliminarily approved the Settlement and conditionally certified the Class for purposes of the Settlement only. You have received this notice because Defendants' records indicate that you are a member of the Class. This notice is designed to inform you of how you can participate in the Settlement, object to the Settlement, or elect to exclude yourself from the Settlement.

I. BACKGROUND OF THE CASE

On July 22, 2016, Plaintiff Jennifer Pae filed a proposed class action complaint in Los Angeles County Superior Court (Case No. BC628004) against Defendants Defendants Fox Restaurant Concepts LLC d/b/a True Food Kitchen, FRC True Food SMP LLC, FRC True Food SDFV LLC, and FRC True Food NBF LLC (collectively "Defendants" or "True Food Kitchen") alleging eight (8) causes of action for: (1) unpaid wages (Cal. Labor Code §§ 216, 1194); (2) failure to pay minimum wage (Cal. Labor Code § 1194, et seq.); (3) failure to pay overtime compensation (Cal. Labor Code § 510); (4) failure to pay meal and rest period compensation (Cal. Labor Code §§ 226.7, 512), (5) failure to provide accurate itemized wage statements (Cal. Labor Code § 226), (6) waiting time penalties (Cal. Labor Code § 203), (7) failure to reimburse business expenses (Cal. Labor Code §§ 2800 and 2802), and (8) unfair business practices (Cal. Bus. & Prof. Code § 17200 et seq.). Defendants removed the case to District Court (Case No. 2:16-CV-06965-DSF-FFM) ("The Pae Federal Action").

On April 26, 2017, Plaintiff Alexandra Sheldon filed a proposed representative action under the California Private Attorneys General Act (PAGA) on behalf of all Aggrieved Employees and the State of California -- alleging only claims under PAGA -- in Los Angeles County Superior Court (“Court”), Case No. BC659173. The Sheldon Action asserts a singular cause of action for penalties under PAGA for failure to properly pay wages, overtime and designated rates, failure to provide meal and rest breaks, failure to timely pay wages at termination, failure to reimburse business expenses, failure to pay reporting time pay, failure to provide and maintain compliant wage statements, Section 558 penalties and other penalties authorized by PAGA (“the Sheldon State Action”).

Throughout 2016 and 2017, Plaintiff secured a list of putative Class Members from Defendants and began gathering information from Class Members. The Parties also engaged in the discovery process in earnest. The Parties exchanged information relevant to class certification, merits, and damages issues. Defendants provided Plaintiffs, among other things, a statistically significant sample of payroll and time records, and the policies and procedures relevant to the claims asserted in both Complaints.

On April 4, 2018, the Parties held a private mediation with a neutral, Steve Serratore. After lengthy, good-faith negotiations, and a reasonable assessment of the risks of continued litigation, the Parties tentatively reached an agreement to settle the claims raised in both the Pae Federal Action and Sheldon State Action (collectively, “Actions”) pursuant to the terms and conditions set forth below.

Plaintiffs believe that these Actions are meritorious based on alleged violations of California’s wage and hour laws, and that the Actions are appropriate for class and representative treatment. Defendants deny any liability or wrong doing of any kind associated with the claims alleged, and contend that, for any purpose other than settlement, the Pae Federal Action and Sheldon State Action are not appropriate for class or representative treatment. Defendants further contend that they have complied in all respects with the California Labor Code, the California Business and Professions Code, and the applicable Industrial Welfare Commission Wage Orders.

The Parties agreed that the Court shall certify a class solely for the purpose of implementing the terms of this Settlement. To that end, the Parties have further agreed to combine the Pae Federal Action and Sheldon State Action for purposes of settlement.

Class Counsel has conducted an in-depth investigation regarding the suitability of the named Plaintiffs’ claims for class treatment; the adequacy of the named Plaintiffs to represent the proposed Class; other class certification requirements; the merits of the liability issues; and the amount of damages owed to Class Members. Class Counsel’s

investigation consisted of: (1) reviewing a statistically significant sample of payroll and time records; (2) interviewing members of the Class about their work experiences; (3) reviewing Defendants' policies and procedures relevant to Plaintiff's claims; (4) researching the applicable law; and (5) taking the deposition of Defendants' key witness and defending the deposition of Plaintiff Pae. The Parties also participated in a full-day mediation before a well-respected class action mediator, Steve Serratore, who assisted the parties in reaching this compromise. Based on their own independent investigation and evaluation, Class Counsel are of the opinion that the Settlement is fair, reasonable, and adequate and is in the best interest of the Class Members in light of all known facts and circumstances, including the risk of significant delay and defenses asserted by Defendants. Defendants agree that the Settlement is fair, reasonable and adequate.

II. SUMMARY OF THE SETTLEMENT

A. Who is included in the Settlement?

You are a Class Member and are included in the Settlement if you worked in at least one True Food Kitchen restaurant location as a "front of the house", non-exempt, hourly employee at any time in California from July 22, 2012 until [the date of preliminary approval].

B. What will I receive from the Settlement?

Defendants will make a settlement payment ("Settlement Payment") to each Class Member who does not elect to exclude him or herself from the settlement.

The Settlement calls for the payment by Defendants of Nine Hundred Thousand Dollars (\$900,000) (referred to as the "Gross Settlement Amount"). As will be set forth in more detail below, the amount available for Class Members from the \$900,000 is estimated at \$____, calculated as follows:

-	\$900,000.00	(Gross Settlement Amount)
-	\$225,000.00	(Plaintiff's Attorneys' Fees)
-	\$30,000.00	(Plaintiffs' Litigation Costs)
-	\$25,000.00	(Class Representatives' Enhancement, in the aggregate)
-	\$20,000.00	(Settlement Administrator Fees - Estimate)
-	\$15,000.00	(Payment to the Labor Workforce and Development Agency)
-	\$_____	(Net Available to Class or "Remainder", before applicable deductions and withholdings for federal and state taxes, including payroll taxes)

This total will vary if the Court does not approve the requested amounts for attorneys' fees, litigation costs, or class representatives' enhancements, or if the cost of administration is different than estimated. The approximate \$ [REDACTED] Remainder of the Gross Settlement Amount will be distributed as follows:

The Class Members' Distribution Amount will be a pro rata percentage of the Remainder calculated by: (1) determining the total number of weeks worked by that Class Member from the period of July 22, 2012 to [the date of preliminary approval]; (2) dividing each Class Member's total weeks worked by the total weeks worked by all other participating Class Members for the same time period; and (3) multiplying the resulting fraction by the Remainder.

There is no reversion and uncashed checks shall be redistributed to the Los Angeles Regional Food Bank, which has been approved by the Court.

C. When will I receive my Settlement Payment?

The Settlement Payments will be paid approximately fifty-five (55) calendar days after final court approval and judgment has been entered and any rights to appeal have expired, been dismissed, or otherwise exhausted.

D. What if I do not want to participate in the Settlement?

You will not be included in the Settlement if you elect not to participate by submitting an Exclusion Form that is provided with this Notice and in accordance with the conditions for submitting that form. If you return the Exclusion Form, you will not receive a Settlement Payment or be bound by the terms of the Settlement.

E. What if I do not submit an Exclusion Form?

If you do not timely mail an Exclusion Form, you will be bound by the Settlement. You should only send an Exclusion Form if you do not want to be part of the settlement and do not want to receive a settlement payment.

F. Settlement Administrator.

The Court has appointed [Third Party Administrator] to act as an independent Settlement Administrator to process this Settlement and to resolve any dispute concerning a Class Member's eligibility to participate in the Settlement and his or her share of the Settlement proceeds.

G. Release of Claims.

Upon the Effective Date of the Settlement (as defined in the Stipulation of Settlement, and except as to such rights or claims as may be created by this Stipulation of Settlement, the Class Members (other than those who file Exclusion Forms) fully releases and discharges Defendants, and each of their respective past, present and future owners, stockholders, parent corporations, related or affiliate companies, subsidiaries, officers, directors, shareholders, employees, agents, principals, heirs, representatives, accountants, attorneys, auditors, consultants, insurers and re-insurers, and their respective successors and predecessors in interest, each of their company-sponsored employee benefit plans of any nature (including, without limitation, profit-sharing plans, pension plans, 401(k) plans, and severance plans) and all of their respective officers, directors, employees, administrators, fiduciaries, trustees and agents, and any individual or entity which could be jointly liable with Defendants (“Released Parties”), from all claims, causes of action, demands, rights, liabilities, damages, restitution, penalties and other relief based on the allegations of wrongdoing which, based on the facts plead, were alleged in the operative complaint for violations of any state or federal laws (including but not limited to the California Labor Code (including, without limitation, California Labor Code sections California Labor Code sections 200, 201, 202, 203, 204, 210, 216, 221, 223, 225.5, 226, 226.3, 226.7, 510, 512, 516, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2800, 2802, 2804) and all applicable Industrial Welfare Commission wage orders, and the Fair Labor Standards Act (29 U.S.C. §§201, *et seq.*) (“FLSA”), California Industrial Welfare Commission Wage Orders, California's Unfair Business Practices law, Cal. Bus. & Prof. Code sections 17200, *et seq.*, and California's Private Attorney General Act (“PAGA”), Cal. Lab. Code §§ 2698, *et seq.*, or any other claims in law or equity, to the extent the claims, causes of action, damages, restitution, penalties, and other relief arose out of failure to pay minimum wage, overtime or other wages, including, without limitation, for time worked off-the-clock and any failure to pay any Section 226.7 premium wages, failure to pay reporting time pay, failure to provide meal and rest periods, failure to pay wages due at termination, failure to keep accurate payroll records or provide accurate itemized wage statements and failure to reimburse business expenses. (collectively, “Class Members’ Released Claims”).

If the Settlement is not approved by the Court or does not become final for some other reason, the litigation will continue.

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H. Class Representative.

In addition to their shares as Participating Class Members, Plaintiff Jennifer Pae shall be paid up to \$15,000, subject to Court approval, and PAGA Representative Alexandra Sheldon shall be paid up to \$10,000, subject to Court approval, for their services as Class or PAGA Representatives, as well as their willingness to accept the risks in the event of an unsuccessful outcome. These payments will be deducted from the Gross Settlement Amount.

I. Attorneys' Fees and Costs.

Class Counsel will seek approval from the Court for payment of attorneys' fees in the amount of twenty-five percent of the Gross Settlement Amount (or \$225,000.00) plus up to \$30,000.00 in costs which, if approved by the Court, will be deducted from the Gross Settlement Amount. Class Counsel believes that the amount for costs and attorneys' fees requested is fair and reasonable, and Defendants will not oppose Class Counsel's request for that amount.

J. Costs of Administration.

The costs of administering the Settlement will be deducted from the Gross Settlement Amount. The Settlement Administrator estimates this amount will not exceed \$20,000.00 (**Subject to Change Based on Bids From TPA**).

III. PLAINTIFFS AND CLASS COUNSEL SUPPORT THE SETTLEMENT

Plaintiffs, as Class and PAGA Representatives, and Class Counsel support this Settlement. Their reasons include the inherent risk of denial of class certification, the risk of a trial on the merits, and the inherent delays and uncertainties associated with litigation. Based on their experience litigating similar cases, Class Counsel believes that further proceedings in this case, including a trial and probable appeals, would be very expensive and protracted. No one can confidently predict how the various legal questions at issue, including the amount of damages, would ultimately be resolved. Therefore, upon careful consideration of all of the facts and circumstances of this case, Class Counsel believes that the Settlement is fair, reasonable, and adequate.

IV. WHAT ARE YOUR RIGHTS AS A CLASS MEMBER?

A. Participating in the Settlement.

Plaintiffs, as Class and PAGA Representatives, and Class Counsel represent your interests as a Class Member. Unless you elect not to participate in the Settlement by

timely filing an Exclusion Form, you are a part of the Class, and you will be bound by the terms of the Settlement and any final judgment that may be entered by the Court, and will be deemed to have released the state wage-and-hour claims against Defendants and any other Released Parties. If you do not submit a valid and timely Exclusion Form, you will receive a Settlement Payment and will forfeit any rights you would otherwise have to sue Defendants and any other Released Parties for claims related to those in the Operative Complaint that your rights under state wage-and-hour laws have been violated. As a member of the Class, you will not be responsible for the payment of attorneys' fees or reimbursement of litigation expenses unless you retain your own counsel, in which event you will be responsible for your own attorneys' fees and costs.

B. Disputes as to Total Weeks Worked by Class Members During Class Period.

The Allocation Form attached to this Notice mailed to Class Members will list the total number of weeks worked by the Class Member during their employment for Defendants from July 22, 2012 to [the date of preliminary approval]. This Class Member total weeks worked will be based off of Defendants' records. Issues of dispute may only include the period of time of employment and/or total weeks worked in which the claimant met the requirements for the Class. Class Members will have an opportunity to challenge the total number of weeks worked listed on the Allocation Form by submitting a written dispute and any supporting evidence or documentation to the Settlement Administrator within the time period. **NOTE: DO NOT SUBMIT THE EXCLUSION FORM IF YOU ARE MERELY DISPUTING THE TOTAL WORKWEEKS ALLOCATED TO YOU ON WHICH YOUR SETTLEMENT SHARE IS BASED – SEE THE ALLOCATION FORM BELOW FOR MORE INFORMATION.** Defendants' records will be presumed determinative, but Class Counsel and Defense Counsel will evaluate the evidence submitted by the claimant and make the final decision as to the number of weeks worked that should be used to calculate the settlement share for the disputing Class Member.

C. Objecting to the Settlement.

You may object to the terms of the Settlement before final approval, either by filing a written objection or filing a notice of your intent to appear and object at the final approval hearing. However, if the Court rejects your objection you will be bound by the terms of the Settlement.

To object, you must send a written notice of objection or a written notice of your intent to appear and object at the final approval hearing to the Settlement Administrator at the addresses shown below. **DO NOT TELEPHONE THE COURT.** Any written objection and/or notice of your intent to appear at the hearing must state: (1) your full

name; (2) your address; and (3) each specific reason for your objection and any legal support for your position. To be valid and effective, the Settlement Administrator must receive any written objections and/or notices of intent to appear at the hearing not later than [REDACTED], 2018 [within forty-five days of mailing of the Class Notice]. A Class Member who fails to file and serve a written statement of objection in the manner described above and by the specified deadline will be deemed to have waived any objections and will be foreclosed from making any objection (whether by appeal or otherwise) to the Settlement.

Send Your Notice of Objection to:

[Third Party Administrator]

D. Excluding Yourself from the Settlement.

If you do not wish to participate in the Settlement, you must complete the enclosed Exclusion Form. To be valid, the Exclusion Form must be completed, signed by you under penalty of perjury, and returned to:

[Third Party Administrator]

The Exclusion Form must be postmarked not later than [REDACTED], 2018 [within forty-five days of mailing of the Class Notice]. A Class Member who fails to mail an Exclusion Form in the manner and by the deadline specified above will be bound by all terms and conditions of the Settlement, if the Settlement is approved by the Court, and the Judgment, regardless of whether he or she has objected to the Settlement.

Any Class Member who files a complete and timely Exclusion Form, upon receipt by the Court and counsel for the parties, will no longer be a member of the Settlement Class, will be barred from participating in any portion of the Settlement, and will receive no benefits from the Settlement. Any such person, at his or her own expense, may pursue any claims he or she may have against Defendants.

V. FINAL SETTLEMENT APPROVAL HEARING

The Court will hold a final approval hearing in Courtroom 7D of the United States District Courthouse of the Central District of California, on [REDACTED], 2018, at [REDACTED], to determine whether the Settlement should be finally approved as fair, reasonable, and adequate. The Court will also be asked to approve Class Counsel's request for costs, attorneys' fees and the enhancement payments made to Plaintiffs as the Class and PAGA Representatives.

The hearing may be postponed without further notice to the Class. It is not necessary for you to appear at this hearing. If you have given notice of your objection to the settlement, you may appear at the hearing at your option if you have filed a notice of intent to appear by [REDACTED], 2018.

VI. GETTING MORE INFORMATION

The above is a summary of the basic terms of the Settlement. For the precise terms and conditions of the Settlement, you are referred to the detailed Joint Stipulation of Settlement and Release between Plaintiffs and Defendants, which will be on file with the Clerk of the Court. The pleadings and other records in this litigation, including the Settlement Agreement and Joint Stipulation, may be examined at any time during regular business hours in the United States District Court, Central District of California, [REDACTED]. You may also contact the Settlement Administrator at: 1-8 [REDACTED]. You also may contact Class Counsel listed below for more information:

Michael H. Boyamian, Esq.
Armand R. Kizirian, Esq.
Boyamian Law, Inc.
550 North Brand Boulevard, Suite 1500
Glendale, California 91203
Telephone: (818) 547-5300
Facsimile: (818) 547-5678

Thomas W. Falvey, Esq.
Law Offices of Thomas W. Falvey
550 North Brand Boulevard, Suite 1500
Glendale, California 91203
Telephone: (818) 547-5200
Facsimile: (818) 500-9307

Alex Hartounian, Esq.
The Hartounian Law Firm
418 N. Fair Oaks, Suite 202
Pasadena, California 91102
Telephone: (818) 794-9675
Facsimile: (818) 459-6997

IMPORTANT:

- 1. PLEASE DO NOT TELEPHONE THE COURT OR DEFENDANTS' COUNSEL FOR INFORMATION REGARDING THIS SETTLEMENT!**
- 2. If you move, please send the Settlement Administrator your new address. It is your responsibility to keep a current address on file with the Settlement Administrator to ensure receipt of your Settlement Payment.**

ALLOCATION FORM

The records of Fox Restaurant Concepts, LLC d/b/a True Food Kitchen, FRC True Food SMP LLC, FRC True Food SDFV LLC, and FRC True Food NBF LLC (“Defendants” or “True Food Kitchen”) indicate that during the Class Period, i.e. from July 22, 2012 to [the date of preliminary approval], you worked as a “front of the house”, non-exempt, hourly employee. The total number of weeks worked for Defendants is [redacted], and is based on Defendants’ payroll and employment records.

BASED ON YOUR TOTAL OF [redacted] WEEKS WORKED FOR DEFENDANTS DURING THE CLASS PERIOD, YOUR ESTIMATED SETTLEMENT SHARE IS \$[redacted].

If you disagree with the dates of employment or total hours worked figure listed above, and believe you worked a different period of time or the numbers of hours worked for Defendants between July 22, 2012 and [the date of preliminary approval], you must notify the Settlement Administrator in writing by the deadline of [45 days after mailing], and attach documents, which support your belief.

Failure to provide the information requested and satisfactory supporting documentation as to what you believe your gross wages were for the relevant work and time period will result in your dispute being denied, and you will instead receive a settlement share based upon the workweeks worked figure listed above. In the absence of contrary documentation from you, Defendants’ payroll and employment records will be presumed to be correct and will form the basis of your settlement share.

Only if you are disputing the total workweeks figure listed above, you must return this Allocation Form signed, dated, and with what you believe your correct number of workweeks worked to be. You must also enclose any supporting documentation you have, and mail this package to the Settlement Administrator at [address [redacted]] by [45 days after mailing].

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COMPLETE BELOW TO DISPUTE YOUR SETTLEMENT SHARE:

I believe that the total number of weeks worked figure listed above is inaccurate and that the total number of weeks I worked for Fox Restaurant Concepts, LLC d/b/a True Food Kitchen from July 22, 2012 to [preliminary app.] is _____.

BY SIGNING BELOW, I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF CALIFORNIA THAT I AM THE PERSON WHOSE NAME APPEARS ON THIS FORM AND THAT THE FOREGOING IS TRUE AND CORRECT.

(Signature)

(Please Print Your Name Clearly)

(Date)

REQUEST FOR EXCLUSION FORM

IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Pae, et al. v. Fox Restaurant Concepts, LLC d/b/a True Food Kitchen, et al.
Case No. 2:16-cv-06965-DSF-FFM

DO NOT FILL OUT THIS FORM if you want to be included in this class action settlement (“Settlement in the True Food Kitchen Class Action Lawsuit”) and to receive your portion of the Settlement.

INSTRUCTIONS

If you do not want to participate in the Settlement, you may “opt out” of the Settlement by returning this Request for Exclusion Form. If you choose to opt out of the Settlement: (a) you will have no right to receive any money under the Settlement; (b) you will not be bound by the Settlement; and (c) you will have no right to object to the Settlement and/or be heard at the final approval hearing.

To opt out, you must sign and return this Request for Exclusion Form to the Claims Administrator, c/o [Third Party Administrator], at the address listed below, and you must return it postmarked **no later than _____, 2018**.

Pae, et al. v. Fox Restaurant Concepts, LLC d/b/a True Food Kitchen, et al.
c/o [Third Party Administrator Info]

OPT OUT SIGNATURE

BY SIGNING THIS REQUEST FOR EXCLUSION FORM, I HEREBY OPT OUT OF THE LAWSUIT AND THE SETTLEMENT. I WISH TO BE EXCLUDED FROM THE SETTLEMENT IN THE TRUE FOOD KITCHEN CLASS ACTION LAWSUIT. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT, I WILL NOT RECEIVE ANY MONEY FROM THE SETTLEMENT OF THIS LAWSUIT. IN ADDITION, BY REQUESTING EXCLUSION, I WILL HAVE NO RIGHT TO OBJECT TO THE SETTLEMENT AND/OR BE HEARD AT THE FINAL APPROVAL HEARING.

Dated: _____, 2018

(Signature (under penalty of perjury))

(Typed or Printed Full Name)

(Address)

(City, State, Zip Code)

(Optional) (Telephone Number, Incl. Area Code)

(Last Four Digits of Social Security Number)

Exhibit “2”

Submitted for *in camera* review

LAW OFFICES OF THOMAS W. FALVEY
THOMAS W. FALVEY, SBN 65744
thomaswfalvey@gmail.com
550 North Brand Boulevard, Suite 1500
Glendale, California, 91203
Telephone: (818) 547-5200
Facsimile: (818) 500-9307

Attorneys for Plaintiffs JENNIFER PAE, ALEXANDRA SHELDON
Individually and on behalf of all others similarly situated
(Additional Counsel for Plaintiffs Listed On Following Page)

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

JENNIFER PAE, individually and on behalf
of all others similarly situated,

Plaintiff,

vs.

FOX RESTAURANT CONCEPTS, LLC
d/b/a TRUE FOOD KITCHEN; a Arizona
limited liability company; FRC TRUE
FOOD SMP, LLC, a California limited
liability company; FRC TRUE FOOD
SDFV, LLC, a California limited liability
company; FRC TRUE FOOD NBF, LLC, a
California limited liability company; and
DOES 1 through 25, inclusive,

Defendants.

ALEXANDRA SHELDON, on behalf of
herself and all other aggrieved employees
and the general public,

Plaintiffs,

vs.

FOX RESTAURANT CONCEPTS, LLC
d/b/a TRUE FOOD KITCHEN; a Arizona
limited liability company; FRC TRUE
FOOD SMP, LLC, a California limited
liability company; FRC TRUE FOOD
SDFV, LLC, a California limited liability
company; FRC TRUE FOOD NBF, LLC, a
California limited liability company; and
DOES 1 through 25, inclusive,

Defendants.

Case No: 2:16-cv-06965-DSF-FFM

[Assigned to the Honorable Dale S.
Fischer (Courtroom 7D) for all
purposes]

CLASS ACTION

**DECLARATION OF THOMAS
W. FALVEY ISO MOTION FOR
FINAL APPROVAL OF CLASS
ACTION SETTLEMENT**

Date:

Time:

Courtroom:

Action Filed: July 22, 2016

1 BOYAMIAN LAW, INC.
2 MICHAEL H. BOYAMIAN, SBN 256107
3 michael@boyamianlaw.com
4 ARMAND R. KIZIRIAN, SBN 293992
5 armand@boyamianlaw.com
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7 Glendale, California, 91203
8 Telephone: (818) 547-5300
9 Facsimile: (818) 547-5678

6 HARTOUNIAN LAW FIRM
7 ALEX HARTOUNIAN, SBN 252210
8 2626 Foothill Boulevard, Suite 250
9 La Crescenta, California 91214
10 Telephone: (818) 794-9675
11 Facsimile: (818) 459-6997
12 E-mail: alex@h-lf.com

11 Attorneys for Plaintiffs JENNIFER PAE, ALEXANDRA SHELDON
12 Individually and on behalf of all others similarly situated
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Declaration of Thomas W. Falvey ISO Plaintiffs' Motion for Final Approval

DECLARATION OF THOMAS W. FALVEY

I, THOMAS W. FALVEY, declare and state as follows:

1. I am an attorney duly licensed to practice law in the State of California. I am a member in good standing of the State Bar of California, and the Central District of California. I am one of the attorneys of record in the instant litigation, and I make this declaration in support of Plaintiff in the matter of Jennifer Pae, etc., et al, vs. Fox Restaurant Concepts LLC, d/b/a True Food Kitchen, etc., et al.

2. I'd ask the court to draw its attention to the fact that because of our efforts, it is estimated that approximately 2,000 potential class members, will share in a settlement of \$900,000, after deducting for appropriate litigation and administration costs, enhancement payments and attorney fees. In fact, it is substantially more likely than not a single person would have gotten a dime in unpaid wages had we not filed this case, unless of course, someone else filed it sometime after our setting this seeking of justice in motion.

3. In the course of this litigation, which took several years and numerous hurdles to overcome, I incurred over 170 hours in the prosecution of this case. I am sure that I have overlooked time worked, because that is the nature of a plaintiff's practice. Unlike defense firms, as in this case, which have billed and received hundreds of thousands of dollars, we do not bill a client, and we do not get paid unless we are successful. My time has been approved, without objection, at a rate of \$850 per hour. Given that I have practiced law for over 40 years, and have obtained results exceeding \$100 million in settlements for tens of thousands of clients, I believe that hourly rate to be very fair, in comparison with a like attorney community. However, even at \$850 per hour, for 170 hours, I have incurred over \$140,000 in time spent, for which I have not yet received one penny, while having expended over \$20,000 in costs. Our fees will not reimburse us for all time spent.

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Exhibit 1

Date	Amount
Abm Parking	
1/26/2017	\$ (8.00)
Central Civil West	
6/22/2017	\$ (8.25)
DM&A	
10/23/2017	\$ (3,968.75)
Fedex	
5/4/2017	\$ (26.73)
2/28/2018	\$ (31.38)
First Legal Deposition Services	
4/4/2017	\$ (1,254.10)
L A Superior Court	
6/21/2017	\$ (1.00)
6/22/2017	\$ (1.00)
Labor And Workforce Development Agency	
7/7/2016	\$ (75.00)
Maricopa County Process Service	
4/4/2017	\$ (100.00)
One & Only Messenger Service	
7/25/2016	\$ (1,435.00)
Serratore Law	
4/3/2018	\$ (6,250.00)
Simpluris	
5/8/2017	\$ (1,752.75)
5/31/2017	\$ (1,752.75)
Sommerhauser Reporting Services	
5/8/2017	\$ (1,897.25)
5/11/2017	\$ (925.40)
7/14/2017	\$ (1,055.35)
True Food Newport	
6/20/2016	\$ (150.90)
True Food San Diego	San Die
7/1/2017	\$ (125.60)
Turbo Messengers, Inc.	
7/14/2017	\$ (34.00)
OVERALL TOTAL	\$ (20,853.21)

EXHIBIT 1

Timesheets submitted for *in*
camera review

BOYAMIAN LAW, INC.
MICHAEL H. BOYAMIAN, SBN 256107
ARMAND R. KIZIRIAN, SBN 293992
550 North Brand Boulevard, Suite 1500
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T: (818) 547-5300 | F: (818) 547-5678
E-mail(s): michael@boyamianlaw.com,
armand@boyamianlaw.com

Attorneys for Plaintiff JENNIFER PAE, ALEXANDRA SHELDON,
Individually and on behalf of all others similarly situated

(Additional Counsel Listed on Following Page)

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

JENNIFER PAE, individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

FOX RESTAURANT CONCEPTS,
LLC d/b/a TRUE FOOD KITCHEN; an
Arizona limited liability company; FRC
TRUE Food SMP, LLC, a California
limited liability company; FRC TRUE
FOOD SDFV, LLC, a California
limited liability company; FRC TRUE
FOOD NBF, LLC, a California limited
liability company; and DOES 1 through
25, inclusive,

Defendants.

Case No. 2:16-cv-06965-DSF-FFM

CLASS ACTION

Assigned to the Hon. Dale S. Fischer

**DECLARATION OF BRYAN VALDEZ
(ON BEHALF OF CPT GROUP, INC.)
WITH RESPECT TO NOTIFICATION
AND SETTLEMENT
ADMINISTRATION**

[Filed Concurrently with Plaintiffs' Motion
for Final Approval of Class Action Settlement
and Plaintiffs' Motion for Attorneys' Fees,
Costs, and Service Awards]

Date: March 25, 2019
Time: 1:30 p.m.
Location: 7D, First Street Courthouse

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10 Pasadena, CA 91102
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12 Facsimile: (818) 459-6997
13 E-mail: alex@h-lf.com

14 Attorneys for Plaintiff JENNIFER PAE, ALEXANDRA SHELDON,
15 Individually and on behalf of all others similarly situated
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DECLARATION OF BRYAN VALDEZ

1
2 1. I am a Case Manager for CPT Group, Inc., the Court-approved class action
3 Settlement Administrator for *Pae, et al. v. Fox Restaurant Concepts, LLC d/b/a True*
4 *Food Kitchen, et al.* I have personal knowledge of the facts set forth in this Declaration
5 and, if called as a witness, could and would testify competently thereto.

6 2. Settlement Administrator (“CPT”) has extensive experience in providing
7 notice of class actions and administering class action settlements. In the past 30 years,
8 CPT has provided notification and/or settlement administration services in over one
9 thousand class action cases. CPT was selected by the parties to provide notice of the
10 settlement and process exclusions in this action. In this capacity, CPT was charged
11 with (a) sending notice of the Settlement to all Class Members; (b) calculating the
12 Settlement Awards amounts due to Class Members in accordance with the Stipulation
13 of Settlement; (c) reporting, in summary or narrative form, the substance of its findings;
14 (d) upon receipt of funds from Defendants and as provided by the terms of the
15 Settlement, issuing and sending out the Settlement Awards to Class Members; (e)
16 making Court-approved payments for individual enhancement awards to the Class
17 Representatives, attorneys’ fees and costs, payments to the LWDA, funds from the
18 uncashed settlement checks transferred to the *cy pres* beneficiary approved by the
19 Court, and administration expenses as described in the Stipulation of Settlement; (f)
20 determining and resolving any dispute by any Class Member as to any factor or issue
21 regarding the computation of any such Class Member’s individual Settlement Award;
22 and (g) resolving any disputes regarding membership in the Settlement Class as defined
23 in Paragraph 8 of the Stipulation of Settlement.

24 3. CPT received the Court-approved text for the content of the Class Notice
25 from Class Counsel on December 6, 2018. CPT prepared a draft of the documents for
26 mailing to the Class Members.

27 ///

1 4. On December 14, 2018, CPT received a data file (“Database”) from
2 Defense Counsel containing each Class Member’s name, last-known address, last-
3 known telephone number, social security number, and employment dates. The finalized
4 mailing list contained a total of two thousand five hundred and eighty (2,580) Class
5 Members.

6 5. On January 9, 2019, CPT caused a National Change of Address (NCOA)
7 database search to be performed in attempt to update the mailing list of addresses as
8 accurately as possible. A search of this database provides updated addresses for any
9 individual who has moved in the previous four years and has notified the U.S. Postal
10 Service of his or her change of address.

11 6. The Class Notice was enclosed in an envelope with the individual Class
12 Member’s name and last-known address on the envelope. On January 11, 2019, the
13 Class Notices were mailed via U.S. First-Class Mail to all identified Class Members.
14 The Class Notice indicated a deadline date of February 25, 2019, to dispute the Class
15 Member’s number of work weeks, to object, or request exclusion from the settlement.
16 Attached hereto as Exhibit A is a true and correct copy of the Class Notice.

17 7. As of the date of this declaration, two hundred and eleven (211) Class
18 Notices were returned to our office by the U.S. Post Office. CPT performed a Skip
19 Trace on one hundred and ninety-eight (198) returned Class Notices without a
20 forwarding address using Accurant, one of the most comprehensive address databases
21 available. It utilizes hundreds of different databases supplied by credit reporting
22 agencies, public records and a variety of other national databases. Thirteen (13) Class
23 Notices were not skip-traced as a result of the U.S. Post Office having provided a new
24 address for the Class Member.

25 8. As a result of Skip Trace effort, new address from the U.S. Post Office, or
26 re-mail request from Counsel or Class Members themselves, a total of two hundred and
27 seventeen (217) Class Notices have been re-mailed to date. As of the date of this
28

1 declaration, CPT reports a total of thirteen (13) undeliverable Class Notices, as no
2 better address was provided from the Post Office or obtained through Skip Trace.

3 9. As of the date of this declaration, CPT has received one (1) deficient
4 dispute from a Class Member. The Class Member's dispute of their workweeks is
5 deficient due to a lack of supporting documentation. A deficiency letter was mailed to
6 the Class Member with a deadline of January 28, 2019 to cure the deficiency.

7 10. As of the date of this declaration, CPT has received one (1) Request for
8 Exclusion and zero (0) Objections.

9 11. As of the date of this declaration, CPT reports a total of two thousand five
10 hundred and seventy-nine (2,579) Participating Class Members, representing a 99.96%
11 participation rate.

12 12. The Gross Settlement Amount is \$900,000 and will have the following
13 anticipated deductions: Class Counsel fees of \$221,306.53, litigation costs of
14 \$30,000.00, Class Representative Enhancement Payments totalling of \$25,000.00,
15 PAGA Payment of \$15,000 to the Labor Workforce and Development Agency,
16 estimated Employer-Sided Payroll Taxes of \$14,773.87, and CPT's settlement
17 administration costs of \$23,500.00.

18 13. Pursuant to the terms of the Stipulation of Settlement, Participating Class
19 Members will receive a proportionate share of the Net Settlement Amount, currently
20 estimated to be \$570,419.60.

21 14. There are two thousand five hundred and seventy-nine (2,579)
22 Participating Class Members who will receive a proportionate share of the Net
23 Settlement Amount. Based on estimated calculations at this time, the highest gross
24 payment amount is estimated to be \$1,515.81 and the average gross payment amount is
25 estimated to be \$221.18.

26 ///

27 ///

28 ///

15. CPT's charge for services rendered to perform its duties and responsibilities pursuant to the terms of the Stipulation of Settlement is \$23,500.00. This includes all costs incurred to date, as well as estimated costs involved in completing the settlement.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on this 24th day of January 2019, at Irvine, California.



Bryan Valdez

Exhibit A

#4305
UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Pae, et al. v. Fox Restaurant Concepts, LLC d/b/a True Food Kitchen, et al.

Case No. 2:16-cv-06965-DSF-FFM

NOTICE OF CLASS ACTION SETTLEMENT

To: All persons employed as non-exempt “front of the house” employees in California at all of Defendants’ True Food Kitchen restaurant locations between July 22, 2012, until December 4, 2018.

PLEASE READ THIS NOTICE CAREFULLY.

Pursuant to the Order of the United States District, Central District of California, entered on December 4, 2018, **YOU ARE HEREBY NOTIFIED AS FOLLOWS:**

A proposed settlement (the “Settlement”) has been reached among the parties in this class action pending in the United States District Court, Central District of California, brought on behalf of all individuals described above (the “Class”). The Court has preliminarily approved the Settlement and conditionally certified the Class for purposes of the Settlement only. You have received this notice because Defendants’ records indicate that you are a member of the Class. This notice is designed to inform you of how you can participate in the Settlement, object to the Settlement, or elect to exclude yourself from the Settlement.

I. BACKGROUND OF THE CASE

On July 22, 2016, Plaintiff Jennifer Pae filed a proposed class action complaint in Los Angeles County Superior Court (Case No. BC628004) against Defendants Fox Restaurant Concepts, LLC d/b/a True Food Kitchen, FRC True Food SMP, LLC, FRC True Food SDFV, LLC, and FRC True Food NBF, LLC (collectively “Defendants” or “True Food Kitchen”) alleging eight (8) causes of action for: (1) unpaid wages (Cal. Labor Code §§ 216, 1194); (2) failure to pay minimum wage (Cal. Labor Code § 1194, et seq.); (3) failure to pay overtime compensation (Cal. Labor Code § 510); (4) failure to pay meal and rest period compensation (Cal. Labor Code §§ 226.7, 512), (5) failure to provide accurate itemized wage statements (Cal. Labor Code § 226), (6) waiting time penalties (Cal. Labor Code § 203), (7) failure to reimburse business expenses (Cal. Labor Code §§ 2800 and 2802), and (8) unfair business practices (Cal. Bus. & Prof. Code § 17200 et seq.). Defendants removed the case to District Court (Case No. 2:16-CV-06965-DSF-FFM) (“The Pae Federal Action”).

On April 26, 2017, Plaintiff Alexandra Sheldon filed a proposed representative action under the California Private Attorneys General Act (PAGA) on behalf of all Aggrieved Employees and the State of California – alleging only claims under PAGA – in Los Angeles County Superior Court (“Court”), Case No. BC659173. The Sheldon State Action asserts a singular cause of action for penalties under PAGA for failure to properly pay wages, overtime and designated rates, failure to provide meal and rest breaks, failure to timely pay wages at termination, failure to reimburse business expenses, failure to pay reporting time pay, failure to

Throughout 2016 and 2017, Plaintiff secured a list of putative Class Members from Defendants and began gathering information from Class Members. The Parties also engaged in the discovery process in earnest. The Parties exchanged information relevant to class certification, merits, and damages issues. Defendants provided Plaintiffs, among other things, a statistically significant sample of payroll and time records, and the policies and procedures relevant to the claims asserted in both Complaints.

On April 4, 2018, the Parties held a private mediation with a neutral mediator, Steve Serratore. After lengthy, good-faith negotiations, and a reasonable assessment of the risks of continued litigation, the Parties tentatively reached an agreement to settle the claims raised in both the Pae Federal Action and Sheldon State Action (collectively, “Actions”) pursuant to the terms and conditions set forth below.

Plaintiffs believe that these Actions are meritorious based on alleged violations of California’s wage and hour laws, and that the Actions are appropriate for class and representative treatment. Defendants deny any liability or wrongdoing of any kind associated with the claims alleged, and contend that, for any purpose other than settlement, the Pae Federal Action and Sheldon State Action are not appropriate for class or representative treatment. Defendants further contend that they have complied in all respects with the California Labor Code, the California Business and Professions Code, and the applicable Industrial Welfare Commission Wage Orders.

The Parties agreed that the Court shall certify a class solely for the purpose of implementing the terms of this Settlement. To that end, the Parties have further agreed to combine the Pae Federal Action and Sheldon State Action for purposes of settlement.

Class Counsel has conducted an in-depth investigation regarding the suitability of the named Plaintiffs’ claims for class treatment; the adequacy of the named Plaintiffs to represent the proposed Class; other class certification requirements; the merits of the liability issues; and the amount of damages owed to Class Members. Class Counsel’s investigation consisted of: (1) reviewing a statistically significant sample of payroll and time records; (2) interviewing members of the Class about their work experiences; (3) reviewing Defendants’ policies and procedures relevant to Plaintiff’s claims; (4) researching the applicable law; and (5) taking the deposition of Defendants’ key witness and defending the deposition of Plaintiff Pae. The Parties also participated in a full-day mediation before a well-respected class action mediator, Steve Serratore, who assisted the parties in reaching this compromise. Based on their own independent investigation and evaluation, Class Counsel are of the opinion that the Settlement is fair, reasonable and adequate and is in the best interest of the Class Members in light of all known facts and circumstances, including the risk of significant delay and defenses asserted by Defendants. Defendants agree that the Settlement is fair, reasonable and adequate.

II. SUMMARY OF THE SETTLEMENT #4307**A. Who is included in the Settlement?**

You are a Class Member and are included in the Settlement if you worked in at least one True Food Kitchen restaurant location as a “front of the house,” non-exempt, hourly employee at any time in California from July 22, 2012 until December 4, 2018.

B. What will I receive from the Settlement?

Defendants will make a settlement payment (“Settlement Payment”) to each Class Member who does not elect to exclude him or herself from the settlement.

The Settlement calls for the payment by Defendants of Nine Hundred Thousand Dollars (\$900,000) (referred to as the “Gross Settlement Amount”). As will be set forth in more detail below, the amount available for Class Members from the \$900,000 is estimated at \$570,419.60, calculated as follows:

-	\$900,000.00	(Gross Settlement Amount)
-	\$14,773.87	(Employer-Side Payroll Taxes)
-	\$221,306.53	(Plaintiffs’ Attorneys’ Fees)
-	\$30,000.00	(Plaintiffs’ Litigation Costs)
-	\$25,000.00	(Class Representatives’ Enhancement, in the aggregate)
-	\$23,500.00	(Settlement Administrator Fees - Estimate)
-	\$15,000.00	(Payment to the Labor Workforce and Development Agency)
-	\$570,419.60	(Net Available to Class or “Net Settlement Amount”, before applicable deductions and withholdings for federal and state taxes, including payroll taxes)

This total will vary if the Court does not approve the requested amounts for attorneys’ fees, litigation costs, or class representatives’ enhancements, or if the cost of administration is different than estimated. The approximate \$570,419.60 Remainder of the Gross Settlement Amount will be distributed as follows:

The Class Members’ Distribution Amount will be a pro rata percentage of the Net Settlement Amount calculated by: (1) determining the total number of weeks worked by that Class Member from the period of July 22, 2012 to December 4, 2018; (2) dividing each Class Member’s total weeks worked by the total weeks worked by all other participating Class Members for the same time period; and (3) multiplying the resulting fraction by the Net Settlement Amount.

There is no reversion and uncashed checks shall be redistributed to Bet Tzedek, which has been approved by the Court.

C. When will I receive my Settlement Payment?

The Settlement Payments will be paid approximately fifty-five (55) calendar days after final court approval and judgment has been entered and any rights to appeal have expired, been dismissed, or otherwise exhausted.

D. What if I do not want to participate in the Settlement?

You will not be included in the Settlement if you elect not to participate by submitting an Exclusion Form that is provided with this Notice and in accordance with the conditions for submitting that form. If you return the Exclusion Form, you will not receive a Settlement Payment or be bound by the terms of the Settlement.

E. What if I do not submit an Exclusion Form?

If you do not timely mail an Exclusion Form, you will be bound by the Settlement. You should only send an Exclusion Form if you do not want to be part of the settlement and do not want to receive a settlement payment.

F. Settlement Administrator.

The Court has appointed CPT Group, Inc. to act as an independent Settlement Administrator to process this Settlement and to resolve any dispute concerning a Class Member's eligibility to participate in the Settlement and his or her share of the Settlement proceeds.

G. Release of Claims.

Upon the Effective Date of the Settlement (as defined in the Stipulation of Settlement, and except as to such rights or claims as may be created by this Stipulation of Settlement, the Class Members (other than those who file Exclusion Forms) fully release and discharge Defendants, and each of their respective past, present and future owners, stockholders, parent corporations, related or affiliate companies, subsidiaries, officers, directors, shareholders, employees, agents, principals, heirs, representatives, accountants, attorneys, auditors, consultants, insurers and re-insurers, and their respective successors and predecessors in interest, each of their company-sponsored employee benefit plans of any nature (including, without limitation, profit-sharing plans, pension plans, 401(k) plans, and severance plans) and all of their respective officers, directors, employees, administrators, fiduciaries, trustees and agents, and any individual or entity which could be jointly liable with Defendants ("Released Parties"), from all claims, causes of action, demands, rights, liabilities, damages, restitution, penalties and other relief based on the allegations of wrongdoing which, based on the facts plead, were alleged in the operative complaint for violations of any state or federal laws (including but not limited to the California Labor Code (including, without limitation, California Labor Code sections California Labor Code sections 200, 201, 202, 203, 204, 210, 216, 221, 223, 225.5, 226, 226.3, 226.7, 510, 512, 516, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2800, 2802, 2804) and all applicable Industrial Welfare Commission wage orders, and the Fair Labor Standards Act (29 U.S.C. §§201, et seq.) ("FLSA"), California Industrial Welfare Commission Wage Orders, California's Unfair Business Practices law, Cal. Bus. & Prof. Code sections 17200, *et seq.*, and California's Private Attorneys General Act ("PAGA"), Cal. Lab. Code §§ 2698, *et seq.*, or any other claims in law or equity, to the extent the claims, causes of action, damages, restitution, penalties, and other relief arose out of failure to pay minimum wage, overtime or other wages, including, without limitation, for time worked off-the-clock and any failure to pay

any Section 226.7 premium wages, failure to pay reporting time pay, failure to provide meal and rest periods, failure to pay wages due at termination, failure to keep accurate payroll records or provide accurate itemized wage statements and failure to reimburse business expenses. (collectively, "Class Members' Released Claims").

If the Settlement is not approved by the Court or does not become final for some other reason, the litigation will continue.

H. Class Representative.

In addition to their shares as Participating Class Members, Plaintiff Jennifer Pae shall be paid up to \$15,000, subject to Court approval, and PAGA Representative Alexandra Sheldon shall be paid up to \$10,000, subject to Court approval, for their services as Class or PAGA Representatives, as well as their willingness to accept the risks in the event of an unsuccessful outcome. These payments will be deducted from the Gross Settlement Amount.

I. Attorneys' Fees, Costs, and Employer-Side Payroll Taxes.

Class Counsel will seek approval from the Court for payment of attorneys' fees in the amount of twenty-five percent of the Gross Settlement Amount (\$900,000) minus the employer-side payroll taxes (\$14,773.87), i.e. twenty-five percent of \$885,226.13. As a result, Class Counsel will be seeking \$221,306.53 in attorneys' fees. In addition to the attorneys' fees, Class Counsel will be seeking to \$30,000.00 in costs which, if approved by the Court, will be deducted from the Gross Settlement Amount. Class Counsel believes that the amount for costs and attorneys' fees requested is fair and reasonable, and Defendants will not oppose Class Counsel's request for that amount.

J. Costs of Administration.

The costs of administering the Settlement will be deducted from the Gross Settlement Amount. The Settlement Administrator estimates this amount will not exceed \$23,500.00.

III. PLAINTIFFS AND CLASS COUNSEL SUPPORT THE SETTLEMENT

Plaintiffs, as Class and PAGA Representatives, and Class Counsel support this Settlement. Their reasons include the inherent risk of denial of class certification, the risk of a trial on the merits, and the inherent delays and uncertainties associated with litigation. Based on their experience litigating similar cases, Class Counsel believes that further proceedings in this case, including a trial and probable appeals, would be very expensive and protracted. No one can confidently predict how the various legal questions at issue, including the amount of damages, would ultimately be resolved. Therefore, upon careful consideration of all of the facts and circumstances of this case, Class Counsel believes that the Settlement is fair, reasonable, and adequate.

IV. WHAT ARE YOUR RIGHTS AS A CLASS MEMBER?**A. Participating in the Settlement.**

Plaintiffs, as Class and PAGA Representatives, and Class Counsel represent your interests as a Class Member. Unless you elect not to participate in the Settlement by timely filing an Exclusion Form, you are a part of the Class, and you will be bound by the terms of the Settlement and any final judgment that may be entered by the Court, and will be deemed to have released the state wage-and-hour claims against Defendants and any other Released Parties. If you do not submit a valid and timely Exclusion Form, you will receive a Settlement Payment and will forfeit any rights you would otherwise have to sue Defendants and any other Released Parties for claims related to those in the Operative Complaint that your rights under state wage-and-hour laws have been violated. As a member of the Class, you will not be responsible for the payment of attorneys' fees or reimbursement of litigation expenses unless you retain your own counsel, in which event you will be responsible for your own attorneys' fees and costs.

B. Disputes as to Total Weeks Worked by Class Members During Class Period.

The Allocation Form attached to this Notice mailed to Class Members will list the total number of weeks worked by the Class Member during their employment for Defendants from July 22, 2012 to December 4, 2018. This Class Member total weeks worked will be based off of Defendants' records. Issues of dispute may only include the period of time of employment and/or total weeks worked in which the claimant met the requirements for the Class. Class Members will have an opportunity to challenge the total number of weeks worked listed on the Allocation Form by submitting a written dispute and any supporting evidence or documentation to the Settlement Administrator within the time period. **NOTE: DO NOT SUBMIT THE EXCLUSION FORM IF YOU ARE MERELY DISPUTING THE TOTAL WORKWEEKS ALLOCATED TO YOU ON WHICH YOUR SETTLEMENT SHARE IS BASED – SEE THE ALLOCATION FORM BELOW FOR MORE INFORMATION.** Defendants' records will be presumed determinative, but Class Counsel and Defense Counsel will evaluate the evidence submitted by the claimant and make the final decision as to the number of weeks worked that should be used to calculate the settlement share for the disputing Class Member.

C. Objecting to the Settlement.

You may object to the terms of the Settlement before final approval, either by filing a written objection or filing a notice of your intent to appear and object at the final approval hearing. However, if the Court rejects your objection you will be bound by the terms of the Settlement.

To object, you must send a written notice of objection or a written notice of your intent to appear and object at the final approval hearing to the Settlement Administrator at the addresses shown below. **PLEASE DO NOT TELEPHONE OR CONTACT THE COURT.** Any written objection and/or notice of your intent to appear at the hearing must state: (1) your full

name; (2) your address; and (3) each specific reason for your objection and any legal support for your position. To be valid and effective, the Settlement Administrator must receive any written objections and/or notices of intent to appear at the hearing not later than February 25, 2019. A Class Member who fails to file and serve a written statement of objection in the manner described above and by the specified deadline will be deemed to have waived any objections and will be foreclosed from making any objection (whether by appeal or otherwise) to the Settlement.

Send Your Notice of Objection to:

Pae, et al. v. Fox Restaurant Concepts, LLC d/b/a True Food Kitchen, et al.
c/o CPT Group Inc.
50 Corporate Park
Irvine, CA 92606

D. Excluding Yourself from the Settlement.

If you do not wish to participate in the Settlement, you must complete the enclosed Exclusion Form. To be valid, the Exclusion Form must be completed and returned to:

Pae, et al. v. Fox Restaurant Concepts, LLC d/b/a True Food Kitchen, et al.
c/o CPT Group Inc.
50 Corporate Park
Irvine, CA 92606

The Exclusion Form must be postmarked not later than February 25, 2019. A Class Member who fails to mail an Exclusion Form in the manner and by the deadline specified above will be bound by all terms and conditions of the Settlement, if the Settlement is approved by the Court, and the Judgment, regardless of whether he or she has objected to the Settlement.

Any Class Member who files a complete and timely Exclusion Form, upon receipt by the independent Settlement Administrator, will no longer be a member of the Settlement Class, will be barred from participating in any portion of the Settlement, and will receive no benefits from the Settlement. Any such person, at his or her own expense, may pursue any claims he or she may have against Defendants.

V. FINAL SETTLEMENT APPROVAL HEARING

The Court will hold a final approval hearing in Courtroom 7D of the First Street Courthouse of the Central District of California located at 350 West 1st Street, Los Angeles, California 90012, on March 11, 2019, at 1:30 p.m., to determine whether the Settlement should be finally approved as fair, reasonable, and adequate. The Court will also be asked to approve Class Counsel's request for costs, attorneys' fees and the enhancement payments made to Plaintiffs as the Class and PAGA Representatives.

The hearing may be postponed without further notice to the Class. It is not necessary for you to appear at this hearing. If you have given notice of your objection to the settlement, you

VI. GETTING MORE INFORMATION

The above is a summary of the basic terms of the Settlement. For the precise terms and conditions of the Settlement, you are referred to the detailed Joint Stipulation of Settlement and Release between Plaintiffs and Defendants, which will be on file with the Clerk of the Court. The pleadings and other records in this litigation, including the Settlement Agreement and Joint Stipulation, may be examined at any time during regular business hours in the United States District Court, Central District of California, 312 N Spring St, Los Angeles, CA 90012. In addition, the Joint Stipulation of Settlement and Release between Plaintiffs and Defendants, along with Plaintiffs' Motion for Preliminary Approval of Class Action Settlement are posted on www.boyamianlaw.com. Plaintiffs' Motion for Final Approval of Class Action Settlement, and Plaintiffs' Motion for Attorneys' Fees, Costs, and Enhancement Awards shall be posted on www.boyamianlaw.com by January 18, 2019, once they have been filed with the Court.

You may also contact the Settlement Administrator at: 1-888-518-5172. You also may contact Class Counsel listed below for more information:

Michael H. Boyamian, Esq.
Armand R. Kizirian, Esq.
Boyamian Law, Inc.
550 North Brand Boulevard, Suite 1500
Glendale, California 91203
Telephone: (818) 547-5300
Facsimile: (818) 547-5678


Thomas W. Falvey, Esq.
Law Offices of Thomas W. Falvey
550 North Brand Boulevard, Suite 1500
Glendale, California 91203
Telephone: (818) 547-5200
Facsimile: (818) 500-9307

Alex Hartounian, Esq.
The Hartounian Law Firm
418 N. Fair Oaks, Suite 202
Pasadena, California 91102
Telephone: (818) 794-9675
Facsimile: (818) 459-6997

IMPORTANT:

- 1. PLEASE DO NOT TELEPHONE OR CONTACT THE COURT OR DEFENDANTS' COUNSEL FOR INFORMATION REGARDING THIS SETTLEMENT!**
- 2. If you move, please send the Settlement Administrator your new address. It is your responsibility to keep a current address on file with the Settlement Administrator to ensure receipt of your Settlement Payment.**

ALLOCATION FORM

CPT ID: «ID» 
«EmployeeName»
«Address1» «Address2»
«City», «State» «Zip»

Please provide current address (if different) here:

The records of Fox Restaurant Concepts, LLC d/b/a True Food Kitchen, FRC True Food SMP, LLC, FRC True Food SDFV, LLC, and FRC True Food NBFI, LLC (“Defendants” or “True Food Kitchen”) indicate that during the Class Period, i.e. from July 22, 2012 to December 4, 2018, you worked as a “front of the house,” non-exempt, hourly employee. The total number of weeks worked for Defendants is «**TotalWorkweeks**» and is based on Defendants’ payroll and employment records.

BASED ON YOUR TOTAL OF «TotalWorkweeks» WEEKS WORKED FOR DEFENDANTS DURING THE CLASS PERIOD, YOUR ESTIMATED SETTLEMENT SHARE IS «estAmount».

If you disagree with the total weeks worked figure listed above, and believe you worked a different period of time for Defendants between July 22, 2012 and December 4, 2018, you must notify the Settlement Administrator in writing by the deadline of February 25, 2019, and attach documents, which support your belief.

Failure to provide the information requested and satisfactory supporting documentation as to what you believe your total weeks worked during the Class Period will result in your dispute being denied, and you will instead receive a settlement share based upon the workweeks worked figure listed above. In the absence of contrary documentation from you, Defendants’ payroll and employment records will be presumed to be correct and will form the basis of your settlement share.

Only if you are disputing the total workweeks figure listed above, you must return this Allocation Form signed, dated, and with what you believe your correct number of workweeks worked to be. You must also enclose any supporting documentation you have, and mail this package to the Settlement Administrator at Pae, et al. v. Fox Restaurant Concepts, LLC d/b/a True Food Kitchen, et al., c/o CPT Group, Inc., 50 Corporate Park, 92606 by February 25, 2019.

COMPLETE BELOW TO DISPUTE YOUR SETTLEMENT SHARE:

I believe that the total number of weeks worked figure listed above is inaccurate and that the total number of weeks I worked for Fox Restaurant Concepts, LLC d/b/a True Food Kitchen from July 22, 2012 to December 4, 2018 is _____.

BY SIGNING BELOW, I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF CALIFORNIA THAT I AM THE PERSON WHOSE NAME APPEARS ON THIS FORM AND THAT THE FOREGOING IS TRUE AND CORRECT.

(Signature)

(Please Print Your Name Clearly)

(Date)

REQUEST FOR EXCLUSION FORM

IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Pae, et al. v. Fox Restaurant Concepts, LLC d/b/a True Food Kitchen, et al.

Case No. 2:16-cv-06965-DSF-FFM

DO NOT FILL OUT THIS FORM if you want to be included in this class action settlement (“Settlement in the True Food Kitchen Class Action Lawsuit”) and to receive your portion of the Settlement.

INSTRUCTIONS

If you do not want to participate in the Settlement, you may “opt out” of the Settlement by returning this Request for Exclusion Form. If you choose to opt out of the Settlement: (a) you will have no right to receive any money under the Settlement; (b) you will not be bound by the Settlement; and (c) you will have no right to object to the Settlement and/or be heard at the final approval hearing.

To opt out, you must sign and return this Request for Exclusion Form to the Settlement Administrator, CPT Group, Inc., at the address listed below, and you must return it postmarked **no later than February 25, 2019**.

Pae, et al. v. Fox Restaurant Concepts, LLC d/b/a True Food Kitchen, et al.

c/o CPT Group, Inc.

50 Corporate Park

Irvine, CA 92606

OPT OUT SIGNATURE

BY SIGNING THIS REQUEST FOR EXCLUSION FORM, I HEREBY OPT OUT OF THE LAWSUIT AND THE SETTLEMENT. I WISH TO BE EXCLUDED FROM THE SETTLEMENT IN THE TRUE FOOD KITCHEN CLASS ACTION LAWSUIT. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT, I WILL NOT RECEIVE ANY MONEY FROM THE SETTLEMENT OF THIS LAWSUIT. IN ADDITION, BY REQUESTING EXCLUSION, I WILL HAVE NO RIGHT TO OBJECT TO THE SETTLEMENT AND/OR BE HEARD AT THE FINAL APPROVAL HEARING.

Dated: _____, 2019

(Signature (under penalty of perjury))

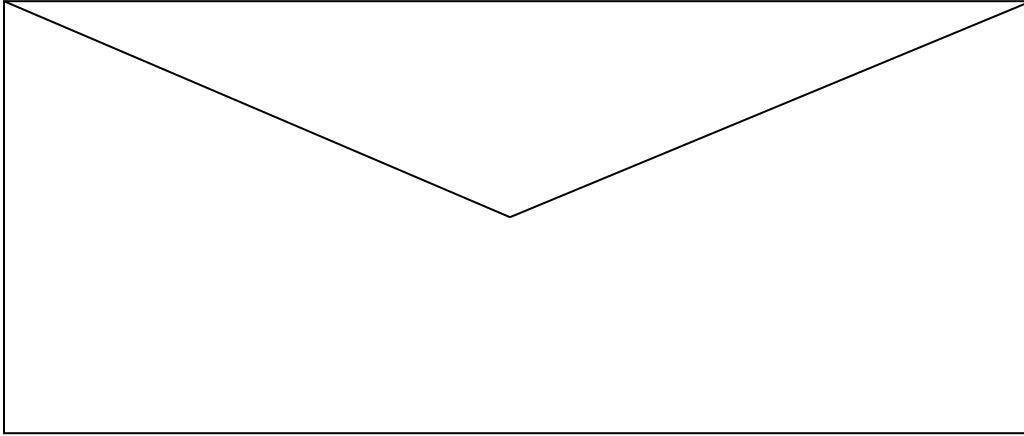
(Typed or Printed Full Name)

(Address)

(City, State, Zip Code)

(Optional) (Telephone Number, Incl. Area Code)

(Last Four Digits of Social Security Number)



**Back Side
#9 Envelopes**

**Front Side
#9 Envelopes**

*Pae, et al. v. Fox Restaurant Concepts, LLC d/b/a True Food
Kitchen, et al.*



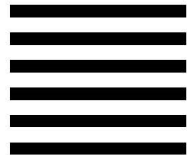
NO POSTAGE
NECESSARY
IF MAILED
IN THE
UNITED STATES

BUSINESS REPLY MAIL

FIRST-CLASS MAIL PERMIT NO 84 IRVINE CA

POSTAGE WILL BE PAID BY ADDRESSEE

|||||
CPT GROUP INC
CLASS ACTION ADMINISTRATORS
50 CORPORATE PARK
IRVINE CA 92606-9905



**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

JENNIFER PAE, individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

FOX RESTAURANT CONCEPTS,
LLC d/b/a TRUE FOOD KITCHEN; a
Arizona limited liability company;
FRC TRUE FOOD SMP, LLC, a
California limited liability company;
FRC TRUE FOOD SDFV, LLC, a
California limited liability company;
FRC TRUE FOOD NBFI, LLC, a
California limited liability company;
and DOES 1 through 25, inclusive,

Defendants

Case No.: 2:16-CV-06965-DSF-FFM

[CLASS ACTION]

Assigned to Hon. Dale S. Fischer

**[PROPOSED] ORDER GRANTING
FINAL APPROVAL OF CLASS
ACTION SETTLEMENT**

Date: March 25, 2019

Time: 1:30 p.m.

Location: 7D, First Street Courthouse

Complaint Filed: 07/22/16

Removal Date: 09/16/16

1 Plaintiffs' motion for final approval of class action settlement, and motion for
2 attorneys' fees and costs, came on for hearing before this Court, Judge Dale S.
3 Fischer, presiding, on March 25, 2019 at 1:30 p.m. Due and adequate notice having
4 been given to the Class Members, and the Court having considered the Settlement,
5 all papers and proceedings had herein, and all oral and written comments received
6 regarding the proposed Settlement, and having reviewed the records in this case,
7 and good cause appearing, the Court **HEREBY ORDERS THE FOLLOWING:**

8 1. This Court has jurisdiction over the subject matter of this application
9 and all matters relating thereto.

10 2. The Court confirms as final its provisional certification of the Class in
11 its December 4, 2018 order preliminarily approving the Settlement. The Class is
12 comprised of all current and former non-exempt front-of-the-house employees in
13 California at all of Defendants' True Food Kitchen restaurants at any time from July
14 22, 2012 to December 4, 2018. With respect to the Class and for purposes of
15 approving this settlement only, this Court finds and concludes that: (a) the members
16 of the Class are ascertainable and so numerous that joinder of all members is
17 impracticable; (b) there are questions of law or fact common to the Class, and there
18 is a well-defined community of interest among members of the Class with respect to
19 the subject matter of the lawsuit; (c) the claims of the Class Representatives are
20 typical of the claims of the other members of the Class; (d) the Class
21 Representatives have fairly and adequately protected the interests of the Class; (e) a
22 class action is superior to other available methods for an efficient adjudication of
23 this controversy; and (f) the counsel of record for the Class Representatives, i.e.,
24 Class Counsel, are qualified to serve as class counsel.

25 3. The Court confirms as final the appointment of Plaintiffs Jennifer Pae
26 and Alexandra Sheldon as Class Representatives and awards Ms. Pae \$15,000 and
27 Ms. Sheldon \$10,000 for their service as Class Representatives.
28

1 4. The Court confirms as final the appointment of Boyamian Law, Inc.,
2 the Law Offices of Thomas W. Falvey, and Hartounian Law Firm, P.C. as Class
3 Counsel.

4 5. The Court approves an award of attorneys' fees of \$221,306.53 (25
5 percent of the gross settlement sum minus the employer's share of payroll taxes)
6 and litigation costs of \$21,417.38, for a total fee and expense award of \$242,723.91.
7 These amounts are to be deducted from the settlement fund of \$900,000.00 pursuant
8 to the terms of the Joint Stipulation of Settlement and Release Between Plaintiffs
9 and Defendants, attached to the Declaration of Armand R. Kizirian as Exhibit "1".

10 6. The Court approves the payment of fees and other charges of the
11 settlement administrator CPT Group, Inc., totaling \$23,500.

12 7. The Court approves the payment of \$15,000 to California's Labor and
13 Workforce Development Agency from the \$20,000 of the settlement fund allocated
14 to resolve the Private Attorneys General Act of 2004 claims at issue in this suit.

15 8. Pursuant to Fed. R. Civ. P. 23(e), the Court grants final approval to the
16 Settlement, and orders the parties to implement, and comply with, its terms. The
17 Court finds that the Settlement is fair, reasonable, and adequate in all respects, and
18 that it is binding on all members of the Class. The Court specifically finds that this
19 Settlement affords substantial monetary relief to the Class and is rationally related
20 to the strength of Plaintiffs' claims given the risk, expense, complexity, and
21 duration of further litigation. This Court also finds that the Settlement is the result
22 of arms-length negotiations between experienced counsel after thorough factual and
23 legal investigation, and significant litigation including fully briefing a motion for
24 class certification. The Court further finds that the response of the Class to the
25 Settlement supports final approval, in that zero Class Members objected to the
26 proposed Settlement and less than 1% excluded themselves from the Settlement.

27 9. The Notice provided to the Class constituted the best notice practicable
28 under the circumstances, and fully met the requirements of due process under the

1 United States Constitution and California law, by providing individual notice to all
2 Class Members who could be identified through reasonable effort.

3 10. The Court finds that the proposed plan of allocation is fair and
4 reasonable. The procedures set forth in the Settlement by which payments are to be
5 calculated and made to Class Members are fair, reasonable, and adequate. Payment
6 shall be made according to those allocations and pursuant to the procedure set forth
7 in the Settlement and this Order.

8 11. By operation of this Order and upon the effective date of the Judgment,
9 Plaintiffs shall release, relinquish, and discharge all claims against the Releasees
10 released under the terms of Paragraphs 24 and 25 of the Settlement.

11 12. By operation of this Order and upon the effective date of the Judgment,
12 all Class Members who have not opted out of the Settlement shall be deemed to
13 have, and by operation of the Judgment shall have, fully, finally, and forever
14 released, relinquished, and discharged all Released Claims against the Releasees as
15 set forth in Paragraph 24 of the Settlement.

16 13. This Judgment is intended to be a final disposition of the above-
17 captioned action in its entirety and is intended to be immediately appealable.

18 14. This Court shall retain jurisdiction with respect to all matters related to
19 the administration and consummation of the settlement, and any and all claims,
20 asserted in, arising out of, or related to the subject matter of the lawsuit, including
21 but not limited to all matters related to the settlement and the determination of all
22 controversies relating thereto.

23 15. The request attorneys' fees and costs are fair, reasonable, and were
24 incurred in the best interests of the Class. Class Counsel, Boyamian Law, Inc., the
25 Law Offices of Thomas W. Falvey, and Hartounian Law Firm, P.C., achieved a
26 settlement for the Class Members through their diligent research, investigation, and
27 litigation of the case. Therefore, the fees are appropriate under a percentage-of-
28 recovery analysis, as the fees requested are in line with previous awards affirmed

1 and approved by the Ninth Circuit Court of Appeals and the Central District of
2 California. *See, e.g., In re Pac. Enterprises Sec. Litig.*, 47 F.3d 373, 378-79 (9th
3 Cir. 1995) (affirming fee award of one-third of settlement); and *In re Heritage Bond*
4 *Litigation*, No. 02-ML-1475-DT, 2005 WL 1594403, *19 (C.D. Cal. June 10, 2005)
5 (33 1/3% of \$27.83 million).

6 16. The Settlement Administrator shall pay the above-stated attorneys'
7 fees and costs to Class Counsel within thirty-five (35) calendar days of the Effective
8 Date, as defined in Paragraph 17(b) of the Settlement.

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10 **IT IS SO ORDERED.**

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13 DATED: _____

14 THE HON. DALE S. FISCHER
15 Judge of the Central District of California
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