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Attorneys for Plaintiffs, and the Putative Class and Collective

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DAVID CHAVEZ and VINCENT SLAUGHTER, on behalf of themselves and all others similarly situated,

Plaintiffs,

vs.

STELLAR MANAGEMENT GROUP VII, LLC; STELLAR MANAGEMENT GROUP, INC. d/b/a QSI QUALITY SERVICE INTEGRITY; THE VINCIT COMPANY, LLC d/b/a THE VINCIT GROUP and VINCIT ENTERPRISES,

Defendants.

Case No.: 3:19-cv-01353-JCS

PLAINTIFFS' SUPPLEMENTAL BRIEFING REGARDING ZOOM CIVIL MINUTE ORDER [DKT. NO. 138]

Plaintiffs David Chavez and Vincent Slaughter ("Plaintiffs"), by and through their attorneys of record, hereby submit the following response to the Court's inquiries regarding Plaintiffs' motion for preliminary approval of the proposed settlement, Dkt. No. 134.

I. SECOND AMENDED COMPLAINT

Pursuant to the Settlement, the Parties have stipulated to request leave to file the Second Amended Complaint ("SAC"). Dkt. No. 139. The proposed SAC was filed on May 6, 2021. *See* Dkt. Nos. 139-1, 140. Specifically, the SAC includes claims under Labor Code Section 2802, as well as the Private Attorneys General Act of 2004 ("PAGA"), as pled in the operative complaint of the now-dismissed action, *Chavez, et al. v. Stellar Management Group VII, LLC, et al.*, Case. No. SCV 264110.

Pursuant to the Court's direction, the SAC also includes class and collective definitions consistent with those presented in the Settlement and Amendment to Settlement. *See infra*, Section IV.

II. FURTHER DETAIL REGARDING PLAINTIFFS' INTERVIEWS WITH CLASS AND COLLECTIVE MEMBERS

The Court directed Plaintiffs' counsel to, in support of Plaintiff's damage analysis, provide a further breakdown of the information provided by Class and Collective members interviewed by Plaintiffs' counsel. Plaintiffs' Counsel conducted approximately 100 in-depth interviews of various non-exempt employees. Fifty-two interviews were conducted prior to the COVID-pandemic, including various factors such as dates and locations of work, hours of work, pre-shift and post-shift off-the-clock work, meal and rest breaks, and reimbursement of work-related expenses. Forty-five interviews were conducted following the beginning of the COVID-pandemic, to include additional information regarding expense reimbursements and off-the-clock work conducted as a result of the pandemic.

These interviews were conducted with Class and Collective members who worked a variety of jobs, but most predominantly, Sanitation Workers or Sanitation Team Members: 85% worked as Sanitation Workers or Sanitation Team Members, 13% worked in a supervisory capacity for such Sanitation Workers as Sanitation Leads, and approximately 3% worked as office clerks (one of whom notably also reported having worked as a Sanitation Worker).[1] Plaintiffs' Counsel was not able to

[1] Plaintiffs' Counsel additionally reviewed multiple job descriptions for the following job positions held by Class and Collective Members: Sanitation Team Member, Sanitation Lead, Clerk, Chemical Room Attendant, Site Safety Coordinator, and Data Entry Coordinator. Sanitation Team Members, Sanitation Leads, and Chemical Room Attendants were considered part of the "cleaning crew" and shared identical job duties to clean and sanitize equipment; Sanitation Leads and Chemical Room Attendants were also required to train Sanitation Team Members. Job descriptions for Clerks, Site Safety Coordinators, and Data Entry Coordinators revealed more clerical and administrative job duties. According to data provided by Defendants, of 4,328 putative Collective Members, 4,310 worked as members on the cleaning crew; of the 1,595 putative Class Members, 1,588 worked as members of the cleaning crew. Plaintiffs' Counsel's interviews with clerks revealed, however, that clerks were required to help check machines after all sanitation workers completed their cleaning of such machines, and to lend assistance to clean machines and equipment whenever insufficient sanitation workers were available.
Defendants' Counsel further confirmed that, while not as routinely as sanitation workers, non-exempt non-sanitation workers at Defendants' customers' facilities were required to don and doff protective gear in connection with their job duties or to move around the facilities, and were also subject to the

interview any non-exempt employees who provided services exclusively from Defendants' corporate offices. Sanitation Workers reported working 5 to 7 days a week, 5 to 12 hours per day; similarly, office clerks reported working 5 to 7 days a week (for an average of 6.2 days per week), 9 to 10.5 hours per day. Sanitation Workers reported receiving an hourly rate of $11 to $16; office clerks reported receiving an hourly rate of to $15.50 to $21.50. These employees reported a variety of job duties including donning and doffing protective equipment, convening for safety meetings at the start of each shift, cleaning off and sanitizing poultry equipment, preparing and spraying liquid chemicals, performing regular maintenance on sanitation equipment, preparing the facility for audits by federal and state agencies, practicing food safety procedures, and ultimately protecting the brand image of meat processing companies.[2]

From these interviews, Plaintiffs were able to ascertain the following average figures for purposes of their damages analysis: 15 minutes of unpaid, off-the-clock work; 80% noncompliant meal and rest breaks; and $50 per individual in unreimbursed, necessary business expenses.

Plaintiffs' Counsel's interviews revealed that Class and Collective Members worked up to 0.5 hour off the clock per day donning and doffing their personal protective equipment and undergoing security procedures at each of Defendants' customers' facilities.[3] Office clerks who were interviewed reported similar violations of up to 0.5 hours of off-the-clock work per day. The resulting average of off-the-clock work was approximately 0.25 hours (or 15 minutes) per day for all Class and Collective Members.

Plaintiffs' Counsel's interviews also revealed that Class Members were not provided compliant meal and rest breaks, whether interrupted, shortened, untimely, or missed altogether, and were not paid a meal or rest period premium as a result. Class Members reported an average of 65% noncompliant meal breaks and 75% noncompliant rest breaks, and a median of 86% noncompliant

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same security inspection procedures as sanitation workers at such facilities. Defendants deny that any such activities were performed by non-exempt employees while off the clock.

[2] Plaintiffs' Counsel further cross-checked these averages with those provided by Defendants' Counsel, which ranged from $11.91 to $22.58, which was in line with the numbers reported by Class and Collective Members.

[3] Three outliers reported 2 hours or more of off-the-clock work, but were removed based on Plaintiffs' Counsel's analysis and to ensure the soundness of Plaintiffs' Counsel's calculations.

meal breaks and a median of 100% noncompliant rest breaks. Given that Class Members also reported being required to don and doff their personal protective equipment during their meal breaks an average of 95% of the time and during their rest breaks 100% of the time, Plaintiffs' Counsel assumed the best case scenario would be more fairly close to 95% and 100% noncompliant meal and rest breaks, respectively. Office clerks who were interviewed reported violations of an average of 25% and 50% noncompliant meal and rest breaks, respectively, but were not consistent as to whether donning and doffing personal protective equipment was necessary for their positions.

Plaintiffs' Counsel then cross-checked data provided by Defendants' Counsel, which provided that 57,363 meal period premiums and 4,361 rest period premiums were provided to Class Members over the course of a total of 160,017 work shifts, and determined that Class Members were provided meal period premiums for approximately 35% of all shifts and rest period premiums for approximately 3% of all shifts. To incorporate these previously-paid premiums into the calculation assuming a best case scenario, Plaintiffs' Counsel assigned 60% noncompliance for meal breaks and 97% noncompliance for rest breaks, or in other words, approximately 80% noncompliance for both meal and rest periods.

Finally, nearly 90% of all interviewed Class Members reported a broad range of unpaid, necessary business expenses, including for pumps, boots, goggles, cellphone usage, anywhere from $0 to $1,494 throughout their entire employment with Defendants. Office clerks who were interviewed reported similar violations of an average of $400 in unreimbursed business expenses, predominately for personal cellphone usage. Three outliers of over $600 (no other Class Member reported paying out-of-pocket business expenses over $400, even though many reported working longer than those individuals) were removed from Plaintiffs' calculations to ensure the soundness of Plaintiffs' Counsel's calculations: the average reported business expense was $79, while the median reported business expense was $20. To acknowledge the wide range of reported business expenses, particularly in light of the fact that approximately 60% of reporting Class Members estimated $50 or less in unpaid business expenses, Plaintiffs' Counsel estimated the average business expense was approximately $50 per Class Member throughout the entire statute of limitations period.

Following the Court's proposal to remove clerical-based Class and Collective Members from the Settlement, the Parties have independently reviewed the data and documents and have met and conferred to determine whether removal of clerical non-exempt employees would be appropriate for this Settlement. The Parties ultimately agreed to remove non-exempt employees who provided services exclusively from Defendants' corporate offices, and have incorporated this amendment in their proposed Amendment to the Settlement. *See infra*, Section IV. According to the analysis conducted by Plaintiffs' Counsel, the remaining clerical non-exempt employees (i.e. those who spent time at Defendants' client work sites) had overlapping job duties and performed work that Plaintiffs contend was performed off the clock, as well as similar ranges of reported off-the-clock work, violation rates for meal and rest breaks, and unreimbursed business expenses. The Parties therefore agreed that it would be fair and reasonable for the Class and Collective to include clerical employees whose employment involved donning and doffing personal protective equipment and where applicable, undergoing security procedures.

III. FURTHER EXPLANATION OF PLAINTIFFS' DAMAGE ANALYSIS

Using the averages calculated above, Plaintiffs' Counsel determined the total potential exposure owed to all Class and Collective Members. Plaintiffs' Counsel determined they can reasonably prove a best case scenario of approximately: (1) a 50% opt-in rate for Collective Members, (2) 15 minutes of off-the-clock every work day for every Class and Collective Member, (3) 80% missed or noncompliant meal and rest period every work day, (4) $50 in unreimbursed business expenses for every Class Member, and (5) Defendants acted knowingly or in bad faith, allowing the usage of a three-year statutory period for FLSA claims, instead of a 2-year statutory period.[4]

In preparation for mediation, as described in Plaintiffs' Motion for Preliminary Approval, Plaintiffs' Counsel performed a detailed damages analysis using the above assumptions and modeling,

[4] Liquidated damages for unpaid overtime during a three-year statute of limitations period is permissible under the FLSA. 29 U.S.C. § 216(b) (liquidated damages for unpaid overtime is in an amount equal to the unpaid overtime); *Haro v. City of Los Angeles*, 745 F.3d 1249, 1259 (9th Cir. 2014). If an employer's conduct constitutes a "knowing violation" of the statute, the FLSA's standard two-year statute of limitations may be extended to three years. 29 U.S.C. § 255(a). Damages for unpaid overtime are not liquidated under California law.

which formed the basis for Plaintiffs' Counsel to engage in good faith and informed settlement negotiations. This analysis utilized various payroll and timekeeping data provided by Defendants, and Plaintiffs' Counsel performed the calculations herein.

Plaintiffs' Counsel analyzed detailed time and pay records for a sampling representing 20% of the Class, job descriptions, timekeeping and break policies, and other class-wide figures, including the total number of Class and Collective Members, average hourly rates, and additional data points. Based on the assumptions described above, Class and Collective Members were entitled to 15 minutes of off-the-clock work per day, for a total of approximately 2 hours of off-the-clock work per work week. In line with the assumption of a best-case-scenario, Plaintiffs' Counsel did not separately calculate damages attributable to minimum wage violations because the overtime damages calculation accounted for the straight time owed for the off-the-clock hours (the data indicated that in most if not all applicable workweeks, Class and Collective Members were compensated at an effective hourly rate that exceeded minimum wage). That is, in calculating these damages, Plaintiffs' Counsel used 1.5 times the hourly rate for each hour of off-the-clock work. The damages per year were then extrapolated out based on the total number of workweeks and workdays at issue to calculate potential exposure for the Class and Collective Members under the FLSA and applicable California law.

Specifically, the unpaid wages that would be owed under the assumptions utilized by Class Counsel based on the assumption of 2 hours off the clock work in each workweek would total approximately $3.8 million for Class Members under California law (approximately $717,000) and for the Collective Members under the FLSA (approximately $1.54 million unliquidated and $3.08 million liquidated).[5]

Plaintiffs' Counsel separately calculated the additional substantive, non-PAGA damages based on the above assumptions, attributable to workweeks where Class Members performed work in California under California law. A breakdown of Plaintiffs' resulting calculations follow here:

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[5] Assuming 100% participation of the Collective, the total liquidated damages under the FLSA for all Collective Members would be approximately $6.1 million.

Non-derivative, non-PAGA damages	**Exposure**
Off-the-clock overtime under the FLSA and under CA law	$2.257 million ○ CA: $717,000 ○ FLSA: $1.54 million
Meal and rest break violations under CA law	$3.2 million
Unreimbursed business expenses under CA law	$76,000
Total, Unliquidated Core Damages	**$5.5 million**
Total, Liquidated Core Damages	**$7.1 million**

The Gross Settlement Amount of $4.25 million represents approximately 77% of the $5.5 million unliquidated core damages, and 60% of the $7.1 million liquidated core damages. The Net Settlement Amount of $2,653,833.48 represents 48% of the unliquidated core damages and 37% of the liquidated core damages.

Plaintiffs' Counsel further calculated the derivative damages owed to the California Class and PAGA penalties owed to the State of California and to the Aggrieved Employees. To calculate waiting time penalties, Plaintiffs' Counsel assumed every previously terminated Class Member would be entitled to 30 days of pay at the average hourly rate for a total of 8 hours per day. *See* Cal. Lab. Code § 203. To calculate wage statement penalties, Plaintiffs' Counsel used the total number of wage statements issued to Class Members to calculate exposure per Class Member of $50.00 for each initial pay period and $100.00 for each subsequent pay period (the aggregate penalty per Class Member did not exceed $4,000.00). *See* Cal. Lab. Code § 226.3.

To calculate the potential PAGA penalties owed to the State of California and to the Aggrieved Employees, Plaintiffs' Counsel used the number of Class Members and the number of pay periods within the PAGA limitations period, starting from October 19, 2017. Ahead of the mediation, Defendants' counsel provided class data that included, *inter alia*, the total number of non-exempt employees employed by Stellar Management Group VII, LLC – the only Defendant that employed non-exempt employees in the State of California – during the Class Period from April 21, 2013 through April 15, 2019 and the number of pay periods that they worked. Plaintiffs applied a one-year look-back period for the PAGA claims (from the October 19, 2018 submission date of Plaintiffs' initial complaint to the LWDA), as "[t]he statute of limitations on a PAGA claim is one year." *Robles v. Schneider Nat'l Carriers, Inc.*, No. EDCV 16-2482 JGB (KKx), 2017 U.S. Dist. LEXIS 132065, at

*23 (C.D. Cal. Aug. 15, 2017) (citing Cal. Code Civ. Proc. § 340). With extrapolation, Plaintiffs estimated that there were 1,338 Aggrieved Employees who worked a total of 20,647 pay periods.

Plaintiffs then applied assumptions about California Labor Code violation rates and the amount of penalties that would be imposed per violation to arrive at an estimate of Defendant's total PAGA exposure. Plaintiffs determined that 1 violation per pay period was both a realistic and reasonable estimate to determine the violation rate for each Aggrieved Employee during the PAGA period. Plaintiffs assumed that each Aggrieved Employee is owed $100 per first pay period violations, and $200 for all subsequent pay period violations, for each of these PAGA violations. *See* Cal. Lab. Code § 2699(f) ("If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars ($100) for each aggrieved employee per pay period for the initial violation and two hundred dollars ($200) for each aggrieved employee per pay period for each subsequent violation."). Although more recent case law has suggested that a $100 per violation would be more appropriate here,[6] Plaintiffs' Counsel used the more aggressive assumption of $100 per initial violation and $200 for each subsequent violation in their presumption of a best case scenario.[7] Plaintiffs also did not incorporate any discretionary reduction by the Court, even though the PAGA statute enables the Court to make such a reduction. *See* Cal. Lab. Code § 2699(e)(2) ("In any action by an aggrieved employee seeking recovery of a civil penalty available under subdivision (a) or (f), a court may award a lesser amount than the maximum civil penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory."). A breakdown of these non-substantive, derivative penalties and PAGA penalties follow here:

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[6] Recent case law found that an employer cannot be presumed to be aware that its continuing underpayment is a violation subject to the "subsequent" violation rate of $200 until the employer is notified it is in violation of the Labor Code by the Labor Commissioner or a court. *See Bernstein v. Virgin Am., Inc.*, Nos. 19-15382, 20-15186, 2021 U.S. App. LEXIS 5197, at *35 (9th Cir. Feb. 23, 2021); *see also, Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1209 (Ct. App. 2008).

[7] Assuming this Court followed *Bernstein*, the PAGA penalties exposure would be closer to approximately $1.95 million, rather than the estimated $3.8 million represented here.

Derivative CA damages and PAGA penalties	**Exposure**
Waiting Time Penalties	$3.5 million
Wage statement Penalties	$2.2 million
PAGA penalties	$3.8 million
Total	**$9.5 million**

In sum, a best case scenario exposes Defendants to a potential total liability of $16.6 million dollars assuming the variables provided above:

Total Exposure for Core Damages and Derivative CA damages and PAGA penalties	**Exposure (including liquidated damages)**
Total assuming 50% Opt-In participation	$16.6 million
Total assuming 100% Opt-In participation	$19.7 million

The Gross Settlement Amount $4.25 million, resulting in a Net Settlement Amount of approximately $2,653,833.48, will result in fair and just relief to the Class Members. The Gross Settlement Amount represents 26% of the total exposure of $16.6 million dollars (assuming a 50% Collective Member opt-in rate), while the Net Settlement Amount represents represents 16% of the total $16.6 million dollar exposure. Assuming, instead, an unlikely 100% Collective Member opt-in rate, the Gross Settlement Amount represents 22%, while the Net Settlement Amount represents 14% of the total potential exposure of $19.7 million. In either scenario, however, the Gross Settlement Amount and the Net Settlement Amount both represent an excellent recovery, especially in face of expanding and uncertain litigation owing to the risks presented by continued litigation.[8]

[8] Courts routinely approve settlements that provide a fraction of the maximum potential recovery. *See, e.g., Officers for Justice*, 688 F.2d at 623. It is well-settled that a proposed settlement is not to be measured against a hypothetical ideal result that might have been achieved. *See, e.g., 7-Eleven Owners for Fair Franchising*, 85 Cal.App.4th 1135, 1150 (2000) (citing *Linney v. Cellular Alaska P'ship,* 151 F.3d 1234, 1242 (9th Cir. 1998) with approval). "Notably, [a court must consider whether] a substantial portion of Defendant's total potential liability exposure would not translate into awards to class members at all. . . . [For example, where] the estimated potential liability is comprised of PAGA penalties, [] these large penalties do not necessarily translate into take-home awards for members of the class…." *Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245, 256 (N.D. Cal. 2015). "Even a small percentage of the maximum possible recovery can be a reasonable settlement. Dollar amounts are judged not in comparison with possible recovery in the best of all possible worlds, but rather in light of the strengths and weaknesses of plaintiffs' case." *In re Warfarin Sodium Antitrust Litig.*, 212 F.R.D. 231, 258 (D. Del. 2002). *See also Vikram v. First Student Mgmt., LLC*, No. 17-CV-04656-KAW, 2019 WL 1084169, at *5 (N.D. Cal. Mar. 7, 2019) (approving gross settlement amount that represents "30.6% of the California labor law violations and PAGA penalties"); *Viceral*, 2016 WL 5907869, at *7 (Chen, J.) (approving wage and hour settlement which represented 8.1% of the total verdict value); *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 WL 3776765, at *4 (N.D. Cal. June 17, 2015) ("10% gross and 7.3% net figures are 'within the range of reasonableness'"); *Balderas v. Massage Envy Franchising, LLP*, 2014 WL 3610945, at *5 (N.D. Cal. July 21, 2014) (gross settlement amount of 8% of maximum recovery and net settlement amount of 5%); *Ma v. Covidien Holding, Inc.*,

These figures are based on Plaintiffs' assessment of a best-case-scenario and do not account for any interest gained on the initial funding of the settlement. To have obtained such a result at trial, Plaintiffs would have to: (1) certify all claims and withstand any decertification motions, invariably complicated by the nature of off-the-clock work performed by the Class and Collective members in numerous and varying locations owned by various third-party entities; (2) prevail on the merits on all claims; (3) prove that Defendants acted knowingly or in bad faith; and (4) prove that all Class and Collective Members experienced the violations at the levels described above for every shift.

In contrast, the Settlement will result in substantial, immediate, and certain payment to Class and Collective Members. Assuming a 100% Collective Member opt-in rate, Class and Collective Members will receive an average recovery of $1,110 and $205, respectively, from the Net Settlement Amount.[9] This amount provides significant compensation to the Class and Collective Members, and the Settlement provides an excellent recovery in the face of expanding and uncertain litigation. In light of all of the risks, the settlement amount is fair, reasonable, and adequate.

IV. AMENDMENT TO THE SETTLEMENT AND PROPOSED NOTICES

Pursuant to the Court's directions, the Parties have agreed to amend the Settlement Agreement. The Amendment to the Settlement Agreement ("Amendment") was fully executed on May 7, 2021, and a true and correct copy is attached here as Exhibit 1. The Parties also agreed to jointly revise the Notices to the Class and Collective, which are attached to the Amendment as Exhibits C and D. Specifically, the Parties have amended the Settlement to provide that:

- Paragraph 2.b, 2.p, 2.t, 2.ee; Page 1 and Section 2 in Notice of Class Action Settlement and Notice of Collective Action Settlement – Refining the defnitions of Aggrieved Employees, Collective Members, Opt-In Plaintiffs, and Rule 23 Settlement Class Members to exclude individuals who worked exclusively in Defendants' corporate offices;

2014 WL 360196, at *4-5 (C.D. Cal. Jan. 31, 2014) (9.1% of "the total value of the action" is within the range of reasonableness).

[9] The averages provided here do not incorporate any interest gained on the Gross Settlement Amount, assume all Class and Collective Members participate in the Settlement and that each member worked identical lengths of employment, and incorporates workweek weightings that reflect the increased value of state law claims and differing average rates of pay by state, described below.

- Paragraph 17.b – Rule 23 Settlement Class Members who do not timely and validly request exclusion from the Settlement will release FLSA claims;
- Paragraph 17.d – Releases under Section 1542 of the California Civil Code do not extend to the Released PAGA Claims;
- Paragraph 17.e; Section 6 in Notice of Class Action Settlement – Rule 23 Settlement Class Members who do not timely and validly request exclusion from the Settlement, but are also Collective Members, will have an opportunity to opt-in as an Opt-In Plaintiff by receiving and negotiating their Settlement Award check for work completed during the FLSA Collective period;
- Paragraph 18(a) – Collective Members' Settlement Award checks will provide consent to magistrate jurisdiction;
- Paragraph 18(b) – Participating Class Members' Settlement Award checks will not require consent to join the Collective and will state such Participating Class Members' of FLSA claims under the Settlement;
- Paragraph 20 – Named Plaintiffs and Participating Individuals will not be prohibited from voluntarily assisting in a lawsuit or adversarial proceeding against the Releasees;
- Paragraph 21.g – The deadline for the Settlement Administrator to provide its report on notice to the Parties is 30 calendar days after the opt-out and objection deadline, to accommodate the 21 day cure period allowed by the Settlement;
- Paragraph 23 – Rule 23 Settlement Class Members who fail to make a timely written objection are not deemed to have waived any objections to the Settlement;
- Paragraph 32.a.ii – Typographical errors regarding Collective Members have been removed;
- Paragraph 41 – Individuals who fail to negotiate their checks within 60 days of issuance and who receive a second check after cancellation of the original check will have the full 180 days from the date of issuance of the original check to negotiate the second check.
- Section 1 in Notice of Class Action Settlement and Notice of Collective Action Settlement – The final approval hearing wll be held via the Court's static Zoom conference;

- Section 4 in Notice of Class Action Settlement and Notice of Collective Action Settlement – The estimated individual settlement amounts are specified to be possibly higher "or lower"; and
- Section 10 in Notice of Class Action Settlement and Notice of Collective Action Settlement – Class and Collective Members may not obtain more information on the Settlement by visiting the physical office of the Clerk of the Court, due to COVID-19 concerns.

V. REVISED PROPOSED ORDER

Pursuant to the Court's directions, Plaintiffs have revised the proposed order and have attached it here as Exhibit 2. Specifically, Plaintiffs have revised the proposed order to provide that:

- Paragraph 1 – The "Settlement" refers to the original Class Action Settlement Agreement and Release and the Amendment to Class Action Settlement Agreement and Release;
- Paragraph 10 – The Notices of Settlement to be approved by the Court are the revised Notices attached to the Amendment to Settlement, rather than the original Notices attached to the Settlement;
- Paragraph 11 – The Parties are not authorized to make changes to the proposed Notices of Settlement unless approved by the Court;
- Paragraph 13 – The Court does not preliminarily approve Plaintiffs' request for attorneys' fees and costs, and that Plaintiffs' Counsel will file a motion for approval for attorneys' fees and costs and service awards at least 15 days before the opt-out deadline;
- Paragraph 16 – The final approval hearing will be held via the Court's static Zoom conference and Class Members do not waive their right to appear by failing to submit a written objection;
- Paragraph 17 – The deadline for the Settlement Administrator to provide its report on notice to the Parties is 30 calendar days after the opt-out and objection deadline, to accommodate the 21 day cure period allowed by the Settlement; and
- Paragraph 17 – The deadline for Plaintiffs' Counsel to file a motion for approval for attorneys' fees and costs and service awards is at least 15 days before the opt-out deadline.

Date: May 7, 2021

Respectfully Submitted,

/s/ Michelle S. Lim

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing document(s) with the Clerk of the Court for the United States District Court, Northern District of California, by using the Court's CM/ECF system on May 7, 2021.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the Court's CM/ECF system.

/s/ Michelle S. Lim
Michelle S. Lim