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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

JOHN VALENCIA, on behalf of himself
and all others similarly situated,

Plaintiff,

vs.

P & M HOLDINGS, LLC d/b/a and a/k/a
GOLDEN STEER STEAKHOUSE;
DOES 1 through 50; inclusive,

Defendant(s).

Case No.: A-21-830175-C
Dept. No.: 25
HEARING REQUESTED

**JOINT MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Hearing Date:
Hearing Time:

**JOINT MOTION FOR PRELIMINARY APPROVAL
OF CLASS ACTION SETTLEMENT**

Plaintiff JOHN VALENCIA ("Plaintiff"), on behalf of himself and all others
similarly situated, by and through his attorneys of record, and Defendant P & M
Holdings, LLC d/b/a and a/k/a Golden Steer Steakhouse ("Defendant") (collectively
Plaintiff and Defendant may be referred to throughout this Motion as the "Parties")
hereby submit this Joint Motion for Preliminary Approval of Class Action Settlement.

Pursuant to Rule 23(f) of the Nevada Rules of Civil Procedure ("NRCF"), the Parties ask the Court to give preliminary approval of the "Joint Stipulation of Settlement and Release (the "Settlement"), a copy of which is submitted for this Court's review concurrently herewith.

Dated: February 26, 2021

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/s/ Christian Gabroy

/s/ Daniel Aquino

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MEMORANDUM OF POINTS AND AUTHORITIES

I. PROCEDURAL HISTORY AND FACTUAL BACKGROUND.

On or about January 7, 2020, Plaintiff sent an NRS 608.140 demand to Defendant with enclosed confidential draft complaint alleging various causes of action for unpaid wages on behalf of himself and all similarly situated individuals under the Nevada Revised Statutes. Specifically, Plaintiff alleges that Defendant failed to: (1) pay all overtime in violation of NRS 608.140 and 608.018 and (2) timely pay all wages due and owing in violation of NRS 608.140 and 608.020-050

Plaintiff's legal claims stem from his allegation that Defendant maintained an unlawful practice of not paying Plaintiff and all other similarly situated employees' daily overtime to nonexempt hourly employees who earned less than one and one-half times the applicable minimum wage. Defendant disputes Plaintiff's claims and disputes the damages that may be awarded for a violation of the statutes at issue in this matter.

Following the dispatching of the January 7, 2020 NRS 608.140 demand but prior

1 to the draft confidential complaint being filed, the Parties entered into a tolling
2 agreement on January 24, 2020 to discuss potential early resolution.

3 To that end, the Parties engaged in informal discovery. Defendant's counsel
4 provided Plaintiff's counsel with time and class member data. The Parties then
5 engaged in extensive discussions regarding their respective positions and the
6 information and data provided and needed to properly evaluate the merits of the claims
7 alleged.

8 Following such extensive discussions regarding the strengths of their respective
9 positions, the Parties reached a proposed class action settlement through arms'-length
10 direct negotiations. A copy of the Parties' Joint Stipulation of Settlement and Release is
11 attached hereto as Exhibit 1, hereinafter "Settlement" or "Settlement Agreement."

12 II. SUMMARY OF THE SETTLEMENT'S KEY PROVISIONS.

13 The Parties' Settlement provides for significant monetary recovery on behalf of
14 the Class, releases only those claims alleged or related to the complaint and sets forth
15 the legally appropriate mechanism for providing notice to the Class of the terms and
16 conditions of the Settlement.

17 A. The Recovery.

18 The Settlement provides for a maximum settlement amount of \$35,000.00. See
19 Settlement at ¶ 10(c). Out of that amount, the following approximate breakdown
20 applies:

- 21 • \$16,333.33¹ in estimated settlement funds to the Class;
- 22 • Up to \$3,500 in settlement administration costs;
- 23 • \$2,500.00 in enhancement to named Plaintiff for his participation in the
24 lawsuit;
- 25 • \$11,666.67 in attorney's fees (1/3 of the maximum settlement amount);
26 and,

27 ¹ The net settlement amount (defined herein) is subject to change and may increase or
28 decrease depending on the actual settlement administration costs and costs awarded to
Class Counsel.

- Up to \$1,000.00 in actual costs.

Id. at ¶ 10(c); ¶ 10(g); and ¶ 12. The employees' share of payroll taxes will not be deducted from the wage payments made to the Settlement Class. *Id.* at ¶ 9, 10(e). The remainder of the maximum settlement amount (the amount remaining after deduction of the settlement administration costs, Enhancement Awards, Attorneys' Fees and Costs) ("net settlement amount") will be paid to the Class Members who participate in the settlement (i.e., file a claim) based on the formula established in Paragraph 10(d) of the Settlement. *Id.* at ¶¶ 10(c)-(d).

The settlement represents a significant recovery on behalf of the Class given the risks associated with this case. See Exhibit I at ¶¶ 7, 10. Plaintiff alleged that he and fellow employees frequently worked over eight (8) hours in a workday and on many occasions, worked a shift until the late evening hours and then returned early the next morning to work a day shift. See Complaint at ¶ 16. Plaintiff alleged that this resulted in him having worked over eight hours in a 24-hour period that were not paid at one and one-half times the regular rate of pay for the overtime hours worked. *Id.* at ¶ 18. Defendant disputes Plaintiff's claims and disputes the damages that may be awarded for a violation of the statutes at issue in this matter. The Settlement represents a compromise, but is not intended to, nor should it, be construed as an admission of liability as to the merits of Plaintiff's claims or whether class certification is maintainable. See Settlement at ¶¶ 4, 25. Nevertheless, because the Settlement provides for a per-daily-overtime-hour payout, each participating class member will be entitled to a proportionate share of the Settlement based on the actual daily overtime hours worked. *Id.* at ¶ 10(d). In sum, the recovery of up to \$16,333.33 for all class members represents a significant recovery given the Parties' positions and uncertain legal requirements at issue and with regard to class certification. See Exhibit I at ¶ 7.

B. The Release.

The Settlement is not an admission by Defendant of liability on any of Plaintiff's claims. See Settlement at ¶ 25. The Settlement provides that, in consideration for the

1 Settlement, Settlement Class Members² who do not file valid requests for exclusion will
2 release all wage and hour claims relating or arising out of the facts of Plaintiff's
3 complaint against Defendant pursuant to the terms of the Settlement.³ *Id.* at ¶¶ 16,18.

4 **C. The Settlement Mechanism.**

5 The Settlement is a claims-made settlement. The Parties have agreed to use a
6 third-party Claims Administrator to administer the claims process. *Id.* at 10(d). The
7 Settlement provides for the Claims Administrator to send out notice explaining the
8 terms and conditions of the Settlement to approximately 60 class members. (A copy of
9 the Notice to be approved by the Court and sent to class members is attached as
10 Exhibit A to the Settlement Agreement.) Following mailing of the Notice, class
11 members then have thirty (30) days to complete and submit a Claim Form or request to
12 be excluded from the Settlement or object to the Settlement. *Id.* ¶ 14(a). (A copy of
13 the Claim Form to be approved by the Court and sent to class members is attached as
14 Exhibit B to the Settlement Agreement.) Unclaimed amounts will be returned to the
15 Defendant.

16 The Settlement further provides that following the notice period the Court will
17 hold a final "fairness" hearing to provide final review and approval of the Settlement.
18 *Id.* at ¶ 19. (Attached as Exhibit D to the Settlement Agreement is a proposed Order
19 granting preliminary approval of the Settlement. Attached as Exhibit E to the
20 Settlement is a proposed Order granting final approval of the Settlement.) The Notice
21 advises class members about the fairness hearing and their opportunity to attend the
22 hearing and make their views known. *Id.* at ¶ 1(q). At the fairness hearing, the parties
23 will address any issues raised by class members or the notice process itself, and the
24 Court will have a second opportunity to review the settlement in full.

25 ² "Settlement Class" means the following class or classes: all hourly paid non-exempt
26 persons employed by Defendant in the state of Nevada who earned less than 1 ½
27 times the applicable minimum wage and who worked over eight (8) hours in a workday
28 and were not paid their total owed wages for the time period commencing on January
17, 2017, up to and including the date the Court grants preliminary approval of this
Settlement.

³"Released Claims" has the meaning ascribed to it in ¶ 1(u) of the Settlement
Agreement.

1 **III. THE LEGAL FRAMEWORK WEIGHS IN FAVOR OF GRANTING**
2 **PRELIMINARY APPROVAL OF THE SETTLEMENT.**

3 NRCP 23(f) provides that settlement of the claims of a certified class is subject
4 to the court's approval.⁴ In general, settlement of class actions is favored as a matter
5 of "strong judicial policy." *Alberto v. GMRI, Inc.*, 252 F.R.D. 652, 658 (E.D. Cal. 2008)
6 (citing *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992)).

7 Procedurally, the reviewing court's evaluation is conducted in two stages.
8 *Alberto*, 252 F.R.D. at 658. At the first stage the court conditionally certifies a class for
9 settlement purposes, preliminarily approves the settlement pending the "fairness
10 hearing," and authorizes notice of the proposed class settlement to be given to the
11 class. *Id.* (citations omitted); see also *Manual for Complex Litigation (Fourth)* § 21.632
12 (2004) ("Manual for Complex Litigation") (summarizing "preliminary fairness review").
13 Stage two is the fairness hearing, set for a time after notice has been provided to the
14 class and class members have had an opportunity to submit claims or objections to the
15 proposed settlement or to opt out of it, and the court reaches a final determination
16 about whether the proposed settlement should be approved as a fair, adequate, and
17 reasonable resolution of the dispute. *Id.* at 659 (citations omitted).

18 Because this is the first stage of the Court's evaluation of the Settlement,
19 Plaintiff submits that (A) the Class should be certified, (B) the Settlement should be
20 preliminary deemed fair, reasonable, and adequate, and (C) notice should be sent out
21 as set forth in the Settlement.

22 **A. The Settlement Class Should Be Certified.**

23 To facilitate the proposed settlement, Plaintiff respectfully requests that the
24 Court conditionally certify the following settlement Class pursuant to NRCP 23: all
25 hourly paid non-exempt persons employed by Defendant in the state of Nevada who
26 earned less than 1 ½ times the applicable minimum wage and who worked over eight
27 (8) hours in a workday and were not paid their total owed wages for the time period

28 ⁴ Nevada's rules of civil procedure track, for the most part, their federal counterpart.
Therefore, given the lack of state law authority relating to class action settlement
mechanisms, federal authority should be consulted and followed.

commencing on January 17, 2017, up to and including the date the Court grants preliminary approval of this Settlement. Exhibit I at ¶ 1(e) and (y). The Parties agree that, for purposes of settlement, the criteria for certifying the Class under NRCP 23(a) and NRCP 23(c)(3) may be satisfied in this case, and the proposed Class should be certified for purposes of settlement.

1. All four criteria of NRCP 23(a) are met.

NRCP 23(a)(1): The class is so numerous that joinder of all members is impracticable. "As a general rule, classes numbering greater than forty individuals satisfy the numerosity requirement." *Quintero v. Mulberry Thai Silks, Inc.*, No. 08-2294, 28 I.E.R. Cas. (BNA) 607, 2008 U.S. Dist. LEXIS 84976, at *7 (N.D. Cal. Oct. 22, 2008) (citation omitted). Here, the settlement Class consists of approximately 60 individuals. Although a relatively small number, Plaintiff submits that the numerosity criterion is satisfied. For purposes of approving this Settlement, Defendant does not oppose Plaintiff's assertion that sufficient numerosity exists.

NRCP 23(a)(2): There are questions of law or fact common to the Class.

The commonality requirement is construed liberally. *Alberto v. GMRI, Inc.*, 252 F.R.D. at 660 (citation omitted); *see also Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998) (Rule 23(a)(2) construed "permissively"). The class members' claims must share some substantial issues of law or fact, but need not be identical. *Quintero*, 2008 U.S. Dist. LEXIS 84976, at *8. Either "shared legal issues with divergent factual predicates" or "a common core of salient facts coupled with disparate legal remedies within the class" satisfies this criterion. *Hanlon*, 150 F.3d at 1019.

Here, all class members are current or former non-exempt employees of Defendant, employed from sometime between January 17, 2017 through the date the Court grants preliminary approval of the Settlement and who worked over eight (8) hours in a 24-hour period. Under Nevada law all non-exempt employees are entitled to be compensated for all overtime for all hours worked over eight (8) hours in a workday, provided that they make less than 1 ½ times the minimum wage rate. See NRS 608.018. Further, all non-exempt employees who leave their employment are also entitled to be paid all their wages due and owing at the time their employment ends.

1 See NRS 608.020-.050. Given this legal foundation, Plaintiff and class members
2 assert common factual and legal questions, which include, whether class members
3 were compensated for all hours they worked at the appropriate legal rate pursuant to
4 Nevada law and whether class members who are former employees were paid all their
5 wages due and owing at the time of their termination. See, e.g., *In re Wells Fargo*
6 *Home Mortgage Overtime Pay Litig.*, 527 F. Supp.2d 1053, 1062-63 (N.D. Cal. 2007);
7 *Wang v. Chinese Daily News, Inc.*, 231 F.R.D. 602,607 (C.D. Cal. 2005). Based on
8 these common issues, this criterion is met. For purposes of approving this Settlement,
9 Defendant does not oppose Plaintiff's assertion that sufficient commonality exists.

10 ***NRCP 23(a)(3): The claims or defenses of the representative parties are***
11 ***typical of the claims or defenses of the class.*** Like commonality, the typicality
12 standard is applied "permissive[ly]." See *Staton*, 327 F.3d at 957 (quoting *Hanlon*, 150
13 F.3d at 1020). It is satisfied if the representatives' claims are "'reasonably coextensive
14 with those of absent class members; they need not be substantially identical.'" *Id.*
15 Here, named-Plaintiff is a former employee of Defendant who worked as a non-exempt
16 hourly paid employee. See Complaint at ¶ 14. He further alleges Defendant did not
17 pay him and similarly situated employees one and one-half times him hourly rate of pay
18 for hours worked over eight (8) in a 24-hour period. *Id.* at ¶¶ 14-20. Plaintiff asserts the
19 same wage and hour violations as all other members of the class. Thus, his claims are
20 typical to those of the Class. For purposes of approving this Settlement, Defendant
21 does not oppose Plaintiff's assertion that sufficient typicality exists.

22 ***NRCP 23(a)(4): The representative parties will fairly and adequately protect***
23 ***the interests of the class.*** Courts have interpreted this requirement as posing two
24 questions: (1) whether either the named plaintiff or his counsel has any conflicts of
25 interest with other class members, and (2) whether the named plaintiff and his counsel
26 will vigorously prosecute the action on behalf of the class. See *id.* (citing *Hanlon* and
27 other cases). Here, neither the named Plaintiff nor this counsel have interests
28 antagonistic to those of other class members. On the contrary, the named Plaintiff
shares with absent class members an interest in recovering compensation that
Defendant allegedly denied them. In addition, Plaintiff's counsel has extensive

1 experience in wage and hour class actions, as well as class action litigation more
2 generally, and the proposed settlement was reached only after arm's-length direct
3 settlement discussions. Exhibit I at ¶¶ 2, 7. Thus, the named-Plaintiff and Plaintiff's
4 counsel are adequate representatives of the Class. For purposes of approving this
5 Settlement, Defendant does not oppose such assertion.

6 **2. The criteria of NRCP 23(b)(3) are met.**

7 To certify a class under NRCP 23(c)(3), a court must find that common
8 questions of fact or law predominate over questions affecting only individual members
9 of the proposed class, and that a class action is the superior method for fairly and
10 efficiently adjudicating the controversy. NRCP 23(c)(3). Both criteria are met here. For
11 purposes of approving this Settlement, Defendant does not oppose such assertion.

12 ***The predominance requirement is met.*** The predominance inquiry "focuses
13 on the relationship between the common and individual issues. When common
14 questions present a significant aspect of the case and they can be resolved for all
15 members of the class in a single adjudication, there is clear justification for handling the
16 dispute on a representative rather than on an individual basis." *Local Joint Executive*
17 *Bd. of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.*, 244 F.3d 1152, 1162
18 (9th Cir), *cert. denied*, 534 U.S. 973, 122 S. Ct. 395 (2001) ("Local Joint Executive Bd.")
(quoting *Hanlon*, 150 F.3d at 1022).

19 Plaintiff argues that common issues of law and fact predominate, and Defendant
20 does not oppose this argument for purposes of settlement approval.

21 ***The superiority requirement is met.*** Determining whether a class action is the
22 superior method of adjudicating a controversy involves "comparing alternative
23 mechanisms of dispute resolution" as applied to the facts and claims. *Wang v. Chinese*
24 *Daily News, Inc.*, 231 F.R.D. at 614. Plaintiff alleges that the situation here is
25 comparable to that of the Las Vegas Sands' former casino employees who sought
26 damages for failure to provide a statutorily required 60-day notice before closure:

27 This case involves multiple claims, some for relatively small
28 individual sums. Counsel for the would-be class estimated
that, under the most optimistic scenario, each class
members would recover about \$1,330. If plaintiffs cannot

1 proceed as a class, some - perhaps most - will be unable to
2 proceed as individuals because of the disparity between
3 their litigation costs and what they hope to achieve.

4 *Local Joint Executive Bd.*, 244 F.3d at 1163 ("Class actions ... may permit the plaintiffs
5 to pool claims which would be uneconomical to litigate individually.") (*citing Phillips*
6 *Petroleum Co. v. Shutts*, 472 U.S. 797, 809, (1985)). In such a situation, the superiority
7 requirement is "easily satisfied." *Id.* Plaintiff avers that the same holds true here.
8 Defendant does not oppose such a finding for purposes of settlement approval.

9 **B. The Proposed Settlement Is Fair, Reasonable, and Adequate.**

10 The *Manual for Complex Litigation* § 21.62 identifies several factors that courts
11 may weigh in determining whether a settlement is fair, reasonable, and adequate (Fed.
12 R. Civ. P. 23(e)(2)), summarizing the inquiry as follows: Fairness calls for a
13 comparative analysis of the treatment of class members vis-a-vis each other and vis-a-
14 vis similar individuals with similar claims who are not in the class. Reasonableness
15 depends on an analysis of the class allegations and claims and the responsiveness of
16 the settlement to those claims. Adequacy of the settlement involves a comparison of
17 the relief granted relative to what class members might have obtained without using the
18 class action process. *Id.*, § 21.62 at 315.

19 At the preliminary approval stage, courts do not make a final determination of
20 fairness, reasonableness, and adequacy. Instead, the key question at this point is only
21 whether the settlement is "potentially fair, as the Court will make a final determination
22 of [the settlement's] adequacy at the hearing on Final Approval, after such time as any
23 party has had a chance to object and/or opt out." *Acosta v. Equifax Info. Servs. LLC*,
24 243 F.R.D. 377,386 (C.D. Cal. 2007). Thus, the inquiry should focus on whether the
25 proposed settlement falls within the "range of possible approval" and appears to be
26 sufficiently fair, reasonable, and adequate to warrant distributing notice to class
27 members informing them about the proposed settlement and their options for
28 responding and participating. *Molski v. Gleich*, 318 F.3d 937,944 (9th Cir. 2003); see
also *Manual for Complex Litigation* § 21.632. "Once the judge is satisfied as to the ...
results of the initial inquiry into the [1] fairness, [2] reasonableness and [3] adequacy of

1 the settlement," the court should direct notice to issue and schedule a final approval
2 hearing. *Id.*, § 21.633 at 321. Plaintiff avers that all three are preliminarily met as
3 follows:

4 **1. The Settlement Is Fair.**

5 **Fairness of distribution among class members.** The proposed settlement is
6 fair in that class members' benefits are determined by the number of daily overtime
7 hours they worked during the class period. See Settlement at ¶ 10(d). Furthermore,
8 the proposed settlement would release only participating class members' wage and
9 hour claims, not all potential employment claims, in exchange for the financial benefits
10 they receive. *Id.* at ¶ 18.

11 **Fairness of proposed attorneys' fees.** The allocation of total settlement funds
12 between class members and the attorneys is also fair, in that the settlement agreement
13 provides for Plaintiff's counsel to seek no more than one-third of the maximum
14 settlement amount in fees. The requested fees are fair compensation for undertaking
15 complex, risky, expensive, and time-consuming litigation solely on a contingency basis.
16 Further, the requests are in line with other attorneys' fees awards for wage and hour
17 class actions, particularly where a significant portion of the class members will be
18 receiving substantial claim payment amounts of several hundred dollars. Indeed,
19 courts have recognized that an appropriate method for awarding attorneys' fees in
20 class action is to award a percentage of the "common fund" created as a result of the
21 settlement. *Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1977). The
22 purpose of the common fund/percentage approach is to "spread litigation costs
23 proportionally among all the beneficiaries so that the active beneficiary does not bear
24 the entire burden alone." *Id.*

25 Moreover, several courts have expressed frustration with the alternative
26 "lodestar" approach for deciding fee awards, which usually involves wading through
27 voluminous and often indecipherable time records. Commenting on the loadstar
28 approach, Chief Judge Marilyn Hall Patel wrote in *In re Activision Securities Litigation*,
723 F.Supp. 1373, 1375 (N.D. Cal. 1989):

1 This court is compelled to ask, "Is this process necessary?"
2 Under a cost-benefit analysis, the answer would be a
3 resounding, "No!" Not only does the *Lindy Kerr-Johnson*
4 analysis consume an undue amount of court time with little
5 resulting advantage to anyone, but in fact, it may be in the
6 detriment of the class members. They are forced to wait
7 until the court has done a thorough, conscientious analysis
8 of the attorneys' fees petition. Or, class members may suffer
9 a further diminution of their fund when a special master is
retained and paid from the fund. Most important, however, is
the effect the process has on the litigation and the timing of
settlement. Where attorneys must depend on a lodestar
approach, there is little incentive to arrive at an early
settlement.

10 Indeed, the percentage approach is preferable to the lodestar because: (1) it
11 aligns the interests of class counsel and absent class members; (2) it encourages
12 efficient resolution of the litigation by providing an incentive for early, yet reasonable,
13 settlement; and (3) it reduces the demands on judicial resources. *In re Activision*
14 *Securities Litigation*, 723 F. Supp. at 1378-79. Courts now routinely uses the
15 percentage of the common fund approach to determine the award of attorneys' fees.
16 (See, e.g., *In re Pacific Enterprises Securities Litigation*, 47 F.3d 373, 378-79 (9th Cir.
17 1994) (approving attorneys' fees of 33 1/3% of settlement fund).

18 Class counsels' application for one-third of the Settlement Funds is within the
19 range of reasonableness. Historically, courts have awarded percentage fees in the
20 range of 20% to 50% of the common fund, depending on the circumstances of the
21 case. *Newberg on Class Action* § 14:6 (4th ed. 2008); see also *In re Activision*
22 *Securities Litigation*, 723 F.Supp. 1373, 1378 (N.D. Cal. 1989). According to *Newberg*:
23 "No general rule can be articulated on what is a reasonable percentage of a common
24 fund. Usually 50% of the fund is the upper limit on a reasonable fee award from a
25 common fund in order to assure that the fees do not consume a disproportionate part
26 of the recovery obtained for the class, although somewhat larger percentages are not
27 unprecedented." *Newberg*, § 14:6. Accordingly, the attorneys' fees sought in this case
28 are fair and reasonable.

1 Fairness of proposed "enhancement" award for the named Plaintiff. The
2 principle of fairness is also well served by the \$2,500.00 enhancement payment
3 proposed for the named Plaintiff. Plaintiff provided invaluable assistance to Plaintiff's
4 counsel in explaining Defendant's alleged compensation policies and procedures and
5 in providing information to assist in the settlement negotiations. Further, Plaintiff
6 incurred significant personal risk in bringing this lawsuit on behalf of the other persons
7 in the class. See, e.g., *Koehl v. Verio*, 142 Cal. App. 4th 1313, 1328 (2006) (in wage
8 and hour action where defendant prevailed at trial, named plaintiffs were held liable,
9 jointly and severally, for defendant's attorneys' fees). They could have been held liable
10 for Defendant's costs if they were ultimately unsuccessful in resolving the case and
11 their potential employment opportunities could (and can still be) impacted because of
12 their public participation in this lawsuit. Such service payments are recognized as
13 serving an important function in promoting class action settlements. In *League of*
14 *Martin v. City of Milwaukee*, 588 F. Supp. 1004 (E.D. Wis. 1984), the court held that the
15 proposed settlement properly granted the named plaintiff additional relief, explaining
16 that it is "not uncommon for class ... members to receive special treatment in
17 settlement" when they have been instrumental in prosecuting the lawsuit. *Id.* at 1024.
18 Accordingly, the enhancement is fair.

2. The Settlement Is Reasonable.

19 At \$35,000.00 overall, the proposed settlement is reasonable. This is not a
20 settlement where the aggregate figure is large simply because the size of the class is in
21 the tens or hundreds of thousands. Instead, here the class size is relatively small in
22 comparison, but Class Members are eligible for financial benefit. These considerations
23 indicate that the proposed settlement falls within the range of reasonableness,
24 warranting preliminary approval.

25 This conclusion is reinforced by considering such factors as the risk that a class
26 might not be certified or might be significantly smaller than proposed; and the time,
27 expense, and complexity of the litigation, including the possibility of appellate
28 proceedings. Counsel for Plaintiff and Defendant are in agreement the \$35,000.00

1 settlement represents a reasonable recovery based on the alleged violations. See
2 Exhibit I at ¶¶ 5, 7.

3 Furthermore, while Class Counsel believe that Plaintiff's claims are meritorious,
4 they are experienced class action litigators, and understand that the outcome of class
5 certification, trial, and any attendant appeals were inherently uncertain, as well as likely
6 to consume many more months, even years. See a true and correct copy of the
7 Declaration of Christian Gabroy, Esq. attached hereto as Exhibit II at ¶ 14. Having
8 reviewed relevant compensation data and employment information, counsel for the
9 parties—all experienced class action litigators well versed in wage and hour law—
10 arrived at a reasonable resolution through a protracted an arms'-length direct
11 negotiation process, which continued into all details of the settlement agreement and
12 ancillary documents. See Exhibit II at 6.

13 Another factor considered in approving a settlement is the complexity, expense,
14 and likely duration of the litigation. *Offices for Justice*, 688 F.2d at 625. The Court must
15 weigh the benefits of the proposed settlement against the expense and delay involved
16 in achieving an equivalent or more favorable result at trial. See, e.g., *Young v. Katz*,
17 447 F.2d 431,433-34 (5th Cir. 1971). The policy that favors settlement of class actions
18 and other complex cases applies with particular force here. Employment cases, and
19 specifically wage and hour cases, are expensive and time-consuming. That this is a
20 class action further amplifies the economies of time, effort, and expense achieved by
21 the settlement. Inevitably, the certification process alone would add time and expense
22 to the litigation process. The settlement, on the other hand, provides class members
23 substantial, prompt and efficient relief. The settlement in this case is therefore
24 consistent with the "overriding public interest in settling and quieting litigation" that is
25 "particularly true in class action suits." See *Van Bronkhorst v. Safeco Corp.*, 529 F.2d
26 943, 950 (9th Cir. 1976) (footnote omitted); see also 4 *Newberg on Class Actions* §
11.41 (citing cases).

27 In sum, the resulting settlement is, in light of all applicable factors, reasonable,
28 and warrants notification of its terms to members of the potential class for their
consideration and response.

3. The Settlement Is Adequate.

As previously mentioned, in a somewhat similar class action the court aptly observed that it would have been irrational for most, and probably all, class members to pursue their claims on an individual basis "because of the disparity between their litigation costs and what they hope to recover." *Local Joint Executive Bd.*, 244 F.3d at 1163.

The recovery provided through the settlement is reasonable, especially as its adequacy must be judged as "a yielding of absolutes and an abandoning of highest hopes.... Naturally, the agreement reached normally embodies a compromise; in exchange for the saving of cost and elimination of risk, the parties each give up something they might have won had they proceeded with litigation.... "Officers for Justice, 688 F.2d at 634 (citation omitted). Accordingly, the settlement is not to be judged against a speculative measure of what might have been achieved. *Linney v. Cellular Alaska P'ship*, 151 F .3d 1234, 1242 (9th Cir. 1998). An additional consideration is that the settlement provides for payment to the class now, rather than a payment many years down the road, if ever. See *City of Detroit v. Grinnell Corp.*, 495 F .2d 448, 463 (2d Cir. 1974).

Thus, considering the present value of the settlement sum, the probability of lengthy litigation in the absence of a settlement, and the risks that the class might not have prevailed at trial, it is no exaggeration to predict that without using the class action process, the relief that members of the class were likely to achieve ranged from negligible to zero. Consequently, the \$35,000.00 settlement satisfies the criterion of adequacy. See *Manual for Complex Litigation* § 21.62 ("Adequacy of the settlement involves a comparison of the relief granted relative to what class members might have obtained without using the class action process.").

C. The Notice Adequately Informs Class Members Of The Settlement.

The Notice explains the process; how to request to be excluded or object; and the consequences of the action the class member takes (doing nothing, opting out, or objecting), in terms of both financial benefit and release of state claims. See Exhibit A to the Settlement Agreement, generally. The Notice advises class members about the

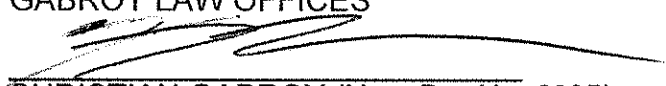
1 final approval hearing, their rights with respect to that hearing, and how to get more
2 information. *Id.* The 30-day time frame to claim, opt out, or object is reasonable,
3 allowing class members to digest the information in the notice and obtain answers to
4 questions before deciding on the action they want to take. *Id.* Accordingly, in addition
5 to approving the Settlement agreement as a whole, the Parties respectfully ask that the
6 Court approve the Notice and other ancillary forms in substantially the format
7 presented with the Settlement.

8 IV. CONCLUSION.

9 Based on the information and reasons provided above, Plaintiff respectfully
10 requests that the Court enter the proposed order granting preliminary approval of the
11 class action settlement that is attached to the Settlement as Exhibit D.

12 Date: February 26, 2021

GABROY LAW OFFICES

13 
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KAINE MESSER (Nev. Bar No. 14240)

15 Mark R. Thierman (Nev. Bar No. 8285)
16 Joshua D. Buck (Nev. Bar No. 12187)
THIERMAN BUCK LLP

17 *Counsel for Plaintiff*

18 Date: February 26, 2021

JACKSON LEWIS P.C.

19 */s/ Daniel Aquino*
20 DANIEL I. AQUINO (Nev. Bar No. 12682)

21 *Counsel for Defendant*

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27
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EXHIBIT I

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13 **EIGHTH JUDICIAL DISTRICT COURT**

14 **CLARK COUNTY, NEVADA**

15 JOHN VALENCIA, on behalf of himself
and all others similarly situated,

16 Plaintiff,

17 vs.

18 P & M HOLDINGS, LLC d/b/a and a/k/a
19 GOLDEN STEER STEAKHOUSE;
20 DOES 1 through 50; inclusive,

21 Defendant(s).

**JOINT STIPULATION OF
SETTLEMENT AND RELEASE**

22 This Joint Stipulation of Settlement and Release ("Settlement") is made and
23 entered into by and between plaintiff John Valencia ("Plaintiff") on behalf of himself and
24 all others similarly situated, and defendant P & M Holdings, LLC d/b/a and a/k/a Golden
25 Steer Steakhouse ("Defendant" or "P & M"). Plaintiff and Defendant are collective
26 referred to herein as the "Parties."

27 **THE PARTIES STIPULATE AND AGREE as follows:**

28 1. The following terms shall have the meanings ascribed to them below:

1 a. "Action" means the lawsuit to be filed for court approval purposes
2 only in the Eighth Judicial District Court of Nevada, Clark County, entitled *Valencia v. P*
3 *& M Holdings, LLC d/b/a and a/k/a Golden Steer Steakhouse* and all other lawsuits,
4 previously filed, alleging the same or substantially the same facts and theories
5 identified in the "Released Claims" (defined below).

6 b. "Claims Administrator" means Simpluris, or such other claims
7 administrator as may be mutually agreeable to the Parties.

8 c. "Class Counsel" means Mark Thierman, Esq., Joshua Buck, Esq.,
9 and Leah Jones, Esq., of Thierman Buck LLP of Reno, Nevada and Christian Gabroy,
10 Esq., and Kaine Messer, Esq., of Gabroy Law Offices of Henderson, Nevada.

11 d. "Class Counsel Award" shall have the meaning ascribed to it in
12 Paragraph 12 below.

13 e. "Class Members" means those individuals that are within the
14 "Settlement Class" (defined below), each of whom is a "Class Member."

15 f. "Class Period" means January 17, 2017 through the date the Court
16 grants preliminary approval of this Settlement.

17 g. "Class Representative" means Plaintiff John Valencia.

18 h. "Court" means the Eighth Judicial District Court of Nevada, Clark
19 County.

20 i. Court's "Preliminary Approval Order" means the preliminary order
21 approving the Settlement, as more fully described in Paragraph 18 below, and in
22 substantially the form attached hereto as Exhibit D, and as approved by the Court.

23 j. Court's "Final Order and Judgment" means the Final Order
24 Approving Class Action Settlement and Judgment, as more fully described in
25 Paragraph 21 below in substantially the form attached hereto as Exhibit E, and as
26 approved by the Court.

27 k. "Defendant" means Defendant P & M Holdings, LLC d/b/a and
28 a/k/a Golden Steer Steakhouse.

1 l. "Effective Date" shall have the meaning ascribed to it in Paragraph
2 10(b) below.

3 m. "Enhancement Award" means, subject to approval by the Court, a
4 maximum payment of \$2,500.00 to the Class Representative from the Maximum
5 Settlement Amount, which is in addition to the Class Representative's individual
6 Settlement Award pursuant to this Settlement.

7 n. P & M means Defendant P & M Holdings, LLC d/b/a and a/k/a
8 Golden Steer Steakhouse, the employer of the Class Members.

9 o. "Maximum Settlement Amount" shall be as defined in Paragraph
10 10(c) below.

11 p. "Net Settlement Amount" shall be as defined in Paragraph 10(c)
12 below.

13 q. "Notice" means the Notice of Pendency of Class Action, Proposed
14 Settlement and Hearing Date for Final Court Approval in substantially the form attached
15 hereto as Exhibit A, and as approved by the Court.

16 r. "Objection Deadline" means the date that is thirty (30) calendar
17 days following the initial mailing of the Notice by the Claims Administrator to Class
18 Members.

19 s. "Parties" means collectively the Plaintiff and Defendant, each of
20 whom is a "Party."

21 t. "Plaintiff" means plaintiff John Valencia, on behalf of himself and
22 all others similarly situated.

23 u. "Released Claims" means the claims to be released by the
24 Settlement Class as fully set forth in Paragraph 18 of this Agreement.

25 v. "Released Parties" collectively means: (i) Defendant (ii)
26 Defendant's respective past, present and future parents, subsidiaries, joint ventures,
27 and affiliates; (iii) the past, present and future shareholders, directors, owners, officers,
28 members, managers, agents, employees, attorneys, insurers, predecessors,

1 successors, licensors, licensees, subsidiaries and assigns of any of the foregoing; and
2 (iv) any individual or entity which could be jointly liable with any of the foregoing.

3 w. "Settlement" or "Stipulation of Settlement" or "Agreement" means
4 this Joint Stipulation of Settlement and Release between Plaintiff and Defendant.

5 x. "Settlement Awards" means Settlement amounts paid by
6 Defendant (on behalf of the Released Parties) to eligible Class Members according to a
7 specified formula submitted as further described herein.

8 y. "Settlement Class" means all hourly paid non-exempt persons
9 employed by Defendant in the state of Nevada who earned less than 1 ½ times the
10 applicable minimum wage and who worked over eight (8) hours in a workday and were
11 not paid their total owed wages for the time period commencing on January 17, 2017,
12 up to and including the date the Court grants preliminary approval of this Settlement.

13 2. Plaintiff sent an NRS 608.140 demand to Defendant with enclosed
14 confidential draft complaint alleging various causes of action for unpaid wages on
15 behalf of himself and all similarly situated individuals under the Nevada Revised
16 Statutes. Specifically, Plaintiff alleges that Defendant failed to: (1) pay all overtime in
17 violation of NRS 608.140 and 608.018 and (2) timely pay all wages due and owing in
18 violation of NRS 608.140 and 608.020-050.

19 Following the dispatching of such demand but prior to the draft confidential
20 complaint, the Parties entered into a tolling agreement on January 24, 2020 to discuss
21 potential early resolution. The parties then engaged in extensive discussions regarding
22 their respective positions and the information and data needed to properly evaluate the
23 merits of the claims alleged. The parties also engaged in informal discovery.
24 Defendant's counsel provided Class Counsel with time and class member data.
25 Following extensive discussions regarding the strengths of their respective positions,
26 the Parties reached a proposed class action settlement through arms-length direct
27 negotiations.

1 3. The Parties now enter into this Stipulation of Settlement for preliminary
2 and final Court approval of the Settlement.

3 a. Solely for the purpose of settling this case, the Parties stipulate
4 and agree to the conditional certification of the following Settlement Class: "all hourly
5 paid non-exempt persons employed by Defendant in the state of Nevada who earned
6 less than 1 ½ times the applicable minimum wage and who worked over eight (8) hours
7 in a workday and were not paid their total owed wages for the time period commencing
8 on January 17, 2017, up to and including the date the Court grants preliminary
9 approval of this Settlement." The Parties agree that if for any reason the Settlement is
10 not preliminarily and finally approved, the conditional certification of the Settlement
11 Class will be of no force or effect, does not constitute an admission by Defendant that
12 class certification is proper, and will not be deemed admissible in this or any other
13 proceeding, and that the Parties will litigate the issue of class certification. The Parties
14 agree that the Complaint will be filed for purposes of court approval only, and that in
15 the event the Settlement is not preliminarily and finally approved, litigation will proceed
16 in normal course.

17 4. This Settlement is not an admission of any liability or wrongdoing by
18 Defendant or any Released Party. Defendant, on its own behalf and on behalf of the
19 Released Parties, specifically deny any liability or wrongdoing of any kind whatsoever
20 for the claims alleged in the Action, and further deny that, for any purpose other than
21 settling the Action, the Action is appropriate for class or representative treatment. With
22 respect to Plaintiff's claims, Defendant contends, among other things, that it has
23 complied with all applicable state, federal and local laws affecting Plaintiff and the other
24 Class Members regarding unpaid wages, unpaid overtime, and penalties.

25 5. It is the desire of the Parties to fully, finally and forever settle,
26 compromise, and discharge all Released Claims. To achieve a full and complete
27 release of all Released Claims in favor of Defendant and the other Released Parties,
28 each Class Member acknowledges that this Stipulation of Settlement is intended to

1 include in its effect all claims reasonably arising out of the allegations made in the
2 Action and all Released Claims against all Released Parties as of the date of the
3 Court's Final Order and Judgment.

4 6. It is the intention of the Parties that this Stipulation of Settlement shall
5 constitute a full, final, and complete settlement and release of all Released Parties with
6 respect to all Released Claims.

7 7. Class Counsel have conducted a thorough investigation into the facts of
8 the Action, including an extensive review of relevant documents and data, and have
9 diligently pursued an investigation of Class Members' claims against Defendant and
10 the other Released Parties. Based on their independent investigation and evaluation,
11 Class Counsel are of the opinion that the Settlement is fair, reasonable and adequate
12 and is in the best interest of the Settlement Class in light of all known facts and
13 circumstances, including the risk of significant delay, the potential that class
14 certification may not be granted, the defenses asserted by Defendant, and numerous
15 potential appellate issues. Defendant and Defendant's counsel also agree that the
16 Settlement is fair and in the best interest of the Settlement Class.

17 8. The Parties agree to cooperate and take all steps necessary and
18 appropriate to consummate this Settlement and to dismiss this Action with prejudice
19 after all Settlement sums have been paid out in accordance with this Stipulation of
20 Settlement.

21 9. This Stipulation of Settlement provides for a claims process requiring
22 Defendant to pay Settlement Awards on behalf of the Released Parties according to a
23 specified formula, as defined below. Settlement Awards will be allocated from the "Net
24 Settlement Amount" (defined below in Paragraph 10(c)). Defendant's aggregate
25 maximum total payment under the Settlement, inclusive of all amounts for all claims,
26 Class Counsel's attorneys' fees and costs, the Enhancement Award, and claims
27 administration costs is thirty-five thousand dollars and no cents (\$35,000.00) as set
28 forth in Paragraph 10(c) below ("Maximum Settlement Amount"). It is further

understood and agreed by the Parties that the following amounts shall be paid from the Maximum Settlement Amount: (a) Settlement Awards for the valid claims filed by the Class Members; (b) the Enhancement Award approved by the Court; (c) the reasonable fees and expenses of the Claims Administrator approved by the Court; and (d) Class Counsel's attorney's fees and costs approved by the Court. It is further understood and agreed by the Parties that the normal employer's portion of payroll taxes shall not be paid from the Maximum Settlement Amount. By virtue of the Settlement and in connection with the Action, Defendant and the other Released Parties shall have no obligation to pay any person or entity any amounts beyond the Maximum Settlement Amount, other than the normal employer's portion of payroll taxes.

TERMS OF SETTLEMENT

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

a. Settlement All-Inclusive: It is agreed by and among Plaintiff and Defendant that the Action and all Released Claims, damages or causes of action of any kind arising out of the disputes that reasonably arise or could have arisen out of the facts alleged in the Action, be settled and compromised as between the Settlement Class on the one hand and Defendant and the Released Parties on the other hand, subject to the terms and conditions set forth in this Stipulation of Settlement and the approval of the Court. This Settlement shall bind the Class Members, Defendant and its respective counsel, subject to the terms and conditions hereof and the Court's approval.

b. Effective Date: The Settlement embodied in this Stipulation of Settlement shall become effective when all of the following events have occurred ("Effective Date"): (i) this Stipulation of Settlement has been executed by all Parties, Class Counsel and Defendant's Counsel; (ii) the Court has given preliminary approval

1 to the Settlement; (iii) the Notice has been sent to the Settlement Class, providing them
2 with an opportunity to submit a form to opt out of the Settlement or to object to the
3 Settlement; (iv) the Court has held a formal fairness hearing and entered the Court's
4 Final Order and Judgment Dismissing; and (v) in the event there are written objections
5 filed prior to the formal fairness hearing that are not later withdrawn, the latest of the
6 following events: (A) when the period for filing any appeal, writ or other appellate
7 proceeding opposing the Settlement has elapsed without any appeal, writ or other
8 appellate proceeding having been filed; (B) when any appeal, writ or other appellate
9 proceeding opposing the Settlement has been dismissed finally and conclusively with
10 no right to pursue further remedies or relief; or (C) when any appeal, writ or other
11 appellate proceeding has upheld the Court's Final Order and Judgment with no right to
12 pursue further remedies or relief. In this regard, it is the intention of the Parties that the
13 Settlement shall not become effective until the Court's Final Order and Judgment is
14 completely final, and there is no further recourse by any appellant or objector who
15 seeks to contest the Settlement. It is further agreed by the Parties that this Settlement
16 shall not become effective if Defendant or the other Released Parties, contrary to
17 Paragraph 10(c) below, are required to pay to any person or entity any amounts
18 beyond the Maximum Settlement Amount. The occurrence of the Effective Date is a
19 prerequisite to any obligation of Defendant to pay any funds into the Settlement
20 Account.

21 c. Maximum Settlement Amount and Net Settlement Amount: To
22 implement the terms of this Settlement, Defendant agrees to pay a maximum amount
23 of Thirty-Five Thousand Dollars and No Cents (\$35,000.00) for the "Maximum
24 Settlement Amount," which includes all Settlement Awards to Class Members, the
25 Enhancement Award to the Class Representative, the attorneys' fees and costs to
26 Class Counsel, and the claims administration costs and expenses. At no time shall
27 Defendant have the obligation to segregate the funds comprising the Maximum
28 Settlement Amount, and Defendant shall retain exclusive authority over and

responsibility for those funds after the Court's final approval of this Settlement and the expiration of any other applicable period referenced in this Stipulation of Settlement, and subject to disbursement of the funds necessary for payment of the Settlement Awards, the approved attorneys' fees and costs for Class Counsel, the approved Enhancement Award to the Class Representative, the approved claims administration fees and expenses, and any other payments provided by this Settlement. All claims disbursed to all Class Members, the Enhancement Award to the Class Representative, the attorneys' fees and costs of Class Counsel, and the fees and expenses of the Claims Administrator shall be paid out of the Maximum Settlement Amount. The "Net Settlement Amount" will be calculated by deducting from the Maximum Settlement Amount the following: (a) the Enhancement Award to the Class Representative approved by the Court; (b) the Class Counsel Award (for Class Counsel's attorneys' fees and expenses) approved by the Court; and (c) the Claims Administrator's reasonable fees and expenses approved by the Court ("Net Settlement Amount"). Settlement Awards to the Class Members will be calculated by the Claims Administrator and paid out of the Net Settlement Amount, as set forth below.

d. Settlement Awards to Class Members: Subject to the terms and conditions of this Agreement, the Claims Administrator will distribute a payment from the Net Settlement Amount to each Class Member, according to a calculation of Settlement Awards to Class Members. The Claims Administrator will calculate the Award for each Class Member by utilizing the following formula: taking, (A) the number of daily overtime hours worked by each Class Member from January 17, 2017 through _____; divided by (B) the total number of daily overtime hours worked by all Class Members from January 17, 2017 through _____; to obtain (C) the percentage of the total daily overtime hours worked by each Class Member. That percentage will then be applied to the Net Settlement Amount to determine each Class Member's Settlement Award. Any amounts not distributed to Class Members will be reverted to Defendant. Within 30 days after funding of the Settlement, the Claims Administrator will

1 mail settlement checks to Class Members. If any check mailed to a Class Member is
2 not cashed within 90 days after issuance, the check will be cancelled, and the amount
3 of that check will be reverted to Defendant.

4 e. Taxes, Withholdings, and Allocation: Settlement Awards for each
5 Class Member will be allocated from the Net Settlement Amount and paid as follows:
6 one-third (1/3) will be allocated to alleged unpaid wages for which IRS Forms W-2 will
7 issue; one-third (1/3) will be allocated to alleged unpaid penalties for which IRS Forms
8 1099-MISC will issue; and one-third (1/3) will be allocated to alleged unpaid interest for
9 which IRS Forms 1099-MISC will issue. Each Class Member who receives a
10 Settlement Award shall pay his/her share of payroll taxes from the one-third (1/3) of the
11 Settlement Award allocated to alleged unpaid wages. Accordingly, each Settlement
12 Award will be reduced by applicable payroll tax withholdings and deductions.
13 Defendant shall pay the normal employer's portion of payroll taxes separately, as
14 calculated by the Claims Administrator. Named Plaintiff (John Valencia) will be issued
15 his Settlement Award at the time the Claims Administrator issues Settlement Awards to
16 all other Class Members.

17 f. Settlement Awards Do Not Trigger Additional Benefits: All
18 Settlement Awards to Class Members shall be deemed to be income to such Class
19 Members solely in the year in which such awards actually are received by the Class
20 Members. It is expressly understood and agreed that the receipt of such Settlement
21 Awards will not entitle any Class Member to additional compensation or benefits under
22 any bonus, contest or other compensation or benefit plan or agreement in place during
23 the period covered by the Settlement, nor will it entitle any Class Member to any
24 increased retirement, 401(k) benefits or matching benefits, or deferred compensation
25 benefits. It is the intent of this Settlement that the Settlement Awards provided for in
26 this Agreement are the sole payments to be made by Defendant to the Class Members
27 in connection with this Settlement, and that the Class Members are not entitled to any
28 new or additional compensation or benefits as a result of having received the

1 Settlement Awards (notwithstanding any contrary language or agreement in any benefit
2 or compensation plan document that might have been in effect during the period
3 covered by this Settlement).

4 g. Class Representative: Subject to Court approval, Defendant
5 agrees to pay Class Representative, on behalf of the Released Parties, an
6 Enhancement Award of \$2,500.00 for his service as Class Representative. The
7 Enhancement Award shall be part of the Maximum Settlement Amount. Defendant will
8 not object to Class Counsel's application for Court approval of the Enhancement Award
9 to Plaintiff. It is understood the Enhancement Award is in addition to any individual
10 Settlement Award to which Plaintiff is entitled along with other Class Members. The
11 Claims Administrator will issue to the Class Representative an IRS Form 1099 for the
12 Enhancement Award, and the Class Representative will be solely responsible for
13 correctly characterizing the Enhancement Award for tax purposes and for paying any
14 taxes on the amounts received.

15 h. Establishment of Settlement Account: The Claims Administrator
16 shall establish a Settlement Account for the purpose of distributing Settlement Awards
17 and other payments identified in this Agreement. Within five (5) days after the Effective
18 Date, Defendant shall pay into the Settlement Account an amount equal to the sum of
19 the following: (a) all Settlement Awards due to Class Members; (b) the Enhancement
20 Awards to the Class Representative approved by the Court; (c) the Class Counsel
21 Award payment approved by the Court; (d) the Claims Administrator's reasonable fees
22 and expenses approved by the Court; and (e) the normal employer's portion of payroll
23 taxes. Defendant shall have no obligation to pay any additional funds into the
24 Settlement Account.

25 CLAIMS ADMINISTRATION

26 11. The Claims Administrator will send out to the Class Members the Notice
27 by first class United States mail. The Claims Administrator will review the Class
28 Members data based on Defendant's records and will calculate the Settlement Awards

1 to Class Members in accordance with this Stipulation of Settlement. The Claims
2 Administrator shall report in writing the substance of its findings to the Parties. The
3 Claims Administrator shall be granted reasonable access to Defendant's records to
4 perform its duties. At the request of the Parties and upon receipt of funds from
5 Defendant, the Claims Administrator shall issue and mail the Settlement Award checks
6 to the Class Members within thirty (30) calendar days of its receipt from Defendant of
7 funds into the Settlement Account, as described in Paragraph 10(h). Tax treatment of
8 the Settlement Awards will be as set forth herein, and in accordance with state and
9 federal tax laws; provided, however, Plaintiff and other Class Members herein
10 acknowledge that neither the Released Parties nor Defendant's counsel has or is
11 providing any tax advice. All disputes relating to the Claims Administrator's
12 performance of its duties shall be referred to the Court, if necessary, which will have
13 continuing jurisdiction over the terms and conditions of this Stipulation of Settlement
14 until all payments and obligations contemplated by this Stipulation of Settlement have
15 been fully carried out.

16 ATTORNEYS' FEES AND COSTS

17 12. In consideration for settling this matter and in exchange for the release of
18 claims by the Settlement Class, and subject to final approval or modification by the
19 Court, Defendant agrees not to object to a payment of up to a maximum of one-third of
20 the Maximum Settlement Amount (\$11,666.67) for all current and future attorneys' fees
21 and expenses of Class Counsel and actual costs up \$1,000.00 that Class Counsel
22 incurred in the Action as the "Class Counsel Award." Defendant will not object to Class
23 Counsel's application for attorneys' fees and costs set forth above. The amounts set
24 forth above will cover all work performed and all fees and costs incurred to date, and all
25 work to be performed and all fees and costs to be incurred in connection with the
26 approval by the Court of this Stipulation of Settlement, administration of the Settlement,
27 obtaining judgment in the Action, and any challenges, writs or appeals to the
28 Settlement. Should Class Counsel request a lesser amount, or the Court approve a

1 lesser amount for the Class Counsel Award, the difference between the lesser amount
2 and the maximum amount set forth above shall be added to the Net Settlement
3 Amount.

4 13. The attorneys' fees and costs approved by the Court shall be distributed
5 to Class Counsel by the Claims Administrator within five (5) days of the Claims
6 Administrator's receipt from Defendant of funds into the Settlement Account, as
7 described in Paragraph 10(h).

8 NOTICE TO THE SETTLEMENT CLASS

9 14. Notice of this Settlement shall be sent via U.S. Mail.

10 a. U.S. Mail. The Notice shall be sent by the Claims Administrator to
11 the Class Members by first class mail based on the following procedure. Any returned
12 envelopes from this mailing with forwarding addresses will be used by the Claims
13 Administrator to forward the Notice to Class Members.

14 i. Within ten (10) calendar days of preliminary approval of this
15 Settlement by the Court, Defendant shall provide to the Claims Administrator a
16 spreadsheet, which will list for each Class Member the Class Member's name, last-
17 known address, social security number, and the number of daily overtime hours worked
18 by each Class Member during the Class Period. The Parties agree that each Class
19 Member's name, last-known address, social security number, and any other Settlement
20 class data, will be used only by the Claims Administrator for the sole purpose of
21 effectuating the Settlement, and will not be provided to Class Counsel. The
22 spreadsheet shall be based on Defendant's payroll and/or personnel records, and in a
23 format reasonably acceptable to the Claims Administrator. Defendant agrees to
24 consult with the Claims Administrator prior to the production date to ensure that the
25 format will be acceptable to the Claims Administrator.

26 ii. The Claims Administrator will run a check of the Class
27 Members' last-known addresses against those on file with the U.S. Postal Service's
28 National Change of Address List. Within twenty-one (21) calendar days of preliminary

iii. Notices returned to the Claims Administrator as non-delivered shall be resent to the forwarding address, if any, on the returned envelope. If there is no forwarding address, the Claims Administrator will do a computer search for a new address using the Class Member's social security number. Said search will be performed by the Claims Administrator one time for each Notice returned without a forwarding address per Class Member. Upon completion of these steps by the Claims Administrator, Defendant and the Claims Administrator shall be deemed to have satisfied their obligations to provide the Notice to the affected Class Member, and, regardless of whether the affected Class Member actually receives the Notice, the affected Class Member shall remain a member of the Settlement Class and shall be bound by all the terms of the Settlement and the Court's Final Order and Judgment.

CLAIM PROCESS

Page 14

1 deficiency notice to the Class Member advising the Class Member to cure the
2 deficiency. The deficiency notice will provide the Class Member a maximum of fifteen
3 (15) calendar days from the date of mailing of the deficiency notice to cure the
4 deficiency; the completed Claim Form must be postmarked no later than the fifteenth
5 (15th) day after the date of mailing of the deficiency notice, or it must be rejected as
6 untimely by the Claims Administrator unless otherwise mutually agreed upon in writing
7 by the Parties. The Parties agree to meet and confer on late and deficient Claim
8 Forms, and may mutually agree in writing to accept late or deficient Claim Forms
9 provided good cause is shown. The Parties further agree that the Class Representative
10 (Plaintiff John Valencia) shall have no obligation to complete and return a Claim Form
11 in order to receive his individual Settlement Award or his Enhancement Award, though
12 he may nevertheless do so at the request of the Claims Administrator for
13 recordkeeping purposes, out of an abundance of caution, or for similar reasons.

EXCLUSION PROCESS

15 16. A Class Member may request to be excluded from the effect of this
16 Agreement, and any payment of amounts under this Agreement, by submitting a
17 Request for Exclusion to the Claims Administrator stating that the Class Member wants
18 to be excluded from this Action. Class Members will have thirty (30) calendar days
19 from the initial mailing date of the Notice within which to postmark or fax their Requests
20 for Exclusion to the Claims Administrator. The Claims Administrator will not send any
21 reminder notices to Class Members about the exclusion process. No Request for
22 Exclusion will be honored if postmarked or faxed after the thirty (30) calendar-day
23 period. Class Members are responsible for maintaining a photocopy of the Request for
24 Exclusion and record of proof of mailing. Unless a timely and valid Request for
25 Exclusion is filed consistent with the terms of this Stipulation of Settlement, the Class
26 Member shall be bound by this Stipulation of Settlement and the Settlement Class
27 release. The Parties agree to meet and confer if the intent of a particular Request for
28

1 Exclusion is ambiguous and may mutually agree to accept such Request for Exclusion
2 for good cause shown; ambiguous does not mean untimely Requests for Exclusion.

3 OBJECTION PROCESS

4 17. A Class Member may object to this Settlement. For a Class Member to
5 object to the Settlement, a Class Member must file with the Court no later than the
6 Objection Deadline a notice of objection, signed by the Class Member or his or her
7 counsel, stating the Class Member's: (i) name; (ii) current address; (iii) telephone
8 number; (iv) dates of employment with Employer; (v) last 4-digits of his or her social
9 security number; and (vi) basis of the objection. The Class Member objecting to the
10 settlement must also serve a copy of his or her notice of objection on counsel for the
11 Parties and the Claims Administrator by the Objection Deadline. The postmark date of
12 the filing and service shall be deemed the exclusive means for determining that the
13 notice of objection is timely. The Claims Administrator will not send any reminder
14 notices to Class Members about the objection process. Class Members who fail to
15 make objections in the manner specified above shall be deemed to have waived any
16 objections and shall be foreclosed from making any objections (whether by appeal or
17 otherwise) to the Settlement. Class Members who file and serve timely notices of
18 objection will have a right to appear at the Court's hearing to provide final approval of
19 the Settlement in order to have their objections heard by the Court. At no time shall
20 any of the Parties or their counsel seek to solicit or otherwise encourage Class
21 Members to submit written objections to the Settlement or appeal from the Court's Final
22 Order and Judgment. Class Counsel shall not represent any Class Members with
23 respect to any such objections to this Settlement. If the Court rejects the Class
24 Member's objection, the Class Member will still be bound by the terms of this
25 Agreement.

26 RELEASE OF CLAIMS

27 18. Upon final approval by the Court of this Stipulation of Settlement, and
28 except as to such rights or claims as may be created by this Stipulation of Settlement,

each Class Member who has not submitted a timely and valid Request for Exclusion and without the need to manually sign a release document, in exchange for the consideration recited in this Agreement, on behalf of himself or herself and on behalf of his/her current, former, and future heirs, executors, administrators, attorneys, agents, and assigns, shall and does hereby fully and finally release and discharge Defendant and the Released Parties from any and all claims of any kind whatsoever, whether known or unknown, contingent or actual, whether based on common law, regulations, statute, or a constitutional provision, under state, federal or local law, arising out of the allegations made in the Action, including but not limited to claims for or related to alleged unpaid wages, unpaid overtime, damages, penalties, interest, attorneys' fees and costs, and all other claims and allegations made in the Action and that arise out of the facts or could have arisen out of the facts alleged in the Action, from January 17, 2017, up through and including the date of the Court's Final Order and Judgment approving this Settlement. Such claims include, but are not necessarily limited to, any and all applicable state and federal law wage-and-hour claims (including, but not necessarily limited to contractual or common law claims for wages, the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.*, Nevada's Constitution, Nevada Revised Statutes §§ 608.016, 608.018, 608.020, 608.030, 608.040, 608.115, 608.140, 608.190, and 608.260, and Nevada Administrative Code § 608.115), rights, demands, liabilities and causes of action, whether known or unknown, contingent or actual, arising during the released period (commencing on January 17, 2017, and ending on the date of the Court's Final Order and Judgment) and specifically arising out of the allegations described in the complaint in the Action.

DUTIES OF THE PARTIES PRIOR TO COURT APPROVAL

19. Within fourteen (14) calendar days from execution of this Stipulation of Settlement, Class Counsel shall file a Joint Motion for Preliminary Approval of Class Action Settlement, submit this Stipulation of Settlement, and request a determination by the Court as to the Settlement's fairness, adequacy, and reasonableness. In so doing,

1 Class Counsel shall apply to the Court for the entry of the Preliminary Approval Order
2 substantially in the following form and as attached hereto as Exhibit D:

3 a. Scheduling a fairness hearing on the question of whether the
4 proposed Settlement, including payment of attorneys' fees and costs, costs of
5 administration, and the Enhancement Award should be finally approved as fair,
6 reasonable, and adequate as to the members of the Settlement Class;

7 b. Certifying the Settlement Class, Plaintiff as Class Representative,
8 and Mark Thierman, Esq., Joshua Buck, Esq., and Leah Jones, Esq., of Thierman
9 Buck LLP and Christian Gabroy, Esq., and Kaine Messer, Esq., of Gabroy Law Offices
10 as Class Counsel;

11 c. Approving as to form and content (1) the proposed Notice attached
12 hereto as Exhibit A, (2) the Claim Form attached hereto as Exhibit B, and (3) the
13 Request for Exclusion form attached hereto as Exhibit C;

14 d. Approving the manner and method for Class Members to request
15 exclusion from the Settlement as contained herein and within the Notice;

16 e. Directing the mailing of the Notice by first class mail to the Class
17 Members;

18 f. Preliminarily approving the Settlement subject only to the
19 objections of Class Members and final review by the Court; and

20 g. Enjoining Plaintiff and all Class Members from filing or prosecuting
21 any other cases, claims, suits or administrative proceedings (including filing claims with
22 the Nevada Office of the Labor Commissioner) regarding claims released by the
23 Settlement unless and until such Class Members have filed valid Requests for
24 Exclusion with the Claims Administrator and the time for filing claims with the Claims
25 Administrator has elapsed.

26 20. To effectuate the Settlement, the Parties agree all formal and informal
27 discovery shall be stayed pending Court approval of the Settlement. The Parties also
28

1 agree that all Court deadlines be continued pending preliminary approval of the
2 Settlement.

3 DUTIES OF THE PARTIES FOLLOWING FINAL COURT APPROVAL

4 21. Following final approval by the Court of the Settlement provided for in this
5 Stipulation of Settlement, Class Counsel will submit a proposed Court's Final Order
6 and Judgment in substantially the form attached hereto as Exhibit E:

7 a. Approving the Settlement, adjudging the terms thereof to be fair,
8 reasonable and adequate, and directing consummation of its terms and provisions;

9 b. Approving Class Counsel's application for an award of attorneys'
10 fees and costs not to exceed the maximum amount set forth herein;

11 c. Approving the Enhancement Award to the Class Representative
12 not to exceed the maximum amount set forth herein;

13 d. Entering judgment of the Action on the merits, and permanently
14 barring and enjoining all members of the Settlement Class from prosecuting against the
15 Released Parties any individual or class or collective claims released herein pursuant
16 to Paragraph 18 above, upon satisfaction of all payments and obligations hereunder.

17 PARTIES' AUTHORITY

18 22. The signatories hereto hereby represent that they are fully authorized to
19 enter into this Stipulation of Settlement and bind the Parties hereto to the terms and
20 conditions thereof.

21 MUTUAL FULL COOPERATION

22 23. The Parties agree to fully cooperate with each other to accomplish the
23 terms of this Stipulation of Settlement, including but not limited to, execution of such
24 documents and taking such other action as reasonably may be necessary to implement
25 the terms of this Stipulation of Settlement. The Parties to this Stipulation of Settlement
26 shall use their reasonable best efforts, including all efforts contemplated by this
27 Stipulation of Settlement and any other efforts that may become necessary by order of
28 the Court, or otherwise, to effectuate this Stipulation of Settlement and the terms set

1 forth herein. As soon as practicable after execution of this Stipulation of Settlement,
2 Class Counsel shall, with the assistance and cooperation of Defendant and their
3 counsel, take all necessary steps to secure the Court's final approval of this Stipulation
4 of Settlement.

5 NO PRIOR ASSIGNMENTS

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

10 NO ADMISSION

11 25. Nothing contained herein, nor the consummation of this Stipulation of
12 Settlement, is to be construed or deemed an admission of liability, culpability,
13 negligence, or wrongdoing on the part of Defendant, the Released Parties, or Plaintiff.
14 Each of the Parties hereto has entered into this Stipulation of Settlement solely with the
15 intention to avoid further disputes and litigation with the attendant inconvenience and
16 expenses.

17 ENFORCEMENT ACTIONS

18 26. In the event one or more of the Parties to this Stipulation of Settlement
19 institutes any legal action or other proceeding against any other party or Parties to
20 enforce the provisions of this Stipulation of Settlement or to declare rights or obligations
21 under this Stipulation of Settlement, the successful party or Parties shall be entitled to
22 recover from the unsuccessful party or Parties' reasonable attorneys' fees and costs,
23 including expert witness fees incurred in connection with any enforcement actions.

24 NOTICES

25 27. Unless otherwise specifically provided herein, all notices, demands or
26 other communications given hereunder shall be in writing and shall be deemed to have
27 been duly given as of the first business day after mailing by overnight courier with
28 confirmed delivery, addressed as follows:

To Plaintiff and the Settlement Class:

Christian Gabroy
Kaine Messer
GABROY LAW OFFICES
170 S. Green Valley Parkway, Suite 280
Henderson, NV 89012
Email: assistant@gabroy.com

To Defendant:

Peter M. Wendzel
JACKSON LEWIS P.C.
390 N. Orange Avenue
Suite 1285
Orlando, FL 32801
Email: Peter.Wendzel@jacksonlewis.com

CONSTRUCTION

28. The Parties 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

29. Paragraph titles 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 contractual and not merely a recital.

MODIFICATION

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

INTEGRATION CLAUSE

31. This Stipulation of Settlement contains the entire agreement between the Parties relating to the settlement and transaction contemplated hereby, and all prior or

1 contemporaneous agreements, understandings, representations and statements,
2 whether oral or written and whether by a Party or such Party's legal counsel, are
3 merged herein. No rights hereunder may be waived except in writing.

4 BINDING ON ASSIGNS

5 32. This Stipulation of Settlement shall be binding upon and inure to the
6 benefit of the Parties and their respective heirs, trustees, executors, administrators,
7 successors, and assigns; provided, however, that a Party's rights and obligations
8 hereunder may not be assigned or delegated without the express prior written consent
9 of the other Parties.

10 CLASS MEMBER SIGNATORIES

11 33. It is agreed that because the Class Members are so numerous, it is
12 impossible or impractical to have each Class Member execute this Stipulation of
13 Settlement. The Notice will advise all Class Members of the binding nature of the
14 release, and the release shall have the same force and effect as if this Stipulation of
15 Settlement were executed by each Class Member.

16 COUNTERPARTS

17 34. This Stipulation of Settlement may be executed in counterparts and by
18 facsimile and digital signatures, and when each party has signed and delivered at least
19 one such counterpart, each counterpart, including email and PDF versions, shall be
20 deemed an original and, when taken together with other signed counterparts, shall
21 constitute one Stipulation of Settlement binding upon and effective as to all Parties.

22
23
24 NO ADVERSE OR RETALIATORY ACTION

25 35. Defendant will not take any adverse or retaliatory action against the Class
26 Representative.

27 IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed
28 this Stipulation of Settlement as of the date(s) set forth below:

Plaintiff/Class Representative

DATED: 02/16/2021

PLAINTIFF JOHN VALENCIA

By: John Valencia
John Valencia

Class Counsel

DATED: 2/16/21

THIERMAN BUCK, LLP

By: [Signature]
Mark R. Thierman
Joshua D. Buck
Leah L. Jones

DATED: 2-16-21

GABROY LAW OFFICES

By: [Signature]
Christian Gabroy
Kaine Messer

Attorneys for Plaintiff and Class Counsel

Defendant P & M

DATED: 02/17/2021

P & M HOLDINGS, LLC D/B/A AND A/K/A
GOLDEN STEER STEAKHOUSE

By: [Signature]
Its: Managing Partner

Counsel for Defendant P & M (Approved as to form)

DATED: 02/24/2021

JACKSON LEWIS P.C.

By: [Signature]
~~Peter M. Wendzel~~
Daniel I. Aquino

*Attorneys for Defendant P & M Holdings, LLC
d/b/a and a/k/a Golden Steer Steakhouse*

EXHIBIT A

DISTRICT COURT
CLARK COUNTY, NEVADA

JOHN VALENCIA, on behalf of)
himself and all others similarly)
situated,)
)
v.)
)
P & M HOLDINGS, LLC d/b/a)
and a/k/a GOLDEN STEER)
STEAKHOUSE)
_____)

**NOTICE OF CLASS ACTION
SETTLEMENT**

TO: all hourly paid non-exempt persons employed by Defendant in the state of Nevada who earned less than 1 ½ times the applicable minimum wage and who worked over eight (8) hours in a workday and were not paid their total owed wages for the time period commencing on January 17, 2017 through [the date the Court grants preliminary approval of this Settlement].

THIS NOTICE AFFECTS YOUR RIGHTS. PLEASE READ IT CAREFULLY.

1. YOU ARE HEREBY NOTIFIED that a proposed settlement ("Settlement") of the above-captioned class action Lawsuit ("Lawsuit") pending in the Eighth Judicial District Court, Clark County, Nevada (the "Court"), has been reached by the Parties and granted preliminary approval by the Court supervising the Lawsuit.
2. The purpose of this Notice is to describe the Lawsuit, to inform you of the terms of the proposed Settlement, and to inform you of your rights and options in connection with the proposed Settlement. The proposed Settlement will resolve all claims in this Lawsuit. A Final Approval Hearing will be held on _____ 2021 at _____ to determine whether the Settlement should be granted final approval.
3. Because your rights may be affected, it is extremely important that you read this Notice carefully. To participate in the Settlement, you must complete and return a Claim Form by _____. Unless you choose to exclude yourself ("opt out") of the Settlement, you will be bound by the Settlement if it is approved by the Court and by any order entered by the Court subject to the conditions in the parties' Agreement for Settlement of Class Action and Release.

SUMMARY OF THE LAWSUIT

4. On January 7, 2020, Plaintiff John Valencia, on behalf of himself and all others similarly situated, sent an NRS 608.140 pre-litigation demand with confidential draft complaint in anticipation of filing a legal Action against Defendant P & M HOLDINGS, LLC d/b/a and a/k/a Golden Steer Steakhouse in the Eighth Judicial District Court, Clark County, Nevada. In the draft complaint, Plaintiff alleged that Defendant failed to pay overtime in violation of NRS 608.018 and failed to pay all wages due and owing in violation of NRS 608.020 through NRS 608.050 and NRS 608.140. Following the dispatching of such demand but prior to the filing of the complaint, the Parties entered into a tolling agreement on January 24, 2020 to discuss potential early resolution.
5. After extensive exchange of relevant information and negotiations, the Parties reached a Settlement in good faith that is memorialized in the Joint Stipulation of Settlement and Release ("Settlement Agreement"). The terms of the Settlement are generally summarized in this Notice.

6. You have received this Notice because Defendant's records show you were or are employed by Defendant in a job that makes you a Class Member whose rights may be affected by this Settlement.

POSITIONS OF THE PARTIES

7. Defendant denies liability for all claims that were or could have been brought in the Action. Defendant has consistently denied that it has violated any wage and hour, overtime, or other law under any federal or state constitution, statute or regulation. Defendant contends that all its employees have been compensated in compliance with the law and the Nevada Revised Statutes. Defendant has asserted and continues to assert defenses to the claims in the Lawsuit and has expressly denied and continues to deny any wrongdoing or legal liability arising out of any of the facts or conduct alleged in the Lawsuit. Defendant's entry into this Settlement and the consummation of this Settlement is not an admission of any liability or wrongdoing by Defendant or any person. Defendant specifically denies any liability, wrongdoing, or culpability of any kind whatsoever for the claims alleged and released in the Action, and further denies that, for any purpose other than settling, the Lawsuit is appropriate for class and representative treatment.

8. Counsel for the Plaintiff ("Plaintiff's Counsel" or "Class Counsel") has extensively investigated and researched the facts and circumstances underlying the issues raised in the Lawsuit, and the law applicable thereto.

9. Plaintiff and Plaintiff's Counsel recognize the expense and length of continued proceedings necessary to continue the Lawsuit against Defendant through trial and through any possible appeals. Plaintiff's Counsel has also taken into account the uncertainty of the outcome of further litigation, including the risk that the class might not be finally certified under the court rules as well as the difficulties and delays generally inherent in such litigation.

10. Plaintiff and Plaintiff's Counsel are also aware of the burdens of proof necessary to establish liability for the claims, of Defendant's defenses thereto, and of the difficulties in establishing damages for the Class Members. Based on the foregoing, Plaintiff's Counsel believes the proposed Settlement is fair, adequate, reasonable, and in the best interests of the Class Members.

11. Although Defendant believes it has meritorious defenses to the Lawsuit, Defendant has concluded that the continued litigation of Plaintiff's claims and defense of this Lawsuit would be lengthy and expensive for all Parties. This Settlement is not an admission of any liability or wrongdoing by any Defendant, Released Parties, or person, which have agreed to settle this Action and settle this case solely to avoid the uncertainties and costs of litigation and so they can have peace.

12. The Court has made no ruling on the merits of the claims and has determined only that certification of the Class for settlement purposes is appropriate under Nevada law.

PRELIMINARY APPROVAL OF THE SETTLEMENT

13. *Class Counsel.* On _____, the Court appointed the following attorneys as Plaintiff's Counsel to represent the Class in this Lawsuit: Thierman Buck LLP, 7287 Lakeside Drive, Reno, Nevada 89511, and Gabroy Law Offices, 170 South Green Valley Parkway, Henderson, Nevada 89012.

14. *Class Definition.* On _____, for purposes of the proposed Settlement, the Eighth Judicial District Court, Clark County, Nevada, preliminarily certified a Class consisting of all hourly paid non-exempt persons employed by Defendant in the state of Nevada who earned less than 1 ½ times the applicable minimum wage and who worked over eight (8) hours in a workday and were not paid their total owed wages during the Class Period (the time period defined in paragraph 15 below).

15. The *Class Period* is January 17, 2017 through _____.
16. *Claims Administrator*. The Court has appointed _____, as Claims Administrator to notify the Class and coordinate the claims process.
17. If you are a member of the Class, you will be bound by the proposed Settlement described below if it is approved, unless you make a written Request for Exclusion (to “opt out”) in the manner described below.

SUMMARY OF SETTLEMENT TERMS

The following is a summary of the proposed Settlement between the Plaintiff, the Class, and Defendant. The specific and complete terms are described in the Agreement for Settlement of Class Action and Release (the “Settlement Agreement”), a copy of which is available for your review as set forth at the end of this Notice.

18. *Conditions of the Settlement*. This Settlement is conditioned upon the Court entering an order at or following the Final Approval Hearing approving the Settlement, as agreed by Plaintiff and Defendant, as fair, reasonable, adequate, and in the best interests of the Class with such order not being subject to any appeal or modification as provided for in the Settlement.

19. *Final Approval Hearing*. A Final Approval Hearing will be held in the Eighth Judicial District Court, Clark County Nevada, on _____ at _____ Courtroom No. _____, before the Hon. _____, District Judge. At this hearing, the Court will determine whether the proposed Settlement is fair, adequate, and reasonable, whether it should be approved by the Court, and whether the Lawsuit should be dismissed on the merits with prejudice as a result of the Settlement. The hearing may be adjourned, continued, and/or rescheduled by the Court from time to time as the Court may direct without further notice. You do not need to attend that hearing to participate in the proposed Settlement.

20. *Settlement Fund*. The Settlement Agreement provides that Defendant will pay a total of **\$35,000.00** to fully resolve all issues in the Lawsuit. After the Court finally approves the Settlement and after deduction of the court-approved deductions from the Fund, as referenced immediately below, monetary Awards will be distributed to each member of the Class who: (a) does not opt out; and (b) fully completes and timely mails a valid Claim Form.

21. *Deductions from the Settlement Fund*. The following deductions will be made from the Fund:

a. *Attorneys’ Fees and Expense Award*. As part of the Settlement approval process, Class Counsel (Plaintiff’s Counsel) will seek approval of an award of attorneys’ fees of **\$11,666.66** for all current and future attorneys’ fees and up to **\$1,000.00** in costs and expenses incurred in the Lawsuit as the “Fees and Expense Award.” Class Counsel will not be permitted to petition the Court for any additional payments for fees, costs, or interest. You will not be required to pay Plaintiff’s Counsel separately for their representation of the Class in the Lawsuit.

b. *Enhancement Award*. Class Counsel will also seek approval for the payment of an Enhancement Award to Class Representative John Valencia (named Plaintiff) in this Lawsuit, for a total of **\$2,500.00**, for his prosecution of this case on behalf of the Class.

c. *Net Settlement Amount to Be Distributed to Authorized Class Members*. The sum expected to remain following the above-referenced deductions and the deduction for the costs of claims administration is **\$16,333.34**, also referenced as “Net Settlement Amount.” The Net Settlement Amount will be distributed among those Class Members who do not opt out and timely mail a valid, fully-completed Claim Form, known as “Authorized Class Members.”

22. **Payments to Authorized Class Members:** The Claims Administrator will calculate the Award for each Authorized Class Member by utilizing the following formula: taking, (A) the number of daily overtime hours worked by each Class Member from January 17, 2017 through _____; divided by (B) the total number of daily overtime hours worked by all Class Members from January 17, 2017 through _____; to obtain (C) the percentage of the total daily overtime hours worked by each Class Member. That percentage will then be applied to the Net Settlement Amount to determine each Authorized Class Member's Award. Any amounts not distributed to Authorized Class Members will be reverted to Defendant. Within 30 days after funding of the Settlement, the Claims Administrator will mail settlement checks to Authorized Class Members.

23. **Tax Matters.**

a. Under the terms of the Settlement, the Award to each Authorized Class Member will be paid as unpaid wages and penalties/interest, from which federal withholding taxes will be deducted and for which employer tax payments will be made, and in part as miscellaneous income, from which federal withholding taxes will not be deducted. IRS Forms W-2 and 1099 will issue for the Award as appropriate.

b. Authorized Class Members should consult with their tax advisors concerning any tax consequences of the payments that they receive under the Settlement. Neither the Parties, the Claims Administrator, nor the attorneys for the Parties are providing tax advice.

24. **Uncashed Checks.** As approved by the Court, if any check mailed to an Authorized Class Member is not cashed within 90 days after issuance, the check will be cancelled, and the amount of that check will be reverted to Defendant.

RELEASE OF PARTIES AND CLAIMS

25. The Authorized Class Member Awards and the Enhancement Award will be paid specifically in exchange for the release of the Released Parties from the Released Claims and for the covenant not to sue concerning the Released Claims.

26. If the Settlement is approved and if the Order of Final Approval dismissing the Lawsuit is entered and the Judgment becomes final, those Class Members who have not validly requested exclusion from the Settlement will be bound by the terms of the proposed Settlement, including releases of parties and the claims set forth at paragraphs 27 and 28 below.

27. **Released Parties.** "Released Parties" collectively means Defendant and (i) its respective past, present, and future parents, subsidiaries, joint ventures, and affiliates; (ii) its past, present, and future shareholders, directors, officers, members, managers, agents, employees, attorneys, insurers, predecessors, successors, and assigns of any of the foregoing; and (iii) any individual or entity which could be jointly liable with any of the foregoing.

28. **Releases of Claims.**

a. **"Released Claims"** means the claims to be released by Class Members who do not timely file a valid request for exclusion, which claims include any and all claims of any kind whatsoever, whether known or unknown, contingent or actual, whether based on common law, regulations, statute, or a constitutional provision, under state, federal or local law, arising out of the allegations made in the Action, including but not limited to claims for or related to alleged unpaid wages, unpaid overtime, damages, penalties, interest, attorneys' fees and costs, and all other claims and allegations made in the Action and that arise out of the facts or could have arisen out of the facts alleged in the Action, from January 17, 2017 through _____.

b. There may exist facts and/or damages pertaining to any or all of the Released Claims in paragraph 28.a., above, of which Plaintiff and Class Members have no knowledge, reason to know, or suspicion at the time the parties, Class Counsel, and Defendant's Counsel sign this Agreement, and that a

Class Member may later discover facts different from or in addition to those he or she now knows or believes to be true. The Release at paragraph 28.a. shall apply to all such unknown and unanticipated damages and claims, as well as to those now known or disclosed, based on the facts alleged in Complaint, and, further, that the Release remains in full force and effect in all respects notwithstanding any such different or additional facts.

PROCEDURE FOR MONETARY RECOVERY

29. ***Deadline to Submit Claim Form.*** If you want to participate in the Settlement and receive money under the Settlement, you must fully complete, sign, and mail the Claim Form **no later than** _____, as set forth in detail below at paragraph 31.

30. ***Completing a Claim Form:*** A Claim Form is attached. You must complete and sign the Claim Form and mail it to the Claims Administrator at the above address. The completed, signed Claim Form must be postmarked on or before _____. Class Members are responsible to maintain a photocopy of the fully completed Claim Form and proof of mailing.

31. A Claim Form is valid only if it is fully completed, signed, and postmarked on or before the deadline specified in paragraphs 29 and 30.

32. If you are a Class Member and you do not choose to exclude yourself from the Settlement, you will be bound by all the provisions of the Settlement Agreement, including a full release of claims that will prevent you from separately suing the Released Parties for the Released Claims settled in this case.

33. ANY CLASS MEMBER WHO DOES NOT SUBMIT A TIMELY, VALID, AND FULLY-COMPLETED CLAIM FORM WILL NOT RECEIVE A SHARE OF THE SETTLEMENT FUND. IF YOU DO NOTHING – THAT IS, IF YOU DO NOT MAIL A TIMELY CLAIM FORM, YOU WILL NOT BE ENTITLED TO A SHARE OF SETTLEMENT FUND. HOWEVER, YOU WILL BE BOUND BY THE TERMS OF THE SETTLEMENT, INCLUDING THE RELEASE REFERENCED AT PARAGRAPHS 27 AND 28 ABOVE, EVEN THOUGH YOU DID NOT RECEIVE ANY MONEY, UNLESS YOU EXCLUDE YOURSELF IN WRITING FROM THE SETTLEMENT AS PROVIDED IN PARAGRAPHS 34 AND 35 BELOW.

PROCEDURE FOR EXCLUSION FROM THE SETTLEMENT

34. ***Request for Exclusion.*** Any Class Member who does NOT wish to participate in the Settlement may exclude himself or herself (*i.e.*, “opt-out”) by sending a signed Request for Exclusion form to the Claims Administrator. The Request for Exclusion must be signed, dated, completed, and mailed by certified mail to: _____.

35. ***Deadline for Request for Exclusion.*** The Request for Exclusion must be **postmarked no later than** _____. If you submit Request for Exclusion **postmarked after** _____, it will be rejected, and you will be bound by the Release and all other Settlement Terms.

36. ***Consequences of Submitting Request for Exclusion.*** Any person who files a complete and timely Request for Exclusion shall, upon receipt by the Claims Administrator, no longer be a member of the Settlement Class, shall be barred from participating in any portion of the Settlement, and shall receive no benefits from the Settlement. Any such person, at their own expense, may pursue individually any claims he/she may have against Defendant. If you wish to exclude yourself and wish to pursue individual action, you should be aware there are time limits on your right to file any such individual action.

PROCEDURE FOR OBJECTIONS TO THE PROPOSED SETTLEMENT

37. *Objections to the Settlement.* Any Class Member who wishes to object to the Settlement must file with the Court and serve on counsel for both parties and the Claims Administrator a written statement objecting to the Settlement. Such written statement must be filed with the Court and served on counsel for the parties **no later than** _____. No Class Member shall be entitled to be heard at the Final Approval Hearing (whether individually or through separate counsel) or to object to the Settlement, and no written objections or briefs submitted by any Class Member shall be received or considered by the Court at the Final Approval Hearing, unless the Class Member gives timely written notice of the Class Member's intent to appear at the Final Approval Hearing, and copies of any written objections or briefs, shall have been timely filed with the Court and served on counsel for all Parties and the Claims Administrator. Any written objections and briefs must be served on counsel for the Parties and the Claims Administrator at the following addresses:

To Plaintiff and the Settlement Class (Class Counsel):

Christian Gabroy
Kaine Messer
GABROY LAW OFFICES
170 S. Green Valley Parkway, Suite 280
Henderson, Nevada 89012
Email: assistant@gabroy.com

To Defendant:

Daniel I. Aquino
JACKSON LEWIS P.C.
300 S. Fourth Street
Suite 900
Email: Daniel.Aquino@jacksonlewis.com

To Claims Administrator:

38. *Objections Must Submitted Timely and In Writing.* Any Class Member who does not timely file with the Court and serve on counsel his or her written objections in the manner provided above shall be deemed to have waived such objections and shall be foreclosed from making any objections (by appeal or otherwise) to the proposed Settlement.

39. Any Class Member who is satisfied with the proposed Settlement need not appear at the Final Approval Hearing.

CHANGE OF ADDRESS

40. If you move after receiving this Notice, if it was misaddressed, or if for any reason you want your payment or future correspondence concerning this Lawsuit and the Settlement to be sent to a different address, you should supply your current preferred address to the Claims Administrator at the address listed in paragraph 37 above.

EXAMINATION OF THE PAPERS AND ADDITIONAL INQUIRIES

41. The foregoing is only a summary of the Lawsuit and the proposed Settlement and does not purport to be comprehensive. For a more detailed statement of the matters involved in the Lawsuit and the proposed Settlement, you may refer to the pleadings, the Settlement Agreement, and other papers filed in the Lawsuit, which may be inspected at the Clerk's Office of the Eighth Judicial District Court, Regional Justice Center, 200 Lewis Avenue, Las Vegas, Nevada 89155, during regular business hours of each Court day.

42. All inquiries by Class Members regarding this Notice and/or the Settlement that involve requests for information on whether a claim has been received or accepted, requests for additional copies of the Claim Form, information on when Authorized Class Member Awards will be paid, or the amount of your individual claim should be directed to the Claims Administrator at _____. Inquiries involving legal questions about this Notice and/or legal questions about the Settlement or your legal rights should be directed to Class Counsel referenced at paragraph 37 above. Email communications to Class Counsel are preferred.

PLEASE DO NOT CONTACT THE CLERK OF THE COURT, THE JUDGE, OR DEFENDANT WITH INQUIRIES.

Dated: _____.

DISTRICT JUDGE, Eighth Judicial District Court

EXHIBIT B

EIGHTH JUDICIAL DISTRICT OF NEVADA IN AND FOR THE COUNTY OF CLARK
JOHN VALENCIA V. P & M HOLDINGS, LLC D/B/A AND A/K/A GOLDEN STEER STEAKHOUSE
CASE NO. _____

CLAIM FORM

List ID: [ID]
[Class Member Name]
[Address 1] [Address 2]
[City], [State] [ZIP]

[Barcode]
*If your name and address is different from what is
printed to the left, please provide updated information:*

To receive your share of the Settlement, you must sign and return this Claim Form **postmarked** no later than [30 DAYS AFTER CLAIMS ADMINISTRATOR'S INITIAL MAILING OF THE NOTICE]. The Claim Form must be mailed or faxed to the Claims Administrator at the below address.

Golden Steer Steakhouse Claims Administrator
Simpluris
[Address/Phone]

**COMPLETE AND SIGN THIS FORM ONLY IF YOU WANT TO RECEIVE MONEY
FROM THE SETTLEMENT**

Your estimated share of the Settlement is based on the number of hours worked between January 17, 2017 and _____ at P & M Holdings, LLC d/b/a and a/k/a Golden Steer Steakhouse ("Defendant") in Nevada as a non-exempt employee. Defendant's records show that, within that period, you worked a total of: _____ **Daily Overtime Hours.**

Based on this information, the current estimated value of your settlement benefit is \$ ____.

If you disagree with Defendant's records as to the number of daily overtime hours you worked, you must state below the number of daily overtime hours you believe you worked during the class period. If you have any documentation (such as pay stubs or written information) to support your claim, you must submit it with this form. If there is still a dispute after you submit your documentation, and the dispute cannot be resolved informally, the dispute will be settled by the Claims Administrator as described in the Notice that accompanies this claim form.

I believe that the Defendant's estimate of the number of daily overtime hours is incorrect and that I worked _____ **Daily Overtime Hours** during the class period. (If you agree with the Defendant's estimate, leave blank.)

My signature below is my consent to be bound by the Settlement and Release as described in the Notice enclosed with this Claim Form. **By signing below, I am making my claim for a share of the Settlement and I agree to the information above.** I declare under penalty of perjury under the laws of the State of Nevada that the foregoing information supplied is true:

Signature

Date Signed

Printed Name

(____) ____ - ____
Daytime Phone Number

____ - ____ - ____
Social Security Number (for taxing reporting)

Questions? Call Claims Administrator toll-free at 1-_____

EXHIBIT C

REQUEST FOR EXCLUSION FORM

List ID: [ID]
[Class Member Name]
[Address 1] [Address 2]
[City], [State] [ZIP]

To exclude yourself from the Settlement and **NOT** receive your share of the Settlement, you must sign and return this Exclusion Form **postmarked** no later than [30 DAYS AFTER CLAIMS ADMINISTRATOR'S INITIAL MAILING OF THE NOTICE]. This form must be mailed or faxed to the Claims Administrator at the below address:

Golden Steer Steakhouse Claims Administrator
Simpluris
[Address/Phone]

BY SUBMITTING THIS FORM, I AM CONFIRMING THAT IT IS MY DECISION NOT TO PARTICIPATE IN THIS CLASS ACTION AND NOT TO BE INCLUDED AS A CLASS MEMBER IN THIS CLASS ACTION. I UNDERSTAND THAT I WILL RECEIVE NO MONEY FROM THIS SETTLEMENT.

I confirm that I was employed by **P & M Holdings, LLC d/b/a and a/k/a Golden Steer Steakhouse** sometime between January 17, 2017 and [Preliminary Approval Date] as a non-exempt hourly employee who earned less than 1 ½ times the applicable minimum wage. I confirm that I have received notice of the proposed settlement in this action. I have decided to be **EXCLUDED** from the Class, and I have decided **NOT** to participate in the proposed settlement.

Print Name () - Phone Number

Mailing Address City State ZIP

Signature Date

EXHIBIT D

ORDR

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Joshua D. Buck, Nev. Bar No. 12187
josh@thiermanbuck.com
Leah L. Jones, Nev. Bar No. 13161
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170 S. Green Valley Pkwy, Ste. 280
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Tel. (702) 259-7777
Fax. (702) 259-7704
Attorneys for Plaintiff

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

JOHN VALENCIA, on behalf of himself
and all others similarly situated, ...

Plaintiff,

vs.

P & M HOLDINGS, LLC d/b/a and a/k/a
GOLDEN STEER STEAKHOUSE;
DOES 1 through 50; inclusive,

Defendant(s).

Case No.:
Dept. No.:

**[PROPOSED] ORDER GRANTING
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

The Joint Motion For Preliminary Approval Of Class Action Settlement came before this Court, the Honorable _____ presiding, on _____, 20____. This Court, having considered the papers submitted in support of the application of the parties, HEREBY ORDERS THE FOLLOWING:

1. This Court grants preliminary approval of the Settlement and the Settlement Class based upon the terms set forth in the Joint Stipulation of

1 Settlement and Release between Plaintiffs and Defendant ("Stipulation of
2 Settlement") filed herewith. The Settlement appears to be fair, adequate
3 and reasonable to the Class.

4 2. The Settlement falls within the range of reasonableness and appears to
5 be presumptively valid, subject only to any objections that may be raised
6 at the final fairness hearing and final approval by this Court.

7 3. A final fairness hearing on the question of whether the proposed
8 Settlement, attorneys' fees to Class Counsel, and the Class
9 Representative Enhancement Award should be finally approved as fair,
10 reasonable and adequate as to the members of the Class is scheduled in
11 accordance with the Implementation Schedule set forth below.

12 4. This Court approves, as to form and content, the Notice of Pendency of
13 Class Action and Proposed Settlement and Hearing Date for Final
14 Approval of Settlement ("Notice of Pendency of Class Action"), in
15 substantially the form attached to the Stipulation of Settlement as Exhibit
16 A. This Court approves the procedure for Class Members to participate
17 in, to opt out of, and to object to the Settlement as set forth in the Notice
18 of Pendency of Class Action.

19 5. This Court directs the mailing of the Notice of Pendency of Class Action,
20 the Claim Form, and the Request for Exclusion Form by first class mail to
21 the Class Members in accordance with the Implementation Schedule set
22 forth below. This Court finds the dates selected for the mailing and
23 distribution of the Notice, as set forth in the Implementation Schedule,
24 meet the requirements of due process and provide the best notice
25 practicable under the circumstances and shall constitute due and
26 sufficient notice to all persons entitled thereto.

27 6. It is ordered that the Settlement Class is preliminarily certified for
28 settlement purposes only.

- 1 7. This Court confirms Plaintiff John Valencia as Class Representative and
- 2 Mark Thierman, Esq., Joshua Buck, Esq., and Leah Jones, Esq., of
- 3 Thierman Buck LLP and Christian Gabroy, Esq., and Kaine Messer, Esq.,
- 4 of Gabroy Law Offices as Class Counsel.
- 5 8. This Court confirms Simpluris as the Claims Administrator.
- 6 9. To facilitate administration of the Settlement pending final approval, this
- 7 Court hereby enjoins Plaintiff and all Class Members from filing or
- 8 prosecuting any claims, suits or administrative proceedings (including
- 9 filing claims with the Nevada Office of the Labor Commissioner)
- 10 regarding claims released by the Settlement unless and until such Class
- 11 Members have filed valid Requests for Exclusion with the Claims
- 12 Administrator and the time for filing claims with the Claims Administrator
- 13 has elapsed.
- 14 10. This Court orders the following **Implementation Schedule** for further
- 15 proceedings:

16 *(Rest of page intentionally left blank)*

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GABROY LAW OFFICES

170 S. Green Valley Pkwy., Suite 280

Henderson, Nevada 89012

(702) 259-7777 FAX: (702) 259-7704

a.	Deadline for Defendant to Submit Class Member Information to Claims Administrator	_____, 2021 [10 calendar days after Order granting Preliminary Approval]
b.	Deadline for Claims Administrator to Mail the Notice, Claim Form, and Request for Exclusion Form to Class Members	_____, 2021 [21 calendar days after Order granting Preliminary Approval]
d.	Deadline for Class Members to Postmark Claim Forms or Requests for Exclusion Forms	_____, 2021 [30 calendar days after initial mailing of the Notice to Class Members]
e.	Deadline for Receipt by Court and Counsel of any Objections to Settlement	_____, 2021 [30 calendar days after initial mailing of the Notice to Class Members]
f.	Deadline for Class Counsel to file Motion for Final Approval of Settlement, Attorneys' Fees, Costs, and Enhancement Award	_____, 2021 [7 calendar days before Final Approval Hearing]
g.	Deadline for Class Counsel to File Declaration from Claims Administrator of Due Diligence and Proof of Mailing	_____, 2021 [7 calendar days before Final Approval Hearing]
h.	Final Fairness Hearing in Department ____ and Final Approval	_____, 2021

i.	Deadline for Defendant to Fund Settlement Account maintained by Claims Administrator	_____, 2021 [5 calendar days after Effective Date]
j.	Deadline for Claims Administrator to wire transfer the Attorneys' Fees and Costs to Class Counsel (if Settlement is Effective)	_____, 2021 [5 calendar days after Defendant Funds Settlement Account]
k.	Deadline for Claims Administrator to mail the Settlement Awards to Class Members and the Enhancement Award to Class Representative (if Settlement is Effective)	_____, 2021 [30 days after Defendant Funds Settlement Account]
k.	Claims Administrator to File Proof of Payment of Settlement Awards, Enhancement Award, Attorneys' Fees and Costs (if Settlement is Effective)	_____, 2021 [90 calendar days after Effective Date]

IT IS SO ORDERED.

Dated: _____

Judge of the District Court

Respectfully submitted by:

GABROY LAW OFFICES

By:

Christian Gabroy
Kaine Messer
170 South Green Valley Parkway
Suite 280
Tel: (702) 259-7777
Fax: (702) 259-7704
Henderson, Nevada 89012

THIERMAN BUCK LLP
Joshua D. Buck
Leah L. Jones
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Tel: (775) 284-1500
Fax: (775) 703-5027

Attorneys for Plaintiff

Approved as to form and content:

JACKSON LEWIS, P.C.

By:

Daniel I. Aquino
300 S. Fourth Street
Suite 900
Las Vegas, NV 89101
Tel (702) 921-2460

Attorneys for Defendant

EXHIBIT E

ORDR

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Fax. (702) 259-7704
Attorneys for Plaintiff

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

JOHN VALENCIA, on behalf of herself
and all others similarly situated,

Plaintiff,

vs.

P & M HOLDINGS, LLC d/b/a and a/k/a
GOLDEN STEER STEAKHOUSE;
DOES 1 through 50; inclusive,

Defendant(s).

Case No.:
Dept. No.:

**[PROPOSED] ORDER GRANTING
MOTION FOR FINAL APPROVAL
OF CLASS ACTION SETTLEMENT,
ATTORNEY'S FEES, COSTS, AND
ENHANCEMENT AWARD**

On _____, 2021, this Court considered the Motion for Final Approval of Class Action Settlement, Attorney's Fees, Costs, And Enhancement Award. Class Counsel and Counsel for Defendant appeared at the hearing. Having fully considered the motion, comments of counsel, and all supporting legal authorities, the Court orders as follows:

IT IS HEREBY ORDERED THAT:

1. The Court adopts the defined terms in the Settlement.

2. This Court has jurisdiction over the subject matter of this litigation and personal jurisdiction over the named-plaintiff, all settlement class members, and defendants.

3. The Court confirms as final the following settlement class pursuant to Nev. R. Civ. P. 23: "All hourly paid non-exempt persons employed by Defendant in the state of Nevada who earned less than 1 ½ times the applicable minimum wage and who worked over eight (8) hours in a workday and were not paid their total owed wages for the time period commencing on January 17, 2017, up to and including [the date the Court granted preliminary approval of the Settlement]."

4. The Court confirms the appointment of John Valencia as the Class Representative and the enhancement payment of \$2,500.00 to John Valencia, as set forth in the Settlement.

5. The Court confirms the appointment of Mark Thierman, Esq., Joshua Buck, Esq., and Leah Jones, Esq., of Thierman Buck LLP and Christian Gabroy, Esq., and Kaine Messer, Esq., of Gabroy Law Offices as class counsel for the settlement class and approves their requests for attorneys' fees and litigation costs of \$11,666.67 and _____, respectively.

6. The class notice was distributed to class members, pursuant to this Court's orders, and fully satisfied the requirements of Nev. R. Civ. P. 23 and any other applicable law.

7. Pursuant to Nev. R. Civ. P. 23, the Court grants final approval to this settlement and finds that the settlement is fair, reasonable, and adequate in all respects, including the attorneys' fees, costs, and incentive award provisions. The Court specifically finds that the settlement confers a substantial benefit to settlement class members, considering the strength of plaintiff's claims and the risk, expense, complexity, and duration of further litigation. The response of the class supports settlement approval. _____ class members objected to the settlement and only _____ requested exclusion from the settlement. The Court further finds that the settlement is

1 the result of arms-length negotiations between experienced counsel representing the
2 interests of both sides, which supports approval of the settlement in accordance with
3 the standards set forth in the joint motion for final approval of settlement.

4 8. The Court finds that as of the date of this Order each and every class
5 member has waived and released claims as set forth in the Settlement Agreement and
6 Notice of Class Action Settlement.

7 9. The Court finds that the settlement administrator Simpluris is entitled to
8 \$3,500 for administrative fees.

9 10. The Court directs the parties to effectuate the settlement terms as set
10 forth in the Settlement Agreement and the settlement administrator to calculate and
11 pay the claims of the class members in accordance with the terms set forth in the
12 Settlement Agreement.

13 11. The Complaint is dismissed with prejudice.

14 12. The Court retains jurisdiction to enforce the terms of the settlement,
15 including the payment of the settlement fund.

16 IT IS SO ORDERED, this _____ day of _____, 2021.

17
18 _____
19 Judge of the District Court

20
21 Respectfully submitted by:: _____
22 Christian Gabroy
23 Kaine Messer
24 *Class Counsel/Counsel for Plaintiff*

25 Approved as to form: _____
26 Daniel Aquino
27 *Counsel for Defendant*
28

EXHIBIT II

DECL

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Attorneys for Plaintiff

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

JOHN VALENCIA, on behalf of himself
and all others similarly situated,

Plaintiff,

vs.

P & M HOLDINGS, LLC d/b/a and a/k/a
GOLDEN STEER STEAKHOUSE; DOES
1 through 50; inclusive,

Defendant(s).

Case No.: A-21-830175-C
Dept. No.: 25

**DECLARATION OF CHRISTIAN
GABROY IN SUPPORT OF JOINT
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

**DECLARATION OF CHRISTIAN GABROY IN SUPPORT OF JOINT MOTION FOR
PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

I, Christian Gabroy, do hereby declare and state as follows:

1. The following declaration is based upon my own personal observation and knowledge, and if called upon to testify to the things contained herein, I could competently so testify.

2. I am an attorney and founder of Gabroy Law Offices and am admitted to

1 practice law in the states of Illinois and Nevada and the United States District Court
2 District of Nevada, the Ninth Circuit Court of Appeals, and the United States Supreme
3 Court.

4 3. I am the attorney of record for Plaintiff John Valencia along with my
5 partner Kaine Messer, Esq. and my co-counsel at Thierman Buck LLP.

6 4. Attached as Exhibit 1 to the Joint Motion for Preliminary Approval of
7 Class Action Settlement is a true and correct copy of the Parties' Joint Stipulation of
8 Settlement and Release (the "Settlement").

9 5. I have extensive litigation practice in the wage-and-hour practice since
10 opening my firm here in Nevada in 2008. I have been certified as class counsel in,
11 *inter alia*, our federal court in *Gaspar, et al. v. Supershuttle Las Vegas, LLC*, Case No.
12 2:15-cv-02149-APG-VCF as well as in Nevada state court in *Zelege v. Ike Gaming,*
13 *Inc. d/b/a and a/k/a El Cortez Hotel and Casino*, Case No. A-18-769220-C, *Baltimore*
14 *v. LTF Club Management Company, LLC*, Case No. A-18-782512-C, *DiMuzio, et al. v.*
15 *Blazin Wings, Inc. d/b/a and a/k/a Buffalo Wild Wings*, Case No. A-18-771424-C,
16 *Greene-Lewis v. Hussong's Las Vegas, LLC*, Case No. A-18-771094-C, *Aaron v.*
17 *Wendy's of Las Vegas, Inc. et al*, Case No. A-18-774902-C, *Boschini v. White House*
18 *Black Market, Inc., et al.*, Case No. A-19-803613-C, *Barnett v. WBF McDonald's*
19 *Management LLC*, Case No. A-18-777786-C, and *Russum v. Lucky Lucy D LLC, et*
20 *al.*, Case No. A-19-795009-C.

21 Case-Specific Information

22 6. In my opinion, the settlement achieved in this case represents a good
23 result on behalf of the Class. Notwithstanding each Parties' various legal arguments
24 as to the appropriateness of class-wide relief in this action, and the liability and amount
25 owed to class members, the basis for recovery is based upon the total amount of
26 unpaid overtime premium hours worked during the class period. Furthermore, the
27 proposed settlement would release only participating class members' wage and hour
28 claims, not all potential employment claims, in exchange for the financial benefits they
receive.

1 7. The Parties have reviewed relevant compensation data and employment
2 and have arrived at a reasonable resolution through a protracted arm's-length
3 negotiation process. The negotiations continued into all details of the settlement
4 agreement and ancillary documents.

5 8. As outlined in the Joint Motion for Preliminary Approval, in addition to
6 requesting that the class be conditionally certified, the Parties are also requesting that
7 this Court approve the proposed class notice and claim form, which are attached to the
8 Settlement as Exhibits A and B, respectfully.

9 9. The Settlement provides for a gross settlement amount of \$35,000.
10 Subject to the Court's approval, Plaintiff's Counsel estimates that the gross settlement
11 amount will break down as follows: \$16,333.33 in estimated settlement funds to the
12 Class; \$3,500.00 in settlement administration costs; \$2,500.00 in enhancements to the
13 named-Plaintiff for his participation in the lawsuit; \$11,666.67 in attorney's fees; and
14 up to \$1,000.00 in actual costs.

15 10. The Settlement represents a significant recovery on behalf of the Class
16 given the risks associated with this case. Plaintiff alleged various causes of action
17 against Defendant for unpaid wages on behalf of himself and all similarly situated
18 individuals under the Nevada Revised Statutes. Specifically, Plaintiff asserted the
19 following claims: (1) Failure to Pay Overtime in Violation of NRS 608.140 and 608.018;
20 and (2) Failure to Timely Pay All Wages Due and Owing in Violation of NRS 608.140 and
21 608.020-050. Plaintiff's legal claims stem from his allegation that he was not paid daily
22 overtime when he and others similarly situated worked over 24 hours in a workday, as
23 defined by NRS 608.0126.

24 11. The parties engaged in settlement discussions, exchanged information,
25 and eventually reached tentative resolution pending this Court's approval. Specifically,
26 Defendant provided Plaintiff with punch and pay data for a sampling of employees.
27 That sampling was extrapolated out to the entire class. The total amount of estimated
28 overtime was approximately just under \$10,000, and the maximum potential penalties
were \$90,960. Through the negotiation process the Parties engaged in extensive

1 discussions regarding their respective positions and exchange of the information and
2 representative data needed to properly evaluate the merits of the claims alleged.

3 12. The total settlement amount of \$35,000.00 represents approximately a
4 350% recovery of the potential recoverable hard damages.

5 13. The enhancement payment of \$2,500.00 to the named Plaintiff is fair and
6 reasonable. Plaintiff provided significant assistance to counsel through is this process
7 and took the risk of bringing this action on behalf of others who were similarly affected
8 by the overtime policy.

9 14. Given that the settlement provides for 350% recovery of the overtime
10 wages potentially owed, and the benefit of a quick and certain payout to Plaintiff and
11 all members of the class who decide to make a claim, it is the opinion of Plaintiff's
12 Counsel—myself, Mark R. Thierman, Joshua Buck, and Kaine Messer (all of whom
13 are experienced wage and hour class action attorneys), that the proposed settlement
14 is fair and reasonable and represents a better alternative than continued litigation
15 under all the circumstances.

16 15. The settlement also provides for all the necessary notice and disclosures
17 to the Class Members so that they can make an informed decision about whether to
18 participate, opt-out, or object to the Settlement. The named-Plaintiff's enhancement
19 and attorneys' fees and cost award are prominently displayed on the Notice. The claim
20 form is simple and straightforward.

21 16. In sum, it is my opinion that the Settlement is fair, reasonable, and
22 adequate; therefore, I respectfully request that the Settlement be preliminarily
23 approved.

24 I declare under penalty of perjury under the laws of the United States of
25 America and the State of Nevada that the foregoing is true and correct.

26 Executed on February 26, 2021, in Henderson, Nevada.

27 /s/ Christian Gabroy
28 Christian Gabroy