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17 **Andy Truong Nguyen, Loan Le,**
18 **and Pho Rice & Roll'd, Inc.**

19 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
20 **COUNTY OF SAN JOAQUIN**

21 **ATHENA HOA NGUYEN,**

22 **Plaintiff,**

23 **vs.**

24 **ANDY TRUONG NGUYEN, LOAN LE,**
25 **and DOES 1-100, inclusive,**

26 **Defendants.**

27 **Case No.: STK-CV-UOE-2020-849**

28 **STIPULATION AND [PROPOSED] ORDER**
APPROVING PAGA SETTLEMENT
AGREEMENT AND DISMISSING SEVENTH
CAUSE OF ACTION (PAGA) WITH
PREJUDICE

STIPULATION

Plaintiff Athena Hoa Nguyen (“Nguyen” or “Plaintiff”) and Defendants Andy Truong Nguyen, Loan Le, and Pho Rice & Roll’d, Inc. (“Defendants”) (collectively, the “Parties”), by and through their respective counsel of record, hereby stipulate as follows:

1 1. Whereas, Plaintiff was a former non-exempt employee who filed this lawsuit on
2 January 16, 2020. On July 21, 2020, the lawsuit was amended to add the Seventh Cause of Action
3 under the Labor Code Private Attorneys General Act of 2004 ("PAGA") asserting a right to
4 recover civil penalties on behalf of the State of California and all current and former non-exempt
5 employees of Defendant in California for alleged Labor Code violations: (1) misappropriation of
6 tips (LC § 351), (2) failure to make and maintain records of tips (LC § 353), (3) failure to timely
7 pay wages (LC § 204), (3) failure to pay all wages due at termination of employment (LC § 201),
8 (4) failure to furnish accurate itemized wage statements (LC § 226), and (5) failure to pay
9 minimum wage (LC § 1197).

10 2. Whereas, Defendants dispute that there is any merit to the claims alleged in this
11 lawsuit and denies that it owes any amounts to Plaintiff or the allegedly aggrieved employees in
12 connection with Plaintiff's claims. In particular, Defendants contend that accurately implemented
13 a tip sharing policy, as permitted by California law.

14 3. Whereas, the parties have engaged in discovery that shows the relatively minor
15 scope of violations, including: averaging only 8 employees during the applicable PAGA period, a
16 tip jar policy, compliant wage statements during part of the PAGA period. Also, Defendants
17 operated a small restaurant that in fact had just opened in May of 2019, and Plaintiff was a short-
18 term employee of 6 weeks.

19 4. Whereas, on March 2, 2023, after written discovery, the Parties engaged in lengthy,
20 arms-length settlement negotiations at a mediation before David Stromberg, Esq.

21 5. Whereas, through negotiation, the Parties have reached a settlement of all claims,
22 including a settlement of the PAGA Claims for the total sum of **\$2,500.00** ("PAGA Settlement
23 Amount").

24 6. Whereas, the Parties agree that, subject to this Court's approval, the PAGA
25 Settlement shall be distributed by Defendants, within 30 days of the Court's approval of the PAGA
26 Settlement, and in accordance with Labor Code section 2699(i):
27

- 1 a. Seventy-Five Percent (75%) of the remaining of the \$2,500 PAGA Settlement
2 Amount shall be paid to the California Labor and Workforce Development Agency,
3 or **\$1,875**;
- 4 b. Twenty-Five Percent of the remaining \$2,500 PAGA Settlement, or **\$625**, shall be
5 paid in equal amounts to those current and former employees who worked for
6 Defendants in 2019 (PAGA Period Employees).
- 7 c. Settlement Checks issued to PAGA Employees pursuant to this Agreement will
8 expire one hundred and eighty (180) days from the date they are issued by
9 Defendants. Any unclaimed funds after the 180-day period shall be remitted by
10 Defendants to the California Unpaid Wage Fund in the name of the Employee to
11 whom the unclaimed funds were issued.

12 7. Whereas, Plaintiff also asserted individual claims against Defendants. The Parties
13 have separately resolved Plaintiff's individual claims. Plaintiff's non-PAGA settlement does not
14 require approval. "While California Labor Code § 2699(1)(2) requires this court to approve any
15 settlement agreement with respect to plaintiffs' PAGA claims, the court is aware of no
16 corresponding provision that imposes any duty on this court to supervise settlement of plaintiffs'
17 non-PAGA claims." *Tenorio v. Gallardo* (E.D. Cal. Sept. 30, 2019) 2019 WL 4747949, *3.

18 8. Whereas, other than the amount Plaintiff is entitled to receive under the PAGA
19 Settlement Agreement (i.e., her pro-rata share of the PAGA penalties), no separate consideration
20 was given or offered to Plaintiff in connection with the resolution of the PAGA claims in this
21 action.

22 9. Whereas, the Parties acknowledge and agree that, if approved, the PAGA Settlement
23 Agreement will result in the complete and final resolution of the PAGA claims asserted in this
24 action and that the PAGA Claims in this action will be dismissed with prejudice.

25 10. Whereas, based on the information, evidence, and data reviewed by counsel for all
26 Parties, who have significant experience in evaluating PAGA claims, the PAGA Settlement
27 Amount provides fair and meaningful relief when weighed against the significant risks of
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1 continued litigation. Although Plaintiff's counsel believes the PAGA claims have merit, they also
2 recognize that continued litigation could be lengthy and present a significant risk of no recovery,
3 particularly in light of Plaintiff's unique bonus Plaintiff earned, and the fact that Defendant
4 furnished three work shirts to its employees, the ability of the Court to reduce penalties pursuant to
5 Labor Code section 2699(e)(2), and in light of small number of PAGA Employees. For their part,
6 Defendant strongly dispute the merits of Plaintiff's claims and the extent of any actual violations,
7 should they exist, but nonetheless agrees that this settlement is appropriate given the cost and
8 burden of continued litigation and the inherent risks in any litigation.

9 11. Whereas, pursuant to California Labor Code section 2699(1)(2), Plaintiff's counsel
10 is providing a copy of this Stipulation and Proposed Order to the LWDA concurrently with the
11 filing of this Stipulation.

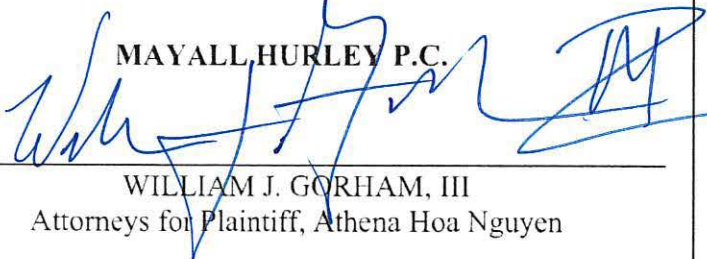
12 12. Whereas, should the Court not approve the PAGA Settlement Agreement, the
13 Parties agree to work together in good faith to remedy any concerns the Court may have regarding
14 the settlement.

15 13. THEREFORE, the Parties agree and jointly request that the Court issue an order
16 approving of the PAGA Settlement set forth herein and permitting the dismissal of the SEVENTH
17 CAUSE OF ACTION (PAGA) Claims with prejudice.

18 **IT IS SO STIPULATED AND AGREED BY THE PARTIES:**

19
20 **DATED:** March 13, 2023

21
22 By


MAYALL HURLEY P.C.

WILLIAM J. GORHAM, III

Attorneys for Plaintiff, Athena Hoa Nguyen

23
24
25 **DATED:** March 13, 2023

AVAN LAW

26
27 By


AHN V. NGUYEN

28
29
30 STIPULATION AND [PROPOSED] ORDER DISMISSING SEVENTH CAUSE OF ACTION (PAGA) WITH
PREJUDICE

Attorneys for Defendant Andy Truong Nguyen, Loan Le,
and Pho Rice & Roll'd, Inc.

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ORDER

Having received and reviewed the Parties' Stipulation and the attached PAGA Settlement Agreement ("PAGA Settlement"), and good cause appearing:

IT IS HEREBY ORDERED that:

1. The Court finds the PAGA Settlement was entered into in good faith, that the Settlement is fair, reasonable and adequate, and that the settlement satisfies the standards and applicable requirements for approval of PAGA representative actions under California law.
2. The Court approves the payments to be made to the PAGA Employees and the State of California as set forth in the PAGA Settlement, pursuant to Labor Code § 2699(1).
3. Upon entry of this Order, the Parties shall effectuate all terms of the PAGA Settlement based on the provisions and timelines set forth herein.
4. The SEVENTH CAUSE OF ACTION (PAGA) in this action is hereby dismissed with prejudice.
5. This Court shall retain jurisdiction with respect to all matters related to the administration and consummation of the PAGA Settlement.

IT IS SO ORDERED.

Dated: _____

Judge of the Superior Court