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and Proposed Class Counsel
8

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF EL DORADO**
11

12 AARON PAUL, REBECCA JOINER,
individually on behalf of themselves, and
13 on behalf of all similarly situated
individuals,

14 Plaintiffs,

15 v.

16 THE RIVA PARTNERS, a California
17 limited partnership, and DOES 1 through
10, inclusive,

18 Defendants.
19
20

CASE NO: SC20200155

Assigned to the Hon. Michael J. McLaughlin, Dept.
4

CLASS ACTION

**DECLARATION OF DANIEL F. GAINES IN
SUPPORT OF UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

DATE: December 9, 2022

TIME: 1:30 p.m.

DEPT.: 4

Action Filed: November 2, 2020

1 I, DANIEL F. GAINES, hereby declare and state as follows:

2 1. I am an attorney duly admitted to the practice of law in the State of California. I
3 am a shareholder of Gaines & Gaines, APLC, counsel for Plaintiffs Aaron Paul ("Paul") and
4 Rebecca Joiner ("Joiner") (together, "Plaintiffs") and proposed Class Counsel in this action. I
5 have personal knowledge of the facts set forth herein and if called as a witness to testify to them,
6 I could and would do so competently.

7 **Education and Experience:**

8 2. I obtained my BS degree from the University California at Berkeley in 2003. I
9 majored in Business Administration at the Haas School of Business.

10 3. Thereafter, I attended the University of Virginia School of Law. At Virginia, I
11 was a member of the editorial board of the Virginia Tax Review. I was also the recipient of the
12 Lacy Armour Scholarship, awarded to recognize academic excellence. At Virginia, I focused
13 my studies on tax and real estate. I earned my JD and became a member of the California Bar in
14 2007.

15 4. Since becoming a member of the Bar, and until his recent retirement, I practiced
16 law with my father, Kenneth, at Gaines & Gaines, APLC. Our practice specializes in litigation,
17 with an emphasis in employment disputes like this one. Over 95% of my practice is devoted to
18 complex employment litigation similar to the instant action.

19 5. My firm has represented employees in complex employment matters such as this
20 one, with an emphasis in wage and hour issues. I have participated in and have been certified as
21 class counsel in dozens of class action matters since my admission to the Bar. A list of the cases
22 in which I have been appointed as class counsel is attached hereto as **Exhibit A**.

23 **Factual and Procedural Background:**

24 6. On February 24, 2020, Plaintiffs exhausted the pre-filing requirements of the
25 Labor Code Private Attorneys General Act of 2004 ("PAGA").

26 7. On November 5, 2020, Plaintiffs initiated their Action in the El Dorado County
27 Superior Court by filing a class action and representative action complaint, on behalf of
28

1 themselves and on behalf of all similarly situated individuals. Thereafter, on February 28, 2022,
2 Plaintiffs filed a First Amended Complaint.

3 8. The Action, as amended, alleges violations of the California Labor Code and
4 California Business and Professions Code. The lawsuit seeks to certify a class of all current and
5 former non-exempt California employees of Defendant at any time between November 5, 2016
6 and July 15, 2022 ("Class Period"). Specifically, the lawsuit alleges that members of the Class
7 were not paid all wages; were not paid all gratuities; were not provided compliant meal and rest
8 periods or premium compensation in lieu thereof; were not reimbursed for all business-related
9 expenses; were not timely issued final wages upon separation of employment; and were not
10 issued accurate and complete itemized wage statements. It seeks recovery of wages, expense
11 reimbursement, damages, interest, statutory and civil penalties, restitution, attorneys' fees and
12 costs. Defendant denies all of the material allegations in the lawsuit and denies that it owes Class
13 Members any remedies. The Court has not made a ruling on the merits of the case.

14 9. Defendant denies any liability or wrongdoing of any kind associated with the
15 claims alleged in the Actions, and further denies that the Action is appropriate for class treatment
16 for any purpose other than this settlement. Defendant contends that it has complied at all times
17 with the California Labor Code. It is Defendant's position that, if this case were to be litigated,
18 class certification would be inappropriate because Plaintiffs are not adequate class
19 representatives, Plaintiffs' claims are not typical of putative class members, and individual issues
20 predominate over class issues, among other defenses, including numerosity and commonality.
21 The Actions, the negotiation and execution of this Settlement Agreement, and all acts performed
22 or documents executed pursuant to or in furtherance of this Settlement Agreement (i) shall not be
23 used as an admission, or as evidence of wrongdoing by the Defendant, or for any other purpose
24 whatsoever; (ii) shall not be an admission or evidence of fault on behalf of Defendant in any
25 action before a civil court, criminal court, administrative agency of any type, or other tribunal;
26 and (iii) shall not be deemed to be, and may not be used as, an admission or evidence of the
27 appropriateness of these or similar claims for class certification in the Action or with respect to
28 any other proceeding whatsoever.

1 10. The Class Representatives contend that Defendant violated the California Labor
2 Code and Industrial Welfare Commission Wage Order(s) and that this case is appropriate for
3 class certification.

4 **Investigation and Settlement Discussions**

5 11. My colleagues and I conducted a thorough investigation into the facts and law
6 during the prosecution of this class action case, including the exchange of extensive formal and
7 informal discovery and the review and verification of statistical data and other facts and
8 information provided by Defendant. My colleagues and I have investigated the applicable law as
9 applied to the facts discovered regarding the alleged claims of Plaintiffs and potential defenses
10 thereto, and the damages and other losses claimed by Plaintiffs.

11 12. On November 2, 2021, following our exchange of information and documents
12 regarding the Settlement Class and the claims and defenses asserted by the Parties, the Parties
13 engaged in arm's-length negotiations through a mediation with the assistance of Judge David I.
14 Brown (Sac. County Sup. Ct., Ret.). While the initial mediation attempt was unsuccessful, the
15 Parties continued settlement discussions with the help of Judge Brown, through which they were
16 able to reach the resolution of the Action set forth herein. The Parties thereafter jointly prepared
17 the Joint Stipulation of Class Action Settlement and Release Of Claims ("Settlement,"
18 "Stipulation," or "Stip."), a true and correct copy of which is attached hereto as **Exhibit B**. All
19 of the terms of the Parties' settlement are contained within the Settlement. At all times, the
20 Parties' settlement negotiations have been non-collusive, adversarial, and at arm's length.

21 **Class Counsel's Assessment of the Fairness of the Settlement and the Risks of Continued**

22 **Litigation:**

23 13. Based on our independent investigation and evaluation, my colleagues and I are of
24 the opinion that settlement for the consideration and on the terms set forth in the Settlement
25 Agreement is fair, reasonable, and adequate and is in the best interest of the Settlement Class in
26 light of all known facts and circumstances, including the risk of significant delay, the risk the
27 Settlement Class will not be certified by the Court, and the defenses asserted by Defendant.

1 14. The Parties agree that the Settlement Class described herein may be certified for
2 settlement purposes only and that any motion for approval seeking, *inter alia*, certification of the
3 Settlement Class is for purposes of the settlement only. If for any reason the settlement is not
4 approved, the certification will have no force or effect and will immediately be revoked. The
5 Parties further agree that certification for purposes of the settlement is in no way an admission
6 that class certification is proper under the more stringent standard applied for litigation and that
7 evidence of this limited Stipulation for settlement purposes only will not be admissible for any
8 purpose in this or any other proceeding.

9 15. Prior to settlement, my office created a comprehensive damage analysis using
10 sampling information obtained through informal discovery. This damage analysis reveals that
11 the negotiated settlement falls within a realistic range of recovery on class members' claims.

12 16. Plaintiffs allege that Defendant failed to pay premium wages to their non-exempt
13 California employees who were denied rest breaks, in violation of Labor Code §§ 226.7 and 558.
14 Plaintiffs and all non-exempt California employees contend that they were routinely unable to
15 take a 10-minute rest break for every four (4) hours of work or major fraction thereof, but were
16 not paid premium wages of one hour's pay for each missed rest break. This violates Labor Code
17 §§ 226.7 and 558. They argue that Defendant's policy and practice required employees to
18 remain on the job premises, resulting in impermissible on-duty rest periods subject to employer
19 control. This policy and practice would violate the holding in *Augustus v. ABM Security*
20 *Services, Inc.* (2016) 5 Cal. 5th 257, which held that the rest period requirement "obligates
21 employers to permit and authorizes employees to take off-duty rest periods. That is, during rest
22 periods employers must relieve employees of all duties and relinquish control over how
23 employees spend their time." *Id.* at 269. Moreover, Plaintiffs relate that they and most of their
24 co-workers were simply too busy to be able to stop and take a lawful rest break during their
25 shifts. Indeed, when Mr. Paul asked another employee about taking a rest break shortly after he
26 was hired, his co-worker laughed and told him that they do not get breaks. The maximum
27 potential value of this claim is approximately \$260,000 based on a projected 25% violation rate;
28 however, in light of the risks inherent in obtaining class certification and prevailing on the merits

1 – particularly where rest breaks need not be recorded, the settlement amount here represents a
2 fair compromise in light of the litigation risks that lied ahead.

3 17. Plaintiffs also contend that Defendant failed to pay Plaintiffs and all other non-
4 exempt California employees premium wages for missed meal periods, in violation of Labor
5 Code §§ 226.7, 512 and 558. Plaintiffs a contend that Class Members were routinely denied a
6 timely, uninterrupted 30 minute off-the-clock meal period for every shift over five hours in
7 duration, but were not paid premium wages of one hour's pay for each missed meal period. This
8 violates Labor Code §§ 226.7, 512 and 558. Based on Plaintiffs' expert's analysis of a sampling
9 of Defendant's time and wage data, the maximum value of this claim is \$813,000. However,
10 risks inherent in further litigated favor the compromised settlement amount, include the
11 proffered defense of waiver, unmanageability as to the class certification hurdle, and other
12 defenses which Defendant proffered. In light of these risks, the settlement amount here
13 represents a fair compromise.

14 18. Plaintiffs contend that Class Members were required to be on-call on the days they
15 were scheduled to work and to call Defendant an hour before their shift starts to see if they were
16 needed. If they were not called in to work, Defendant would not compensate them for any time
17 worked that day. They also maintain that Defendant failed to pay Class Members all wages due
18 during the course of their employment, including, but not limited to, all tip and gratuity wages
19 due, in violation of Labor Code §§ 351, 510 and 1194. Defendant allegedly required Plaintiffs
20 and other employees who earned gratuities to pay a set percentage of their gratuities to each of
21 the other non-gratuity earning employees with whom they worked on every shift. Defendant's
22 policy was allegedly unlawful because it required servers to pay set percentages of their
23 gratuities which were calculated *not* on the total amount of gratuities they received, but rather on
24 their *total food and beverage sales* for that shift Defendant's policy and practice would
25 purportedly violate Labor Code § 351, which states, in pertinent part, that "[n]o employer or
26 agent shall collect, take, or receive any gratuity or a part thereof that is paid, given to, or left for
27 an employee by a patron, or deduct any amount from wages due an employee on account of a
28 gratuity, or require an employee to credit the amount, or any part thereof, of a gratuity against

1 and as a part of the wages due the employee from the employer.” Plaintiffs estimate the
2 maximum value of these unpaid wage claims at no more than \$97,000, and potentially far less
3 (because precise records regarding these claims are not in existence). Defendant also maintained
4 numerous defenses to these unpaid wage claims, such that they required a discount for settlement
5 purposes at this junction of the litigation.

6 19. Plaintiffs also assert penalty claims for defective wage statements (valued at up to
7 \$557,850), waiting time (up to \$1,240,346), and pursuant to PAGA (up to \$579,200 without
8 stacking multiple violations in the same pay period). Whether Plaintiffs could recover for these
9 penalty claims (and how much they could recover) is unclear, because they are wholly derivative
10 of Plaintiffs’ unpaid wage claims, subject to proof of independent elements for recovery, subject
11 to defenses for good faith and proof of injury, and in the case of PAGA penalties, subject to
12 judicial discretion. The compromised settlement amount takes these risks into account.

13 20. A discount on the maximum value of Class members’ claims was required (and
14 warranted) to resolve the matter at this stage of the litigation. Class certification is a substantial
15 risk in any class action case. Here, while Plaintiffs maintain that the requirements of class
16 certification are met, Defendant proffers various arguments why class treatment is not
17 appropriate here, including but not limited to that individualized inquires among class members
18 predominate over common ones. If Defendant was to defeat Plaintiffs’ class certification
19 motion, there would be no class wide relief whatsoever, and most class members would likely
20 not file individual claims.

21 21. Defendant strongly contends that its policies and practices do not violate any laws.
22 It contends that it provided all required wages in a timely manner.

23 22. When the costs and risks of non-certification and loss on the merits are considered,
24 my colleagues and I are of the opinion that the settlement reached is clearly a favorable one.

25 23. The settlement for each participating Class Member is fair, reasonable and
26 adequate, given the inherent risk of litigation, the risk relative to class certification and the costs
27 of pursuing such litigation. The settlement shall finally resolve all claims of the Class Members
28 as alleged in the Action.

1 **Class Certification Requirements:**

2 24. To date, no class has been certified. The Stipulation of Settlement contains a
3 provision pursuant to which we stipulate to the Court's provisional certification of the
4 approximately 583-member Settlement Class, but do so for purposes of this settlement only.

5 25. In this case, the Class Members are identifiable from Defendant's records.
6 Further, the settlement class is sufficiently numerous to warrant certification. According to
7 Defendant's records, the Class is comprised of approximately 583 individuals.

8 26. The Class Members' claims all stem from a common source: all Class Members
9 allege that Defendant violated the same Labor Code and Wage Order provisions in connection
10 with their work for Defendant at its restaurant. The same Labor Code and Wage Order
11 violations are alleged on behalf of all persons encompassed in the settlement class, arising out of
12 or which could be pled based on the facts and the allegations set forth in the operative complaint in
13 the Action, including but not limited to claims for failure to pay all wages due; failure to pay all
14 gratuities; failure to provide meal periods; failure to provide rest periods; failure to reimburse all
15 business-related expenses; failure to furnish accurate wage statements; failure to timely pay earned
16 wages upon termination or discharge; and unfair competition premised on the claims set forth
17 above.

18 27. In this case, the named Plaintiffs and proposed Class Representatives Aaron Paul
19 and Rebecca Joiner are former non-exempt employees of Defendant whom, Plaintiffs allege,
20 were not provided with proper uninterrupted (off-the-clock and free of all duties) 30-minute
21 meal periods for every shift they worked which exceeded five hours in duration; were not
22 provided with 10-minute rest breaks as required by California law; were not provided with
23 compliant itemized employee wage statements; and were not timely paid all wages due at
24 termination, among other claims. Plaintiffs allege the same claims as those that the members of
25 the Settlement Class would reasonably be expected to bring based on the course of conduct
26 alleged herein.

28. Plaintiffs have also demonstrated that they will aggressively and competently assert the interests of the proposed Settlement Class; they have taken active roles in the litigation and have no apparent conflicts with other class members.

Settlement of Claims Pursuant to Labor Code § 2699 et seq. (PAGA)

29. Concurrently with the filing of this Motion, Plaintiffs' counsel is transmitting the Settlement Agreement (and these approval documents) to the LWDA, in compliance with Labor Code § 2699(l)(2).

I declare, under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed this 8th day of November, 2022 at Westlake Village, California.

Daniel F. Gaines
DANIEL F. GAINES

EXHIBIT A

Adams v. Newell Rubbermaid, USDC – Central District of California (Los Angeles), Case No. EDCV 08-1499 JTM (CTx)

Adams v. Sam's West, Inc., San Bernardino County Superior Court, Case No. CIVDS1403987

Agredano v. GS Brothers, Inc., Los Angeles County Superior Court, Case No. BC445561

Allen v. Toms Sierra Company, Nevada County Superior Court, Case No. CU18-082823

Allen v. Valley Inventory Service, Inc., Solano County Superior Court, Case No. FCS034682

Alvarez v. Pilot Travel Centers, LLC, San Joaquin County Superior Court, Case No. STK-CV-UOE-2018-4605

Alonzo v. Camblin Steel Service, Inc., Placer County Superior Court, Case No. SCV0034165

Amenhotep v. Google, Inc., Santa Clara County Superior Court, Case No. 17CV311528

Anaya v. Progressive Logistics Services, LLC, Riverside County Superior Court, Case No. RIC1308270

Andre v. Newell Rubbermaid, Inc., San Bernardino County Superior Court, Case No. CIVVS1200282

Anduha v. ABC Phones of North Carolina, Inc., Stanislaus County Superior Court, Case No. 2022729

Anslow v. Wellington Energy, Inc., USDC – Northern District of California (San Francisco), Case No. CV11-1596-JCS

Aranda, et al. v. Universal Lumpers of California, Inc., San Joaquin County Superior Court, Case No. STK-UOE-2017-7826

Armendariz v. Integrated Pain Management Medical Group, Inc., Kern County Superior Court, Case No. BCV-19-100267-SDS

Barrow, et al. v. Desmond Foods, L.P., Sacramento County Superior Court, Case No. 34-2015-00187227

Batmanghelich v. Sirius XM Radio Inc., USDC – Central District of California (Los Angeles), Case No. CV 09-9190 VBF (JCx)

Bosser v. Hooked on Solar, Yolo County Superior Court, Case No. CVCV-2016-876

Bourland v. Horizon Personnel Services, Inc., Sacramento County Superior Court, Case No. 34-2014-00161365-CU-OE-GDS

Bowen v. IMI Material Handling Logistics, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2016-0000192

Branson v. Mladen Buntich Construction, San Bernardino County Superior Court, Case No. CIVDS1609129

Brandt v. Sacramento Auto Insurance Center, Inc., San Joaquin County Superior Court, Case No. 39-2009-00202938-CU-OE-STK

Brown v. 22nd District Agricultural Association, United States District Court, Southern District of California, Case No. 15-cv-2578-DHB

Brown v. Sierra Central Credit Union, Sutter County Superior Court, Case No. CVCS18-0002161

Burgess v. Blue Cross and Blue Shield of South Carolina, San Joaquin County Superior Court, Case No. 39-2012-00277449-CU-BT-STK

Burgess v. Strategic Retail Solutions, LLC, Los Angeles County Superior Court, Case No. BC413791

Calhoun v. Celadon Trucking Services, Inc., USDC – Central District of California (Los Angeles), Case No. 5:16-cv-01351-PSG-FFM

Caporicci v. Owens & Minor Distribution, Inc., San Joaquin County Superior Court, Case No. 39-2013-00295662-CU-OE-STK

Carl v. Advanced Call Center Technologies, LLC, Sacramento County Superior Court, Case No. 34-2013-00148310

Carlisle, et al. v. Professional Technical Security Services, Inc., Case No. CGC18569791

Carrete v. Gamestop, Inc., Imperial County Superior Court, Case No. ECU08501

Carrillo v. Bimbo Bakeries, Inc., San Bernardino County Superior Court, Case No. CIVDS1606813

Caudillo v. Aegis Treatment Centers, LLC, Merced County Superior Court, Case No. 18CV-0744

Cerami v. Metlife, Inc., USDC – Central District of California (Orange County), Case No. 11-CV-00681-CJC (MLGx)

Charles v. Aaron's Inc., Los Angeles County Superior Court, Case No. BC431468

Charles v. Nursefinders, LLC, Imperial County Superior Court, Case No. ECU07422

Cheifer v. JetBlue Airways Corporation, Los Angeles County Superior Court, Case No. BC451887

Cheifer, et al. v. WHGM, Inc., Los Angeles County Superior Court, Case No. LC104900

Chong, et al. v. Crescent Northwoods Inn, Inc., Del Norte County Superior Court, Case No. CVUJ-2018-1133

Church v. GameStop, Inc., et. al., USDC – Central District of California (Los Angeles), Case No. 11-CV-00132-VAP-RZ

Clothier v. Spar Marketing Services, Inc., Alameda County Superior Court, Case No: RG12-639317

Coleman v. Wireless Lifestyle, Inc., USDC – Western District of Missouri, Case No. 4:12-cv-00855-ODS

Colombo-Beyeler, et al. v. Viking River Cruises, Inc., San Bernardino County Superior Court, Case No. CIVDS1611608

Conlee v. Clark Pacific Corporation, Yolo County Superior Court, Case No. CV14-1409

Contreras v. Osmose Utilities Services, Inc., San Bernardino County Superior Court, Case No. CIVDS1513998

Contreras v. West American Service Corporation, Kings County Superior Court, Case No. 14C0280

Corona v. Yosemite Meat & Locker Service, Inc., Stanislaus County Superior Court, Case No. 2006828

Cortellessa v. Dotnext, Inc., Alameda County Superior Court, Case No. RG09429971

County v. Ingram Mirco, Inc., San Bernardino Superior Court, Case No. CIVRS 1304445

Covarrubias, et al. v. Petersendean Builder Group, Inc., Kern County Superior Court, Case No. BCV-16-101122

Cowen, et al. v. Evergreen Alliance Golf Limited, L.P., d/b/a Arcis Golf, San Bernardino County Superior Court, Case No. CIVDS1719283

Cruz-Garcia v. Lemonade Restaurant Group, LLC, Los Angeles County Superior Court, Case No. BC478205

Cunningham v. Performance Contracting, Inc., Contra Costa County Superior Court, Case No. C16-02157

Dabney v. Coneybeare, LLC, et al., Orange County Superior Court, Case No. 30-2018-00999989-CU-OE-CXC

Dabney, et al. v. Panera, LLC., San Bernardino County Superior Court, Case No. CIVDS1516030

Diaz, et al. v. Seaworld Entertainment, Inc., Imperial County Superior Court, Case No. ECU10046

Diggs v. Western Waterproofing Company, Inc., San Francisco County Superior Court, Case No. CGC-14-539281

Dismuke v. Rhodes Retail Services, Inc., Sacramento County Superior Court, Case No. 34-2011-00105001

Dorsette v. TA Operating, LLC, USDC – Central District of California (Los Angeles), Case No. EDCV 09-1350 PA (RZx)

Duran v. The Image of California, Inc., Kern County Superior Court, Case No. S-1500-CV-284056 DRL

Edwards v. Trans World Entertainment Corp., San Diego County Superior Court, Case No. 37-2010-00095123-CU-OE CTL

Esakhani v. Central Valley Gaming, Stanislaus County Superior Court, Case No. 2020667

Escobar v. SMSSI of California, Inc., San Francisco Superior Court, JCCP No. 4776

Espinosa v. Taltech Construction, et al., Los Angeles County Superior Court, Case No. BC590176

Espinosa v. Bodycote Thermal Processing, Inc., Los Angeles County Superior Court, Case No. BC501617

Espinoza v. Pabco Building Products, LLC, Los Angeles County Superior Court, Case No. VC065660

Estrada v. Net Source Communications, Inc., Los Angeles County Superior Court, Case No. BC431169

Estrada v. OS Restaurant Services, LLC, Santa Clara County Superior Court, Case No. 16CV293249

Estupinan v. Global Development Strategies, Inc., Santa Clara County Superior Court, Case No. 110CV178898

Fadhl. v. Siemens Healthcare Diagnostics Inc., Sacramento County Superior Court, Case No. 34-2017-00209518

Fernandez v. The Regents of the University of California, Los Angeles County Superior Court, Case No. BC656256

Ferrer v. Dish Network Corporation, Los Angeles County Superior Court, Case No. BC441354

Findora v. Barry Callebaut USA LLC, Napa County Superior Court, Case No. 19CV000219

Flores v. Cintas Corporation, Los Angeles County Superior Court, Case No. BC400422

Friel v. Midwest Construction Services, Inc., San Joaquin County Superior Court, Case No. 39-2015-00329204-CU-OE-STK

Gagnon v. Banc of California, Contra Costa County Superior Court, Case No. C 15-00196

Galarza v. Bayou Well Services, LLC, Kern County Superior Court, Case No. S-1500-CV-279372 DRL

Galarza v. C & H Testing Service LLC, Kern County Superior Court, Case No. BCV-15-100008 SPC

Garcia v. Old Dominion Freight Line, Inc., San Bernardino County Superior Court, Case No. CIVDS1404636

Geer v. Applied Aerospace Structures Corp., San Joaquin County Superior Court, Case No. 39-2014-00313702-CU-OE-STK

Getz v. California Cinema Investments, Inc., Ventura County Superior Court, Case No. 56-2013-00437706-CU-MC-VTA

Gibbs v. M. Lehmann Enterprises, Orange County Superior Court, Case No. 30-2013-00678538-CU-OE-CXC

Gilles v. Schaefer Ambulance Service Inc., Imperial County Superior Court, Case No. ECU07970

Goldman, et al. v. Defender's, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2018-0009973

Gomez v. Low Desert Empire Pizza, Inc., San Bernardino County Superior Court, Case No. CIVVS900392

Gomez v. Pizza Hut of Southeast Kansas, Inc., San Bernardino County Superior Court, Case No. CIVVS900679

Gonzalez v. Harris Farms, Inc., USDC – Eastern District of California (Fresno), Case No. 1:14-cv-00038-LJO-SAB

Guerrero v. Main Electric Supply Company LLC, Ventura County Superior Court, Case No. 56-2019-00525427-CU-OE-VTA

Gutierrez v. Asset Management Specialists, Inc., Fresno County Superior Court, Case No. 12CECG03577

Gutierrez v. Linkus Enterprises, Inc., Madera County Superior Court, Case No. MCV065774

Gutierrez v. Shiekh, LLC, San Bernardino County Superior Court, Case Nos. CIVRS1206525, CIVRS1303408

Hairston v. Stanislaus Surgical Hospital, Stanislaus County Superior Court, Case No. CV-19-000651

Hindman v. Service Quick, Inc., San Bernardino County Superior Court, Case No. CIVDS1724229

Hogan v. iMobile of CA LLC, San Bernardino County Superior Court, Case No. CIVDS1409263

Hogan v. Wireless Evolution Inc., Riverside County Superior Court, Case No. MCC1300669

Hogan v. Wireless That's It! LLC, Riverside County Superior Court, Case No. RIC1201997

Holmes v. Bottling Group, LLC, Stanislaus County Superior Court, Case No. 2022584

Hooper, et al. v. URS Midwest, Inc., et al., San Bernardino Superior Court, Case No. CIVDS1607489

Humphrey v. Freedomroads, LLC, Shasta County Superior Court, Case No. 178228

Hurtado v. Rush Truck Centers of California, Inc., Los Angeles County Superior Court, Case No. BC427672

Hyde v. Dent Wizard International Corporation, Sacramento County Superior Court, Case No. 34-2015-00173882

Ibrihim v. Imperfect Foods, Inc., San Joaquin County Superior Court, Case No. STK-VI-UOE-2019-0000846

Id-deen v. Educational Services of America, Solano County Superior Court, Case No. FCS040803

Isherwood v. Mason Dixon Intermodal, Inc., San Joaquin County Superior Court, Case No. 39-2012-00279891-CU-OC-STK

Jahanbin v. Pacific Mercantile Bank, Orange County Superior Court, Case No. 30-2011-00480705CU-OE-CXC

Jenkins v. Sedgwick Claims Management Services, Inc., Los Angeles Superior Court, Case No. LC101648

Job v. California Security Services, Yuba County Superior Court, Case No. 14-0000820

Johnson v. The Goodyear Tire & Rubber Company, USDC – Northern District of California (San Francisco), Case No. 3:13-cv-01069-MMC

Jolin v. Bay Cities Recovery, Inc., El Dorado County Superior Court, Case No. PC20100458

Jordan v. Sutter Memorial Hospital, Stanislaus County Superior Court, Case No. 2023344

Keebaugh v. Mike Thompson Recreational Vehicles, San Bernardino County Superior Court, Case No. CIV-DS-1500718

Kelly v. Robin's Enviro Vac, Inc., Kern County Superior Court, Case No. S-1500-CV-282277
DRL

King v. Levy Premium Foodservice Limited Partnership, Alameda County Superior Court, Case No. HG15786353

Kunsman v. Punch Bowl Sacramento, LLC, et al., Sacramento County Superior Court, Case No. 34-2018-00243175

LaFear v. Encore Education Corporation, San Bernardino County Superior Court, Case No. CIVDS1802251

Lanzarin v. AWI Management Corporation, Solano County Superior Court, Case No. FCS041809

Lee, et al. v. Foster Dairy Farms, Stanislaus County Superior Court, Case Nos. 2006542, 2015679

Lemus, et al. v. Eastridge Workforce Technology, Inc., San Bernardino County Superior Court, Case No. CIV-DS-1611470

Lewis v. American Casino & Entertainment Properties LLC, San Bernardino County Superior Court, Case No. CIVDS1719094

Lemus v. On Assignment Staffing Services, San Bernardino County Superior Court, Case No. CIV-DS-1600497

Leon v. Piercey West Inc., Los Angeles County Superior Court, Case No. BC656874

Lopez v. Creative Communication Technologies, Inc., Imperial County Superior Court, Case No. ECU07851

Lopez v. Go Green Auto Spa Franchise, Inc., et al., Los Angeles County Superior Court, Case No. BC 562212

Lopez v. Truck Accessories Group, LLC, Yolo County Superior Court, Case No. CV13798

Ludlow v. Prince Telecom, LLC, Stanislaus County Superior Court, Case No. 684239

Luna v. Express Locations, LLC, Imperial County Superior Court, Case No. ECU09779

Macias v. American Tire Distributors, Inc., Kern County Superior Court, Case No. BCV-18-101586

Maldonado v. Hardwood Flooring Liquidators, Inc., Los Angeles County Superior Court, Case No. BC642170

Mansfield v. Cambridge Real Estate Services, Inc., Butte County Superior Court, Case No. 160175

Martinez v. DPI Specialty Foods West, San Joaquin County Superior Court, Case No. 39-2015-00327311-CU-OE-STK

Martinez v. Styles For Less, Inc., San Bernardino County Superior Court, Case No. CIVVS1203057

Mayne v. John Muir Behavioral Health, Contra Costa County Superior Court, Case No. C17-00998

Maze v. Bulldog Freightway, Inc., Imperial County Superior Court, Case No. ECU08716

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McCrary v. Campbell Soup Supply Company, San Joaquin County Superior Court, Case No. 39-2013-00297698-CU-OE-STK

McDaniel v. Vancary, Inc., Tulare County Superior Court, Case No. 268036

Melgar-Farela v. Guardian Compliance, Inc., Los Angeles County Superior Court, Case No. BC481865

Mendiola v. Tyco Electronics Corporation, Riverside County Superior Court, Case No. RIC1400721

Mettler v. Les Schwab Tire Centers of California, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2018-476

Miller v. California Subshine, Inc., Los Angeles County Superior Court, Case No. BC637754

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Mitchell v. Crossmark, Inc., USDC – Central District of California (Los Angeles), Case No. CV 11-2818-JAK (FMOx)

Moghrabi v. Vitaligent, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2018-1650

Molina v. Berkshire Hathaway Energy Company, et al., Imperial County Superior Court, Case No. ECU000522

Moore v. Horizon Solar Power, Inc., San Bernardino County Superior Court, Case No. CIVDS1410001

Murray v. Select Media Services, LLC, Los Angeles County Superior Court, Case No. BC424506

Myles v. Central Transport LLC, San Bernardino County Superior Court, Case No. CIVDS1401434

Navarro v. Mariana Packing Co., Inc., Solano County Superior Court, Case No. FCS045935

Nehrlich, et al. v. RPM Mortgage, Inc., Orange County Superior Court, Case No. 30-2013-00666783-CU-OE-CXC

Overton v. Hat World, Inc., USDC – Eastern District of California (Sacramento), Case No. 2:11-CV-01645-LKK-KJN

Perez v. Alcatel-Lucent USA Inc., Imperial County Superior Court, Case No. ECU07977

Perez v. Major Gloves and Safety, Inc., San Bernardino County Superior Court, Case No. CIVDS1710445

Perry v. Cardinal Health 200, LLC, Solano County Superior Court, Case No. FCS035303

Phraxayavong-Briones v. RSM, Inc., Sacramento County Superior Court, Case No. 34-2012-00117524

Pugh v. Wi Spa, LLC, Imperial County Superior Court, Case No. ECU07932

Quist v. Knight Transportation, Inc., San Bernardino Superior Court, Case No. CIVDS 1615414

Quitco v. Aviation Fuel Systems Repair, Inc., San Bernardino Superior Court, Case No. CIVRS1302311

Rambeau v. C.C.M. Corporation, et al., Sacramento County Court, Case No. 34-2018-00244842

Rankins v. Roman Empire Living Skills, Inc., Los Angeles County Superior Court, Case No. BC713399

Rees v. Advantel, Incorporated, Santa Clara County Superior Court, Case No. 16-CV-292219

Renfrow v. Janra Enterprises, Inc., Sacramento County Superior Court, Case No. 3402010-00080471

Reynolds v. Diamond Pet Food Processors of Ripon, San Joaquin County Superior Court, Case No. 39-2014-00310818

Richard v. A-Para Transit Corp., Alameda County Superior Court, Case No. HG17870373

Richardson v. TEC Equipment, Inc., et al., Los Angeles County Superior Court, Case No. VC065536

Robles v. North County Health Project Incorporated, San Diego Superior Court, Case No. 37-2014-00001751-CU-OE-NC

Rodas v. Monetary Management of California, Inc., USDC – Eastern District of California (Sacramento), Case No. 2:14 cv 01389 TLN AC

Rodriguez v. 20/20 Plumbing & Heating, Inc., San Bernardino County Superior Court, Case No. CIVDS1705362

Rodriguez v. Commerce Distribution Company, Los Angeles County Superior Court, Case No. BC656259

Rodriguez v. Valley Oak, San Joaquin County Superior Court, Case No. STK-CV-UOE-2016-7980

Roden v. Service Champions, San Bernardino County Superior Court, Case No. CIVDS1613183

Russell v. Bradshaw International, Imperial County Superior Court, Case No. ECU00853

Rutledge, et al. v. Healthport Technologies, LLC, Alameda County Superior Court, Case No. RG16835813

Sabala v. Econtactlive, Inc., Stanislaus County Superior Court, Case No. 684981

Sabatier v. Picture Perfect Installation, Inc., Riverside County Superior Court, Case No. RIC10004953

Salameh v. Sonomaidence OPCO, LLC, Sonoma County Superior Court, Case No. SVC264228

Salazar v. Tag-3 Medical Investment Group, LLC, Los Angeles County Superior Court, Case No. BC527698

Salbeck v. Ingredion Incorporated, San Joaquin County Superior Court, Case No. STK-UOE-2017-0012622

Sampson v. Healthnet of California Inc., Sacramento County Superior Court, Case No. 34-2015-00183785-CU-OE-GDS

Sanchez v. Don Roberto Jewelers, Inc., Imperial County Superior Court, Case No. ECU06819

Sanders v. Lionakis, Sacramento County Superior Court, Case No. 34-2017-00223601

Santana v. United Staffing Associates, LLC, Tulare County Superior Court, Case No. 249338

Schrader v. Adidas Promotional Retail Operations, Inc., Los Angeles County Superior Court, Case No. BC414168

Sebrell v. Pomeroy IT Solutions, San Bernardino County Superior Court, Case No. CIVDS1721560

Seymour v. Quest Service Group, LLC, Sacramento County Superior Court, Case No. 34-2017-00206917

Silva v. Trical, San Benito County Superior Court, Case No. CU-16-00218

Simler v. Polly's Inc., Riverside County Superior Court, Case No. RIC 1117862

Sipin, Scott v. Salesforce.com, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2019-0004629

Skuro v. BMW of North America, LLC, USDC – Central District of California (Los Angeles), Case No.: CV 10-8672-GW (FFMx)

Smith v. Steelcase, Inc., San Bernardino County Superior Court, Case No. CIVDS1725850

Sohal v. Foster Poultry Farms, Stanislaus County Superior Court, Case No. 2026605

Solomon v. City of Los Angeles, Los Angeles County Superior Court, Case No. BC570345

Solano v. Vozzcom, Inc., Imperial County Superior Court, Case No. ECU09519

Smith, et al. v. Sente Development, Inc., Sacramento County Superior Court, Case No. 34-2016-00196614

Solorzano v. FDS Manufacturing Corporation, Los Angeles County Superior Court, Case No. BC542532

Solowitz v. BakeMark USA LLC, Los Angeles County Superior Court, Case No. BC467838

Spampinato v. Wind & Sea Restaurants, Inc., San Bernardino County Superior Court, Case No. CIVVS1205154

Spitzer, et al. v. FRHI Hotels & Resorts (Canada) Inc., San Bernardino County Superior Court, Case No. C IVDS1712220

Stephens v. C.S., Inc., Riverside County Superior Court, Case No. PSC1301224

Stevenson v. Harvest Management Sub LLC, Ventura County Superior Court, Case No. 56-2011-00397420-CU-OE-SIM

Thompson v. Continental Labor Resources, Inc. d/b/a Continental Labor & Staffing Resources, Kern County Superior Court, Case No. S-1500-CV-278751-DRL

Thompson v. Sidhu Truck Line, Inc., Kern County Superior Court, Case No. BCV-15-101308-DRL

Tigas v. Ajilon Communications, Los Angeles County Superior Court, Case No. BC409737

Torres v. Coastal Employment Inc., Los Angeles County Superior Court, Case No. BC529207

Tran v. CSP Fiber Services, San Bernardino County Superior Court, Case No. CIVDS172758

Tripp v. California Guest Services, Inc., Plumas County Superior Court, Case No. CV16-00036

Valdez v. Diamond Landscaping, Inc., Los Angeles County Superior Court, Case No. BC497097

Valencia v. American Team Managers, Inc., Orange County Superior Court, Case No. 30-2016-00857365-CU-CR-CXC

Van Son v. Rush Truck Centers of California, Inc., Los Angeles County Superior Court, Case No. BC494747

Vasquez v. Schurman Fine Papers, San Joaquin County Superior Court, Case No. STK-CV-LMC-2015-10035

Velasquez v. Modesto Ventures, LLC, Sacramento County Superior Court, Case No. 32-2012-00126159

Victoria v. Bali Limousines Inc., San Mateo County Superior Court, Case No. CIV507774

Victorian v. Vision X, Inc., Los Angeles County Superior Court, Case No. BC400333

Wade v. Frito Lay, Kern County Superior Court, Case No. BCV-17-102014

Walls v. E. & J. Gallo, Stanislaus County Superior Court, Case No. 2015874

Warner v. Waterdrops Express Car Wash, LLC, Tulare County Superior Court, Case No. 265708

Waybright v. EAH, Inc., Stanislaus County Superior Court, Case No. 2011677

Weiss v. C.A.R. Enterprises, Inc., Riverside County Superior Court, Case No. RIC1113165

White v. Sally Beauty Supply, LLC, Imperial County Superior Court, Case No. ECU08177

Williams v. Dennis Dillon RV, LLC, San Bernardino County Superior Court, Case No. CIVDS 16006879

Williams v. Closet World, Inc., Los Angeles County Superior Court, Case No. BC400178

Williams v. Progress Rail Services Corporation, Kern County Superior Court, Case No. S-1500-CV-280236 DRL

Wing v. Three Group, Inc., Los Angeles County Superior Court, Case No. BC643883

Wilson v. ALSCO, Inc., Imperial County Superior Court, Case No. ECU07406

Wilson v. Michael C. Stead, Inc., Contra Costa Superior Court, Case No. C1400135

Winningham v. Storer Transportation Service, San Joaquin County Superior Court, Case No. 39-2015-00324708-CU-STK

Woody v. WBN Home Design, San Bernardino County Superior Court, Case No. CIVDS1613367

Woods, et al. v. F&B Innovations, LLC, San Bernardino County Superior Court, Case No. CIVDS1717765

Woodyard v. Bellus ALC Acquisition, LLC, USDC – Central District of California (Los Angeles), Case No. 2:13-cv-05285 SJO AGRx

Wright v. Social Vocational Services, Inc., Kern County Superior Court, Case No. BCV-15-101264

Ybarra v. New Legend, Inc., Sutter County Superior Court, Case No. CVCS-16-2097

Zaragoza v. Center Automotive, Inc., Los Angeles Superior Court, Case No. BC505194

EXHIBIT B

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18
19 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
20 **FOR THE COUNTY OF EL DORADO**

21 AARON PAUL, REBECCA JOINER,
22 individually on behalf of themselves, and on
behalf of all similarly situated individuals,

23 Plaintiffs,

24 v.

25 THE RIVA PARTNERS, a California
26 limited partnership, and DOES 1 through
10, inclusive,

27 Defendants.
28

CASE NO: SC20200155

*Assigned to the Hon. Michael J. McLaughlin,
Dept. 4*

CLASS ACTION

**JOINT STIPULATION OF CLASS ACTION
SETTLEMENT AND RELEASE OF
CLAIMS**

1 This Joint Stipulation of Class Action Settlement and Release of Claims ("Settlement
2 Agreement") is made and entered into by and between Plaintiffs Aaron Paul and Rebecca Joiner
3 (together, "Plaintiffs" or "Class Representatives," individually, "Plaintiff Paul" and "Plaintiff
4 Joiner," respectively), individually and on behalf of all others similarly situated Class Members,
5 Aggrieved Employees, and the State of California as Private Attorney General, on the one hand,
6 and Defendant The Riva Partners ("Defendant"), subject to the terms and conditions herein and the
7 Court's approval.

8 **A. Definitions.**

9 1. Plaintiffs, the Class Members (as defined below), and Defendant are collectively
10 referred to herein as "the Parties."

11 2. Daniel F. Gaines and Alex P. Katofsky of Gaines & Gaines, APLC are counsel of
12 record for Plaintiffs. For purposes of this Settlement Agreement only, the firm of Gaines & Gaines,
13 APLC shall be designated as "Settlement Class Counsel."

14 3. "Defendant's counsel" is Louis A. Basile, Esq. and Ravn R. Whittington, Esq. of
15 Porter Simon, Professional Corporation and Christian Brown, Esq. of Elevation Law.

16 4. The "Action" means the case of *Aaron Paul, et al. v. The Riva Partners*, El Dorado
17 County Superior Court Case. No. SC20200155.

18 5. The "Class Members" shall be defined as "all individuals who worked for
19 Defendant as a non-exempt employee in California at any time between November 5, 2016 and
20 July 15, 2022 (the "Class Period"). Defendant represents that this Class contains no more than 583
21 members.

22 6. Any Class Member who files a timely request for exclusion, as detailed below, will
23 be excluded from the final settlement.

24 7. The "Effective Date" of this Joint Stipulation of Class Action Settlement and
25 Release of Claims is the date of the later of: (a) final approval by the Court; or (b) if there are
26 objections to the settlement which are not withdrawn, and if an appeal, review, or writ is not sought
27 from the judgment, the 61st day after service of notice of entry of judgment; or (c) if there are
28 objections to the settlement which are not withdrawn, and if an appeal, review, or writ is filed, the

1 day after the Judgment granting final approval of the Settlement is affirmed or the appeal is
2 dismissed and the Judgment is no longer subject to judicial review.

3 **B. General.**

4 10. On February 24, 2020, Plaintiffs exhausted the pre-filing requirements of the Labor
5 Code Private Attorneys General Act of 2004 ("PAGA").

6 11. On November 5, 2020, Plaintiffs initiated their Action in the El Dorado County
7 Superior Court by filing a class action and representative action complaint, on behalf of themselves
8 and on behalf of all similarly situated individuals. Thereafter, on February 28, 2022, Plaintiffs filed
9 a First Amended Complaint.

10 12. The Action, as amended, alleges violations of the California Labor Code and
11 California Business and Professions Code. The lawsuit seeks to certify a class of all current and
12 former non-exempt California employees of Defendant at any time between November 5, 2016 and
13 July 15, 2022 ("Class Period"). Specifically, the lawsuit alleges that members of the Class were
14 not paid all wages; were not paid all gratuities; were not provided compliant meal and rest periods
15 or premium compensation in lieu thereof; were not reimbursed for all business-related expenses;
16 were not timely issued final wages upon separation of employment; and were not issued accurate
17 and complete itemized wage statements. It seeks recovery of wages, expense reimbursement,
18 damages, interest, statutory and civil penalties, restitution, attorneys' fees and costs. Defendant
19 denies all of the material allegations in the lawsuit and denies that it owes Class Members any
20 remedies. The Court has not made a ruling on the merits of the case.

21 13. Defendant denies any liability or wrongdoing of any kind associated with the claims
22 alleged in the Actions, and further denies that the Action is appropriate for class treatment for any
23 purpose other than this settlement. Defendant contends that it has complied at all times with the
24 California Labor Code. It is Defendant's position that, if this case were to be litigated, class
25 certification would be inappropriate because Plaintiffs are not adequate class representatives,
26 Plaintiffs' claims are not typical of putative class members, and individual issues predominate over
27 class issues, among other defenses, including numerosity and commonality. The Actions, the
28 negotiation and execution of this Settlement Agreement, and all acts performed or documents

1 executed pursuant to or in furtherance of this Settlement Agreement (i) shall not be used as an
2 admission, or as evidence of wrongdoing by the Defendant, or for any other purpose whatsoever;
3 (ii) shall not be an admission or evidence of fault on behalf of Defendant in any action before a
4 civil court, criminal court, administrative agency of any type, or other tribunal; and (iii) shall not
5 be deemed to be, and may not be used as, an admission or evidence of the appropriateness of these
6 or similar claims for class certification in the Action or with respect to any other proceeding
7 whatsoever.

8 14. The Class Representatives contend that Defendant violated the California Labor
9 Code and Industrial Welfare Commission Wage Order(s) and that this case is appropriate for class
10 certification.

11 15. Class Counsel represent that they have conducted a thorough investigation into the
12 facts and law during the prosecution of this class action case, including the exchange of extensive
13 formal and informal discovery and the review and verification of statistical data and other facts and
14 information provided by Defendant. Counsel for the Parties also represent that they have
15 investigated the applicable law as applied to the facts discovered regarding the alleged claims of
16 Plaintiffs and potential defenses thereto, and the damages and other losses claimed by Plaintiffs.

17 16. On November 2, 2021, following their exchange of information and documents
18 regarding the Settlement Class and the claims and defenses asserted by the Parties, the Parties
19 engaged in arm's-length negotiations through a mediation with the assistance of Judge David I.
20 Brown (Ret.). While the initial mediation attempt was unsuccessful, the Parties continued
21 settlement discussions with the help of Judge Brown, through which they were able to reach the
22 resolution of the Action set forth herein.

23 17. Based on their own independent investigation and evaluation, Class Counsel are of
24 the opinion (and will so represent to the Court) that settlement for the consideration and on the
25 terms set forth in this Settlement Agreement is fair, reasonable, and adequate and is in the best
26 interest of the Settlement Class in light of all known facts and circumstances, including the risk of
27 significant delay, the risk the Settlement Class will not be certified by the Court, and the defenses
28 asserted by Defendant.

1 18. The Parties agree that the Settlement Class described herein may be certified for
2 settlement purposes only and that any motion for approval seeking, *inter alia*, certification of the
3 Settlement Class is for purposes of the settlement only. If for any reason the settlement is not
4 approved, the certification will have no force or effect and will immediately be revoked. The
5 Parties further agree that certification for purposes of the settlement is in no way an admission that
6 class certification is proper under the more stringent standard applied for litigation and that
7 evidence of this limited Stipulation for settlement purposes only will not be admissible for any
8 purpose in this or any other proceeding.

9 **C. Terms of Settlement.**

10 19. The financial terms of the Settlement Agreement are as follows:

11 (a) **Gross Settlement Amount:** The Parties agree to settle the Action for a Gross
12 Settlement Amount of Three Hundred Fifty Thousand Dollars (\$350,000.00) (“the Gross
13 Settlement Amount”), subject to any increase based on the escalator provision in paragraph H(56)
14 herein. The Gross Settlement Amount includes the attorneys’ fees of Class Counsel; litigation costs
15 and expenses (which includes, without limitation, all such fees and costs incurred to date, as well
16 as such fees and costs to be incurred in documenting the settlement, providing any notices required
17 as part of the settlement, securing Court approval of the settlement, and obtaining judgment in the
18 Action); the Service Payments to the Class Representatives, as approved by the Court; the payment
19 to the California Labor and Workforce Development Agency (“LWDA”); and all costs of
20 administration, including, without limitation, notice, and settlement administration fees and
21 expenses. All employer payroll tax obligations due on wage payments made from the Net
22 Settlement Proceeds shall be paid by Defendant separate and apart from, and in addition to, the
23 Gross Settlement Amount.

24 (b) **Net Settlement Proceeds:** “Net Settlement Proceeds” is defined as the
25 Gross Settlement Amount less the amounts approved and awarded by the Court for: attorneys’ fees
26 and documented litigation costs and expenses incurred or advanced by Class Counsel; the Service
27 Payments to the Class Representatives; the payment to the LWDA pursuant to PAGA; and the costs
28 of administering the settlement.

1 (c) **Individual Payment Amounts:** “Individual Payment Amount” means the
2 portion of the Net Settlement Proceeds distributable to each Class Member who participates in the
3 Settlement (i.e., who does not submit a valid request for exclusion form). The Individual Payment
4 Amounts will be calculated by multiplying the Net Settlement Proceeds by a fraction, with the
5 numerator equal to the total wages paid (including gratuities) to each individual participating Class
6 Member during employment by Defendant in California in a non-exempt position during the Class
7 Period and the denominator equal to the total wages paid (including gratuities) to all participating
8 Class Members in California in a non-exempt position during the Class Period. Each Participating
9 Class Member who does not opt out will receive an Individual Payment Amount.

10 i. For tax purposes, each Individual Payment Amount will be
11 apportioned (a) 25% as wages (reported on an IRS Form W-2 and subject to applicable
12 withholdings); and (b) 75% to penalties and interest reported on an IRS form 1099, without
13 deductions or withholdings. All Individual Payment Amounts paid to Class Members will be
14 subject to any applicable wage garnishments, liens, or other legally mandated treatment as required
15 by law.

16 (d) **PAGA Payments:** The Parties agree that Ten Thousand Dollars
17 (\$10,000.00) shall be allocated to settle Plaintiffs’ claims brought pursuant to PAGA. Of this
18 amount, Seventy-Five percent (75%), or Seven Thousand Five Hundred Dollars (\$7,500.00), shall
19 be paid to the LWDA, and the remaining Twenty-Five percent (25%), or Two Thousand Five
20 Hundred Dollars (\$2,500.00), shall be included in the Net Settlement Proceeds for payment to Class
21 Members.

22 (e) **Service Payments and General Release Payments to Class**
23 **Representatives:** The amount awarded to each Class Representative as a “Service Payment” and
24 in exchange for a general release, as set forth in Paragraph 22, below, will be set by the Court in its
25 discretion, not to exceed Fifteen Thousand Dollars (\$15,000.00) each (\$30,000.00 total). This
26 amount will be deducted from the Gross Settlement Amount. An IRS Form 1099 will be issued to
27 each Class Representative for their Service Payment. Defendant agrees not to dispute or otherwise
28 object to the Service Payments if Plaintiffs each request \$15,000.00 or less.

1 (f) **Attorneys' Fees:** An award to Class Counsel of attorneys' fees will be
2 deducted from the Gross Settlement Amount in an amount to be set by the Court taking into account
3 the settlement award that has been made available for the Settlement Class by the efforts of Class
4 Counsel. The amount awarded shall not exceed 35% of the Gross Settlement Amount (i.e., One
5 Hundred Twenty-Two Thousand Five Hundred Dollars (\$122,500.00)). An IRS Form 1099 will
6 be issued to Class Counsel with respect to its award of attorneys' fees. Defendant agrees not to
7 dispute or otherwise object to the attorneys' fee award requested by Class Counsel so long as the
8 request does not exceed 35% of the Gross Settlement Amount.

9 (g) **Attorneys' Costs and Expenses:** Class Counsel will be reimbursed from
10 the Gross Settlement Amount in an amount to be set by the Court for documented out-of-pocket
11 litigation costs and expenses, not to exceed Thirty Thousand Dollars (\$30,000.00). An IRS Form
12 1099 will be issued to Class Counsel with respect to its award of costs and expenses.

13 (h) **Settlement Administration Costs:** The fees and other charges of the
14 Settlement Administrator to administer the Settlement are expected to total no more than Twelve
15 Thousand Dollars (\$12,000) and will be paid from the Gross Settlement Amount. These fees shall
16 include any costs associated with the required tax reporting on any Individual Payment Amounts,
17 and the issuing of any and all W-2 and 1099 forms. Subject to approval of the Court, the Parties
18 have agreed that ILYM Group, Inc., which has submitted a competitive bid, will serve as a neutral
19 third-party claims' administrator ("Settlement Administrator") to perform all acts related to
20 providing notice to the Settlement Class. Settlement Administrator shall be responsible for (a)
21 printing and distributing the Court-approved Notice of Class Action Settlement ("Class Notice") to
22 all Class Members; (b) administering the settlement; (c) processing exclusions, objections, and field
23 inquiries from Class Members; (d) resolving disputes; (e) calculating the Individual Payment
24 Amount each Participating Class Members is eligible to receive; (f) distributing the Gross
25 Settlement Amount as directed by the Court and set forth herein; (g) tax reporting; (h) providing
26 necessary weekly status reports; and (i) other duties and responsibilities set forth herein.

27 (i) **No Warranty by Defendant:** Plaintiffs understand and agree that
28 Defendant is not providing Plaintiffs or Class Members with tax or legal advice and that Defendant

1 makes no representations regarding tax obligations or consequences, if any, related to this
2 Settlement Agreement.

3 **D. Release of Claims.**

4 20. Upon the Effective Date, and subject to Defendant's full payment of the Gross
5 Settlement Amount, Plaintiffs and all Settlement Class Members who do not timely opt-out will
6 be deemed to have fully released and discharged Defendant The Riva Partners and its present and
7 former officers, directors, members, owners, managers, shareholders, agents, operators, partners,
8 joint ventures, subsidiaries, parent companies, related entities, consultants, attorneys, successors
9 or assigns ("Released Parties") from any and all Released Claims that arose during their
10 employment in a non-exempt position in California during the Class Period.

11 21. The "Released Claims" include all claims and allegations made in the Action, and
12 which could have been raised in the Action based on the facts and claims alleged therein, including,
13 without limitation, all claims for failure to pay minimum wages and overtime wages, pay all
14 gratuities, provide meal and rest periods, or compensation in lieu thereof, reimburse for necessary
15 expenditures, timely pay all wages due at separation, and issue compliant wage statements,
16 including claims arising, without limitation, under Labor Code §§ 201, 202, 203, 226(a), 226.3,
17 226.7, 350, 351, 510, 512, 558, 1194, 1194.2, 1198, 2698, and 2699, *et seq.* and IWC Wage Order
18 5-2001.

19 22. Upon the Effective Date, and subject to Defendant's full payment of the Gross
20 Settlement Amount, Plaintiffs Paul and Joiner shall be deemed to have fully, finally, and forever
21 released the Released Parties from any and all claims, obligations, demands, actions, rights, causes
22 of action, and liabilities against the Released Parties, of whatever kind and nature, character, and
23 description, whether in law or equity, whether sounding in tort, contract, federal, state and/or local
24 law, statute, ordinance, regulation, common law, or other source of law, whether known or
25 unknown, and whether anticipated or unanticipated, including unknown claims covered by Civil
26 Code Section 1542, arising through the date of their signatures hereon, for any type of relief,
27 including, without limitation, claims for wages, damages, unpaid costs, penalties, liquidated
28 damages, punitive damages, interest, attorneys' fees, litigation costs, restitution, or equitable relief.

1 These claims include, but are not limited to, the Released Claims, as well as any other claims under
2 any provision of the California Labor Code or any applicable California Industrial Welfare
3 Commission Wage Orders, and claims under local, state, or federal discrimination statutes,
4 including, without limitation, the California Fair Employment and Housing Act, California
5 Government Code §§ 12940 et seq.; the Unruh Civil Rights Act, California Civil Code §§ 51 et
6 seq.; the California Constitution; Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000 et
7 seq.; the Americans with Disabilities Act, 42 U.S.C. §§ 12101 et seq.; the Employee Retirement
8 Income Security Act of 1974, 29 U.S.C. §§ 1001 et seq.; and all of their implementing regulations
9 and interpretive guidelines. With respect to these Released Claims as described in this Section,
10 Plaintiffs Paul and Joiner shall be deemed to have expressly waived and relinquished, to the fullest
11 extent permitted by law, the provisions, rights, and benefits he may otherwise have had pursuant
12 to Section 1542 of the California Civil Code, which provides as follows:

13 **A general release does not extend to claims that the creditor or releasing party**
14 **does not know or suspect to exist in his or her favor at the time of executing the**
15 **release and that, if known by him or her, would have materially affected his or**
16 **her settlement with the debtor or released party.**

17 Notwithstanding Section 1542, Plaintiffs understand and agree that this Agreement shall act
18 as a release of all future claims that may arise from Plaintiffs Paul and Joiner's employment or
19 separation from employment with Defendant, or any other matters that existed between Plaintiffs
20 Paul and Joiner and the Released Parties up to the date of this Agreement, whether such claims are
21 currently known or unknown, and that Plaintiffs intentionally waive any rights they may have under
22 the provisions of Section 1542, as well as under any other statutes or common law principles of
23 similar effect in the State of California or in any other state.

24 **E. Notice and Exclusion Process.**

25 23. Within ten (10) calendar days after entry of the order granting preliminary approval
26 of this Settlement, Defendant shall provide to the Settlement Administrator a list of all Class
27 Members, including their last known addresses, telephone numbers, social security numbers, and
28 total wages paid (including gratuities) during employment in a non-exempt position in California
during the Class Period ("Settlement Class Information"). The names, addresses, telephone

1 numbers, and Social Security numbers will only be disclosed to the Settlement Administrator and
2 not to Plaintiffs' Counsel. All information provided to the Settlement Administrator will be marked
3 CONFIDENTIAL. This information shall be kept confidential and shall not be disclosed, either in
4 writing or orally, by the Settlement Administrator, to anyone other than Defendant. The Settlement
5 Administrator shall use due care with respect to the storage, custody, use, and/or dissemination of
6 the confidential information. Such information must be stored in a secure fashion and all persons
7 who access the data must agree to keep it confidential.

8 24. A notice of pendency of class action, proposed settlement, and hearing date for
9 Court approval ("Class Notice") in the form attached hereto as **Exhibit 1**, and as approved by the
10 Court, shall be sent by the Settlement Administrator to the Class Members, by first class mail,
11 within twenty (20) calendar days after entry of the order granting preliminary approval. Attached
12 to the Class Notice will be a request for exclusion form ("Request for Exclusion Form") in the form
13 attached hereto as **Exhibit 2**.

14 25. The Settlement Administrator will make reasonable efforts to ensure that the Class
15 Notice and Request for Exclusion Form are sent to all Class Members. It will conclusively be
16 presumed that if an envelope has not been returned within thirty (30) days of the mailing that the
17 Class Member received the Class Notice. In the event of returned or non-deliverable notices, the
18 Settlement Administrator will make reasonable efforts to locate Class Members and re-send the
19 notices.

20 26. Each Class Member will be fully advised of the settlement, the ability to object to
21 the settlement, and the ability to submit a Request for Exclusion Form. The Class Notice will
22 inform the Class Members of the Court-established deadlines for filing objections and a Request
23 for Exclusion Form.

24 27. Each Class Notice will contain personalized information setting forth the total wages
25 paid (including gratuities) during employment by Defendant in California in a non-exempt position
26 during the Class Period for each Class Member and their estimated Individual Payment Amount.
27 To the extent a Class Member disputes any of the information listed on his or her Class Notice, the
28 Class Member may produce evidence to the Settlement Administrator showing such information

1 the Class Member contends should be reflected in the Class Notice. Defendant's records will be
2 presumed determinative, however, and the Settlement Administrator's decision on these matters
3 will be final. The Class Notice will also set forth IRS W-9 requests for information if required.

4 28. All Class Members who do not submit a Request for Exclusion Form will be eligible
5 to receive an Individual Payment Amount which shall be mailed to them if and when the Effective
6 Date occurs.

7 29. To elect not to participate in the Settlement, a Class Member must submit a Request
8 for Exclusion Form, and mail it to the Settlement Administrator no later than forty-five (45)
9 calendar days after the initial mailing of the Class Notice and Request for Exclusion Form to Class
10 Members, unless the Court requires a longer period, in which case the Court ordered exclusion
11 period will apply. The date of the postmark shall be deemed the date of submission. The timeliness
12 of submitted Request for Exclusion Forms will be determined by valid postmark. If the 45th day
13 falls on a Sunday or federal holiday, the time to request exclusion will be extended to the next day
14 on which the U.S. Postal Service is open.

15 30. The deadline for submission of Exclusion Forms shall be extended once by 30 days
16 for those Class Members whose Class Notice and Exclusion Form are returned as "undeliverable."
17 If the 30th day falls on a Sunday or federal holiday, this deadline will be extended to the next day
18 the U.S. Postal Service is open.

19 31. The Settlement Administrator will use a change of address database to ascertain the
20 most recent addresses prior to mailing notices of the members of the Settlement Class, and will
21 search for additional addresses on returned mail (through a skip trace process and/or as it otherwise
22 deems appropriate based on its experience) and will re-mail the Class Notice and Exclusion Form
23 to an updated address (if any) within 15 days of receipt of the returned mail. The 30-day extended
24 time limit will run from the date of the second mailing for those Class Members. To the extent a
25 Class Notice from the initial mailing is not returned within 30 days, it shall be deemed to have been
26 sent to a valid address even if it is thereafter returned. It is the intent of the Parties that reasonable,
27 but not extraordinary, efforts be used to locate Class Members. If the initial Class Notice and
28 Request for Exclusion Form is returned, the Settlement Administrator will search using the social

1 security number for a more current address. If no address is found within 10 days, no further action
2 is required, and Notice will be deemed effective.

3 32. The Settlement Administrator will notify the Parties of the total number of valid
4 Request for Exclusion Forms within ten (10) calendar days after the deadline for receipt of the
5 Request for Exclusion Forms (fifty-five (55) days following the initial mailing of the Class Notice
6 and Request for Exclusion Forms to Class Members).

7 33. In order to object to the settlement a Class Member must mail his or her objection
8 to the Settlement Administrator no later than forty-five (45) calendar days after the mailing of the
9 Class Notice and Request for Exclusion Form to Class Members, unless the Court requires a longer
10 period, in which case the Court ordered objection period will apply. If the 45th day falls on a
11 Sunday or federal holiday, the time to object to the settlement will be extended to the next day the
12 U.S. Postal Service is open.

13 34. The Settlement Administrator shall provide the Parties, at least 12 calendar days
14 prior to the final approval hearing, or as otherwise ordered by the Court, a declaration of due
15 diligence and proof of mailing with regard to the mailing of the Class Notice and Request for
16 Exclusion Forms. The Settlement Administrator will also provide to the Parties, at least 12 calendar
17 days prior to the final approval hearing, or as otherwise ordered by the Court, a report listing the
18 amount of all payments to be made to each Class Member without names or personal identifying
19 information.

20 35. Defendant shall deposit the Gross Settlement Amount and all employer payroll tax
21 obligations with the Settlement Administrator in two equal installments, the first due no later than
22 10 calendar days after the Effective Date and the second due no later than September 15, 2023.

23 36. The Settlement Administrator shall disburse each installment of the Gross
24 Settlement Amount within 15 calendar days after its receipt thereof, with the Class Members,
25 Plaintiff, Class Counsel, the LWDA and the Settlement Administrator each being paid one-half of
26 their total payments due hereunder after Defendant's deposit of each installment of the Gross
27 Settlement Amount. Class Members must cash each of their Individual Payment Amount checks
28 within 180 calendar days after they are mailed by the Settlement Administrator. The value of any

1 checks uncashed more than 180 days after mailing shall be cancelled and the gross amount of the
2 checks paid to the Office of the California State Controller – Unclaimed Property Fund, to be held
3 in the name of the respective Class Member.

4 **F. Duties of the Parties Prior to Court Approval.**

5 37. Promptly after signing of this Joint Stipulation of Class Action Settlement and
6 Release of Claims, Plaintiffs shall move the Court for preliminary approval of this settlement and
7 entry of an order accomplishing the following:

8 (a) scheduling a fairness hearing on the question of whether the proposed
9 settlement should be finally approved as fair, reasonable and adequate as to the Class Members;

10 (b) approving as to form and content the proposed Class Notice;

11 (c) approving as to form and content the proposed Request for Exclusion
12 Form;

13 (d) preliminarily certifying the Settlement Class for purposes of approving
14 the Settlement Agreement;

15 (e) preliminarily approving the PAGA payment of \$7,500.00 to the LWDA;
16 Plaintiff preliminarily approving the Class Representative payments;

17 (f) preliminarily setting attorneys' fees and costs payable to Class Counsel;

18 (g) preliminarily setting the Service Payments to the Class Representatives; and

19 (h) preliminarily approving ILYM Group, Inc. as the Settlement
20 Administrator and its estimated fees and costs of \$12,000.

21 38. The Parties shall submit this Settlement Agreement to the Court and the LWDA
22 in support of Plaintiffs' unopposed motion for preliminary approval of the settlement.

23 **G. Duties of the Parties in Connection with and Following Final Court Approval.**

24 39. In connection with the hearing on final approval of the settlement, the Parties will
25 submit a proposed final order no later than ten (10) calendar days prior to the scheduled date of
26 the hearing on final approval (unless otherwise ordered by the Court):

27 (a) approving the settlement, adjudging the terms thereof to be fair, reasonable
28 and adequate, and directing consummation of its terms and provisions;

1 (b) approving Class Counsel's application for an award of attorneys' fees and
2 reimbursement of documented litigation costs and expenses, the service payments to the Class
3 Representatives, the PAGA Payment to the LWDA, and the costs of administering the settlement;
4 and

5 (c) Entering judgment in accordance with this Stipulation, pursuant to Cal.
6 Rules of Court, Rule 3.769(h).

7 40. Class Counsel shall file an application for attorneys' fees and reimbursement of
8 costs and expenses no later than ten (10) calendar days prior to the scheduled date of the hearing
9 on final approval (unless otherwise ordered by the Court).

10 **H. Miscellaneous Provisions:**

11 41. **Voiding the Agreement.**

12 A failure of the Court to approve any material condition of this Settlement Agreement which
13 effects "a fundamental change of the Parties' settlement," or if the settlement is reversed or
14 materially modified on appellate review, shall render the entire Stipulation of Settlement voidable
15 and unenforceable as to all Parties herein at the option of any Party. Defendant may terminate this
16 Settlement Agreement if more than 10% of total Class Members request exclusion from the
17 Settlement Class. To terminate it, Defendant must give notice of such to Plaintiff no later than 10
18 calendar days after the end of the exclusion period. If it terminates the Settlement on this basis, it
19 shall pay the Settlement Administrator all fees incurred for the administration through the date of
20 termination.

21 42. **Parties' Authority.**

22 The signatories hereto represent that they are fully authorized to enter into this Settlement
23 Agreement and bind the Parties hereto to the terms and conditions hereof.

24 43. **Mutual Full Cooperation.**

25 The Parties agree to fully cooperate with each other to accomplish the terms of this
26 Stipulation of Settlement, including but not limited to, execution of such documents and such other
27 action as may reasonably be necessary to implement the terms of this Settlement Agreement. The
28 Parties to this Settlement Agreement shall use their best efforts, including all efforts contemplated

1 by this Settlement Agreement and any other efforts that may become necessary by order of the
2 Court, or otherwise, to effectuate this Settlement Agreement and the terms set forth herein. As
3 soon as practicable after execution of this Settlement Agreement, Class Counsel shall, with the
4 assistance and cooperation of Defendant and its counsel, take all necessary steps to secure the
5 Court's preliminary and final approval of the settlement.

6 **44. No Prior Assignments.**

7 The Parties hereto represent, covenant, and warrant that they have not directly or indirectly,
8 assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or
9 entity any portion of any liability, claim, demand, action, cause of action or rights released and
10 discharged by this Stipulation of Settlement.

11 **45. No Admission.**

12 Nothing contained herein, nor the consummation of this Stipulation of Settlement, is to be
13 construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part
14 of Defendant or any of the other Released Parties. Each of the Parties hereto has entered into this
15 Settlement Agreement with the intention of avoiding further disputes and litigation with the
16 attendant inconvenience and expenses. This Settlement Agreement is a settlement document and
17 shall, pursuant to California Evidence Code section 1152 and/or Federal Rule of Evidence 408
18 and/or any other similar law, be inadmissible in evidence in any proceeding, except an action or
19 proceeding to approve the settlement, and/or interpret or enforce this Settlement Agreement.

20 **46. Construction.**

21 The Parties hereto agree that the terms and conditions of this Settlement Agreement are the
22 result of lengthy, intensive arms' length negotiations between the Parties and that this Settlement
23 Agreement shall not be construed in favor of or against any Party by reason of the extent to which
24 any Party or her or its counsel participated in the drafting of this Settlement Agreement.

25 **47. Captions and Interpretations.**

26 Paragraph titles or captions contained herein are inserted as a matter of convenience and for
27 reference, and in no way define, limit, extend, or describe the scope of this Settlement Agreement
28

1 or any provision hereof. Each term of this Settlement Agreement is contractual and not merely a
2 recital.

3 **48. Modification.**

4 This Settlement Agreement may not be changed, altered, or modified, except in writing and
5 signed by the Parties hereto, and approved by the Court. This Settlement Agreement may not be
6 discharged except by performance in accordance with its terms or by a writing signed by each of
7 the Parties hereto on their attorneys.

8 **49. Integration Clause.**

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

14 **50. Binding on Assigns.**

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

17 **51. Governing Law.**

18 All terms of this Settlement Agreement and its exhibits shall be governed by and interpreted
19 according to the laws of the State of California, without giving effect to any conflict of law
20 principles or choice of law principles.

21 **52. Signatures of All Class Members Unnecessary to be Binding.**

22 It is agreed that, because the members of the Settlement Class are numerous, it is impossible
23 or impractical to have each Class Member execute this Settlement Agreement. The Class Notice,
24 attached hereto as Exhibit 1, will advise all Class Members of the binding nature of the release
25 provided herein and such shall have the same force and effect as if this Settlement Agreement was
26 executed by each Class Member.

27 **53. Counterparts.**

28 This Settlement Agreement may be executed in counterparts, and when each Party has

1 signed and delivered at least one such counterpart, each counterpart shall be deemed an original,
2 and when taken together with other signed counterparts, shall constitute one fully-signed Settlement
3 Agreement, which shall be binding upon and effective as to all Parties.

4 **54. Confidentiality**

5 Until Plaintiffs file their motion for preliminary approval of the class action settlement of
6 the Actions, the Parties and their Counsel agree to maintain confidentiality as to the Settlement,
7 including the amount and terms of the Settlement, except as to spouses, tax or financial advisors,
8 attorneys, taxing agencies, or as otherwise required by law.

9 **55. No Publicity**

10 Plaintiffs and their Counsel will not contact the media about the Settlement Agreement or
11 respond to any inquiries by the media regarding the Settlement, other than to state that the matter
12 was amicably settled, and the Court did not find Defendant liable. Plaintiffs and their Counsel also
13 will not post any information about the Settlement Agreement on social media or their firms'
14 websites.

15 **56. Representation Regarding Class Size.**

16 Defendant has represented that there are no more than 583 Class Members. Should this
17 number increase, the Gross Settlement Amount will increase proportionately. For example, if
18 there are 641 Class Members, the Gross Settlement Amount shall increase by 10%.

19 **57. Continuing Jurisdiction.**

20 The Parties agree that upon the occurrence of the entry of judgment in this case pursuant to
21 the terms of this Agreement, this Agreement shall be enforceable by the Court pursuant to Code
22 of Civil Procedure Section 664.6 and all other applicable law, and the Court shall retain exclusive
23 and continuing equity jurisdiction of this Action over all Parties and Class Members to interpret
24 and enforce the terms, conditions and obligation of the Agreement.

25 **57. Default; Notice; Cure; Acceleration; Time is of the Essence.**

26 Time is of the essence with respect to all provisions of this Agreement. If Defendant fails
27 to timely make any payment due hereunder, it shall be in default of its obligations. Plaintiffs shall
28 thereafter give notice of default and Defendant must cure said default within ten (10) calendar days

thereof. In the event of an uncured default, all unpaid amounts shall be accelerated and become due and payable with interest at the legal rate from the date of default.

11 / 09 / 2022

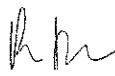
Dated: _____, 2022

By: 

AARON PAUL
Plaintiff and Class Representative

11 / 09 / 2022

Dated: _____, 2022

By: 

REBECCA JOINER
Plaintiff and Class Representative

Dated: _____, 2022

THE RIVA PARTNERS

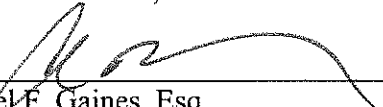
By: _____

Its: _____

APPROVED AS TO FORM:

Dated: _____, 2022

GAINES & GAINES, APLC

By: 

Daniel F. Gaines, Esq.
Alex P. Katofsky, Esq.
Counsel for Plaintiffs and Class
Representatives

Dated: _____, 2022

PORTER SIMON, PROFESSIONAL
CORPORATION

By: _____

Louis A. Basile, Esq.
Ravn R. Whittington, Esq.
Counsel for Defendant

1 thereof. In the event of an uncured default, all unpaid amounts shall be accelerated and become due
2 and payable with interest at the legal rate from the date of default.

3
4 Dated: _____, 2022

By:

AARON PAUL
Plaintiff and Class Representative

5
6
7 Dated: _____, 2022

By:

REBECCA JOINER
Plaintiff and Class Representative

8
9
10 Dated: Nov 8, 2022

THE RIVA PARTNERS

Thomas A. Turner

By:

11
12 Its: President, South Lake Restaurants, its General Partner

13 **APPROVED AS TO FORM:**

14 Dated: _____, 2022

GAINES & GAINES, APLC

By:

Daniel F. Gaines, Esq.
Alex P. Katofsky, Esq.
Counsel for Plaintiffs and Class
Representatives

15
16
17
18
19 Dated: Nov 8, 2022

PORTER SIMON, PROFESSIONAL
CORPORATION

20
21 By: *Louis A. Basile*

Louis A. Basile, Esq.
Ravn R. Whittington, Esq.
Counsel for Defendant

EXHIBIT 1

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF EL DORADO**

AARON PAUL, REBECCA JOINER,
individually on behalf of themselves, and on
behalf of all similarly situated individuals,

Plaintiffs,

v.

THE RIVA PARTNERS, a California limited
partnership, and DOES 1 through 10, inclusive,

Defendants.

CASE NO: SC20200155

*Assigned to the Honorable Michael J.
McLaughlin, Dept. 4*

**NOTICE OF PENDENCY OF PROPOSED
CLASS ACTION SETTLEMENT AND
FINAL HEARING**

**YOU MAY BE ENTITLED TO RECEIVE MONEY FROM A SETTLEMENT
PLEASE READ THIS NOTICE CAREFULLY. YOUR RIGHTS MAY BE AFFECTED.**

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

- A settlement will provide \$350,000 to pay claims to all individuals who worked for The Riva Partners ("Defendant") as a non-exempt employee in California at any time between November 5, 2016 and July 15, 2022.
- The settlement resolves a lawsuit alleging that Defendant failed to pay all wages due; failed to pay all gratuities; failed to provide compliant meal and rest periods or premium compensation in lieu thereof; failed to reimburse all business-related expenses; failed to timely issue final wages upon separation of employment; and failed to issue accurate and complete itemized wage statements. The Settlement avoids costs and risks of continuing the lawsuit, pays money to employees, and releases Defendant from liability from the claims asserted in this lawsuit.
- Lawyers for the employees will ask the Court to award them up to \$122,500 as attorneys' fees and \$30,000 as expenses for investigating the facts, litigating the case, and negotiating the settlement. This will be paid from the settlement amount.
- Defendant denies liability and believes all appropriate wages were paid and that it otherwise complied with any Labor Code obligations. The Parties disagree on how much money could have been awarded if employees won at trial.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
Do Nothing	You do not need to take any action if you wish to receive your settlement payment. If the settlement is approved by the Court, you will automatically be mailed a settlement check at the address on file with the Settlement Administrator. If your address has changed, you must notify the Settlement Administrator of your new address. In exchange for the settlement payment, you will release claims against the Defendant, as detailed below.
Exclude Yourself	To exclude yourself, you must send the enclosed Request for Exclusion form to the Settlement Administrator by the applicable deadline, as detailed below. If you request exclusion, you will receive no money from the Settlement . This is the only option that allows you to ever be part of any other lawsuit against The Riva Partners about the legal claims that were brought in this case.
Object	Write to the Settlement Administrator about why you don't like the settlement by the applicable deadline, as detailed below, and/or appear at the Final Approval Hearing to make an oral objection.
Go to a Hearing	Ask to speak in Court about the fairness of the settlement, as detailed below.

WHY DID YOU RECEIVE THIS NOTICE?

This notice explains a proposed settlement of a class action lawsuit, and informs you of your legal rights under that proposed settlement. You are receiving this notice because you may be a member of the Class on whose behalf this class action lawsuit has been brought.

WHAT IS THIS LAWSUIT ABOUT?

On November 5, 2020, Plaintiffs Aaron Paul and Rebecca Joiner ("Plaintiffs"), former non-exempt employees of Defendant The Riva Partners ("Defendant"), filed this lawsuit in the El Dorado County Superior Court. Thereafter, on February 28, 2022, Plaintiffs filed a First Amended Complaint. The lawsuit alleges violations of the California Labor Code and California Business and Professions Code. The lawsuit seeks to certify a class of all current and former non-exempt California employees of Defendant at any time between November 5, 2016 and July 15, 2022 ("Class Period"). Specifically, the lawsuit alleges that members of the Class were not paid all wages; were not paid all gratuities; were not provided compliant meal and rest periods or premium compensation in lieu thereof; were not reimbursed for all business-related expenses; were not timely issued final wages upon separation of employment; and were not issued accurate and complete itemized wage statements. The Settlement seeks recovery of wages, expense reimbursement, damages, interest, statutory and civil penalties, restitution, attorneys' fees and costs. Defendant denies all of the material allegations in the lawsuit and denies that it owes Class Members any remedies. The Court has not made a ruling on the merits of the case.

The lawyers for the parties are:

Plaintiffs' Attorneys

Daniel F. Gaines, Esq.
Alex P. Katofsky, Esq.
Gaines & Gaines, APLC
4550 E. Thousand Oaks Blvd., Suite 100
Westlake Village, CA 91362
Phone: (866) 550-0855

Defendant's Attorneys

Louis A. Basile, Esq.
Ravn R. Whittington, Esq.
PORTER SIMON, PROFESSIONAL
CORPORATION
P.O. Box 5339
210 Grove Street
Tahoe City, California 96145

Christian Brown, Esq.
ELEVATION LAW
855 N. Lake Boulevard, Suite 1
P.O. Box 5008
Tahoe City, CA 96145

SUMMARY OF THE SETTLEMENT

A. Why is there a Settlement?

The Court did not decide in favor of Plaintiffs or Defendant. Plaintiffs believes they would have prevailed on their claims at a trial. Defendant does not believe that Plaintiffs would have won anything from a trial. There has been no trial. Instead, both sides agreed to a settlement, which is memorialized in the Joint Stipulation of Class Action Settlement and Release of Claims ("Settlement" or "Settlement Agreement"), in order to avoid the further costs, risks, and uncertainty of a trial. Plaintiffs and Plaintiffs' Attorneys believe the settlement is fair, reasonable, adequate, and in the best interests of all Class Members.

B. Who is in the Settlement Class?

The Settlement encompasses a class composed of all individuals who worked for The Riva Partners as a non-exempt employee in California at any time between November 5, 2016 and July 15, 2022.

C. What does the Settlement provide?

1. Gross Settlement Proceeds.

The Settlement provides that Defendant will pay \$350,000 (the "Gross Settlement Amount") to settle the lawsuit.

2. Net Settlement Proceeds.

The "Net Settlement Proceeds" is the portion of the Gross Settlement Amount that will be available for distribution to Class Members who do not submit timely and valid requests for exclusion in exchange for the release of their class claims. The Net Settlement Amount is the Gross Settlement Amount less the following amounts that will be requested at the Final Approval Hearing and are subject to comment or objection by Participating Class Members. The Court will set these amounts at the Final Approval Hearing.

(a) **Class Counsel's Attorneys' Fees** in an amount set by the Court, not to exceed \$122,500;

(b) **Class Counsel's Documented Litigation Costs/Expenses** in an amount set by the Court, not to exceed \$30,000;

(c) **Service Payments to the Class Representatives** in an amount set by the Court, not to exceed \$15,000 to each Plaintiff for their service in the lawsuit;

(d) **Settlement Administration Costs** which are currently estimated to not exceed \$12,000 , for administering the settlement; and

(e) **PAGA Payment** in the total amount of \$10,000 for the settlement of claims arising under the California Private Attorneys General Act ("PAGA"). 75% or \$7,500, shall be paid to the California Labor and Workforce Development Agency ("LWDA"). The remaining 25% or \$2,500, shall be included in the Net Settlement Proceeds for payment to Class Members

3. Individual Payment Amount.

Your share of the Net Settlement Amount will be determined by the formula detailed in section E below.

D. What Are You Giving Up To Get A Payment Or Stay In The Class?

Upon the Effective Date, and subject to Defendant's full payment of the Gross Settlement Amount, Plaintiffs and all Settlement Class Members who do not timely opt-out will be deemed to have fully released and discharged Defendant The Riva Partners and its present and former officers, directors, members, owners, managers, shareholders, agents, operators, partners, joint ventures, subsidiaries, parent companies, related entities, consultants, attorneys, successors or assignees ("Released Parties") from any and all Released Claims which arose during their employment in a non-exempt position in California during the Class Period.

The "Released Claims" include all claims and allegations made in the Action, and which could have been raised in the Action based on the facts and claims alleged therein, including, without limitation, all claims for failure to pay minimum wages and overtime wages, pay all gratuities, provide meal and rest periods, or compensation in lieu thereof, reimburse for necessary expenditures, timely pay all wages due at separation, and issue compliant wage statements, including claims arising, without limitation, under Labor Code §§ 201, 202, 203 226(a), 226.3, 226.7, 350, 351, 510, 512, 558, 1194, 1194.2, 1198, 2698, and 2699, *et seq.* and IWC Wage Order 5-2001.

E. How Is My Share Of The Settlement Calculated?

Each participating Class Member (those who do not opt out of the Settlement) shall receive an "Individual Payment Amount," which is distributable to each Class Member who participates in the Settlement (i.e., who does not submit a valid request for exclusion form).

The Individual Payment Amounts will be calculated by multiplying the Net Settlement Proceeds by a fraction, with the numerator equal to the total wages paid (including gratuities) to each individual participating Class Member during employment by Defendant in California in a non-exempt position during the Class Period and the denominator equal to the total wages paid (including gratuities) to all participating Class Members in California in a non-exempt position during the Class Period. Each Participating Class Member who does not opt out will receive an Individual Payment Amount.

For tax purposes, each Individual Payment Amount will be apportioned (a) 25% as wages (reported on an IRS Form W-2 and subject to applicable withholdings); and (b) 75% to penalties and interest. All Individual Payment Amounts paid to Class Members will be subject to any applicable wage garnishments, liens, or other legally mandated treatment as required by law.

According to the records of Defendant, you earned total wages (including gratuities) of \$[REDACTED] while employed as a non-exempt employee in California from November 5, 2016 through July 15, 2022. Based on these wages earned, you are entitled to an Individual Payment Amount of approximately \$[REDACTED]. This amount is subject to change based on the final ruling of the Court.

Please be advised that the individual data above is presumed to be correct unless you submit documentation proving otherwise. If you disagree with the data, please submit an explanation and evidence in support of your position to the Settlement Administrator no later than [REDACTED], 2022. In the event of a dispute, the Settlement Administrator will resolve the challenge with input from the Defendant and will make a final and binding determination without a hearing or right of appeal by you.

F. When Will I Be Paid My Share of the Settlement

Defendant will deposit the settlement payment in two equal installments, one shortly after Court approval of the settlement and one no later than September 15, 2023. Class Members will be issued their settlement shares in equal installments shortly after each deposit by Defendant. Please contact the Settlement Administrator if your address changes.

THE SETTLEMENT HEARING

The Court will conduct a final fairness hearing regarding the proposed settlement (the "Final Settlement Hearing") on [REDACTED], at 8:30 a.m., in the Courtroom of Judge Michael J. McLaughlin of the El Dorado County Superior Court, Department 4, located at 1354 Johnson Blvd., South Lake Tahoe, California 96150. The Court will determine: (i) whether the lawsuit should finally be certified as a class action for settlement purposes; (ii) whether the settlement should be given the Court's final approval as fair, reasonable, adequate and in the best interests of the Settlement Class Members; (iii) whether the Settlement Class Members should be bound by the terms of the settlement; (iv) the amount of the attorneys' fees and costs to be awarded to Plaintiffs' Attorneys; and (v) the amount that should be awarded to Plaintiffs as service payments. At the Final Settlement Hearing, the Court will hear all properly filed objections, as well as arguments for and against the proposed settlement. You have a right to attend this hearing, but you are not required to do so. You also have the right to hire an attorney to represent you, or to enter an appearance and represent yourself.

WHAT ARE YOUR OPTIONS?

• **OPTION 1 – DO NOTHING AND PARTICIPATE IN THE SETTLEMENT**

IF YOU TAKE NO ACTION IN RESPONSE TO THIS NOTICE, YOU WILL AUTOMATICALLY RECEIVE YOUR SHARE OF THE SETTLEMENT IF IT IS APPROVED BY THE COURT. YOU ARE NEVER REQUIRED TO GO TO COURT OR PAY ANYTHING TO THE LAWYERS IN THIS CASE. If you move, you must update your address with the Settlement Administrator. If you disagree with pre-printed data indicated in section E above, you must submit an explanation and/or documentation to the Settlement Administrator to justify your position, postmarked no later than [REDACTED]. The Settlement Administrator's address is [Settlement Administrator address].

• **OPTION 2 – OBJECT TO THE SETTLEMENT**

If you wish to remain a Settlement Class Member, but you object to the proposed settlement (or any of its terms) and wish the Court to consider your objection at the Final Settlement Hearing, you may object to the proposed settlement in writing. You may also appear at the Final Approval Hearing, either in person or through an attorney at your own expense. All written objections, supporting papers, and/or notices of intent to appear at the Final Approval Hearing must clearly identify the case name and number and be mailed to the Settlement Administrator at [Settlement Administrator address]. Written objections must be postmarked no later than _____.

• **OPTION 3 – EXCLUDE YOURSELF FROM THE SETTLEMENT**

You have a right to exclude yourself (“opt out”) from the Settlement Class, but if you choose to do so, you will not receive any benefits from the proposed settlement. You will not be bound by a judgment in this case and you will have the right to file your own lawsuit against the Defendant and pursue your own claims in a separate suit. You can opt out of the Class by completely filling out and mailing the enclosed Request for Exclusion Form to the Settlement Administrator at the above-stated address, such that it is postmarked no later than _____.

ARE THERE MORE DETAILS ABOUT THE SETTLEMENT?

The above is a summary of the basic terms of the settlement. For the precise terms and conditions of the settlement, you should review the detailed “Joint Stipulation of Class Action Settlement and Release of Claims” which is on file with the Clerk of the Court. The pleadings and other records in the Lawsuit may be examined at any time during regular business hours at the Office of the Clerk of the El Dorado County Superior Court, located at 1354 Johnson Blvd., South Lake Tahoe, California 96150.

IF YOU NEED MORE INFORMATION OR HAVE ANY QUESTIONS, you may contact the Settlement Administrator at [address], [telephone number].

PLEASE DO NOT TELEPHONE THE COURT FOR INFORMATION ABOUT THIS SETTLEMENT OR THE CLAIMS PROCESS.

**BY ORDER OF THE SUPERIOR COURT OF
THE STATE OF CALIFORNIA**

EXHIBIT 2

REQUEST FOR EXCLUSION

ONLY COMPLETE THIS REQUEST FOR EXCLUSION FORM IF YOU WANT TO OPT OUT OF (NOT PARTICIPATE IN) THE SETTLEMENT OF THE ACTION KNOWN AS *Aaron Paul, et al. v. The Riva Partners, et al.*, El Dorado County Superior Court, Case No. SC20200155. IF YOU OPT OUT OF THE SETTLEMENT, YOU WILL NOT RECEIVE ANY PORTION OF THE SETTLEMENT AMOUNT.

I confirm that I was employed by Defendant The Riva Partners as a non-exempt employee in California between November 5, 2016 and July 15, 2022.

I do not wish to receive any payment under the terms of the proposed class action settlement or to otherwise participate in the proposed settlement.

Date: _____

Signature: _____

Print Name: _____

Residence Street Address: _____

City, State and Zip Code: _____

IN ORDER TO BE VALID, THIS REQUEST FOR EXCLUSION FORM MUST BE COMPLETED, SIGNED, MAILED BY FIRST CLASS MAIL, AND POSTMARKED ON OR BEFORE **[45 days after mailing of Notice]**. Send this signed request for exclusion form to the Settlement Administrator:

The Riva Partners Claims Administrator
c/o ILYM Group, Inc.

TITLE	Paul_Joiner v Riva Class and PAGA Agreement v6
FILE NAME	Paul v. Riva - Cl...Sett Agrmt v6.pdf
DOCUMENT ID	2bc695467f121c8a6869b36a030d93e938fe4296
AUDIT TRAIL DATE FORMAT	MM / DD / YYYY
STATUS	 Signed

Document History



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11 / 08 / 2022
18:38:55 UTC

Sent for signature to Rebekah Joiner

[REDACTED] and Aaron Paul
[REDACTED] from office@gaineslawfirm.com
[REDACTED]



VIEWED

11 / 09 / 2022
13:34:29 UTC

Viewed by Aaron Paul

[REDACTED]



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11 / 09 / 2022
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Signed by Aaron Paul

[REDACTED]



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11 / 09 / 2022
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[REDACTED]



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[REDACTED]



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11 / 09 / 2022
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Christian Brown (chris@elevationlawfirm.com)

Document name:

Paul v. Riva - Class and PAGA Sett Agrmt v6.pdf

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fd4c5f595f0063175d0d854faf3b31cdd944d877f3a0d824ec8595330bdcf5bf

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From:

SignRequest <no-reply@signrequest.com> on behalf of
(chris@elevationlawfirm.com)

To:

basile@portersimon.com, tom@trctahoe.com

Subject:

Christian Brown (chris@elevationlawfirm.com) has sent you a
SignRequest

Message:

For signatures/dates

IP address:

71.94.77.89

User agent:

Mozilla/5.0 (Windows NT 10.0; Win64; x64) AppleWebKit/
537.36 (KHTML, like Gecko) Chrome/107.0.0.0 Safari/537.36

Christian Brown (chris@elevationlawfirm.com)

Email address verification:

Verified by SignRequest

basile@portersimon.com

Email address verification:

Verified by SignRequest

Text added, page 18:

Nov 8, 2022

Signature added, page 18:

Louis A. Basile

IP address:

47.224.242.239

User agent:

Mozilla/5.0 (iPhone; CPU iPhone OS 15_6_1 like Mac OS X)
AppleWebKit/605.1.15 (KHTML, like Gecko) Version/15.6.1
Mobile/15E148 Safari/604.1

Document signed:

Nov. 9, 2022, 1:28 a.m. (UTC)

tom@trctahoe.com

Email address verification:

Verified by SignRequest

Text added, page 18:

President, South Lake Restaurants, its General Partner

Signature added, page 18:

Thomas A. Turner

Text added, page 18:

Nov 8, 2022

IP address:

45.17.112.18

User agent:

Mozilla/5.0 (Windows NT 10.0; Win64; x64) AppleWebKit/
537.36 (KHTML, like Gecko) Chrome/107.0.0.0 Safari/537.36

Document signed:

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