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and Similarly Aggrieved Employees

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MAK BBQ, INC.; KEEGAN LEE and HEE YOUNG LEE

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES
CENTRAL DISTRICT, UNLIMITED JURISDICTION**

EDGAR GAMBOA ROCHA, an individual, and
Similarly Aggrieved Employees,

Plaintiff,

v.

KYL BBQ, INC., a California Corporation doing
business as LA VACA BRAZILIAN GRILL;
MAK BBQ, INC., a California Corporation;
KEEGAN LEE, an individual; HEE YOUNG
LEE, an individual; and DOES 1 through 50,
inclusive,

Defendants.

Case No.: 19STCV31362

*[Assigned For All Purposes To Hon. Teresa
Beaudet, Dept. 50]*

**JOINT STIPULATION FOR APPROVAL OF
SETTLEMENT OF PRIVATE ATTORNEYS
GENERAL ACT OF 2004 (“PAGA”) CAUSE
OF ACTION; MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT
THEREOF; DECLARATION OF NINA
BAUMLER; DECLARATION OF DAVID
FISHMAN; DECLARATION OF KEEGAN
LEE**

Complaint Filed: September 4, 2019

Trial Date: January 20, 2021

1 **JOINT STIPULATION FOR APPROVAL OF PAGA SETTLEMENT**

2 Plaintiff Edgar Gamboa Rocha and Defendants KYL BBQ., Inc. doing business as La Vaca
3 Brazilian Grill, MAK BBQ, Inc., Keegan Lee and Hee Young Lee (collectively, the “Parties”) by and
4 through their respective counsel of record, hereby enter into the following stipulation for Court approval
5 of the settlement of Plaintiff’s sixth cause of action pursuant to the California Labor Code Private
6 Attorneys General Act (“PAGA”) as follows:

7 **Summary of Case**

8 WHEREAS, Defendant KYL BBQ, Inc. doing business as La Vaca Brazilian Grill operates a
9 Brazilian fast food buffet concession located in the Westfield shopping mall, Century City, California;

10 WHEREAS, Defendant MAK BBQ, Inc. doing business as La Vaca Brazilian Grill operates
11 Brazilian fast food buffet concession located in the Westfield shopping mall, Canoga Park, California;

12 WHEREAS, Defendant Keegan Lee is an officer of Defendants KYL BBQ, Inc. and MAK BBQ,
13 Inc.;

14 WHEREAS, Defendant Hee Young Lee is the sole owner of Defendants KYL BBQ, Inc. and MAK
15 BBQ, Inc;

16 WHEREAS Plaintiff Edgar Gamboa Rocha (hereinafter “Plaintiff”) worked as a food preparer for
17 Defendants KYL BBQ, Inc. and MAK BBQ, Inc. between approximately August 2016 and July 2017,
18 January 2018 and April 2018, and again from May 2018 through August 2019;

19 WHEREAS, on or about September 5, 2019, Plaintiff filed a letter (“PAGA Notice Letter”) with
20 California’s Labor and Workforce Development Agency (“LWDA”) relating to his claims and Labor Code
21 violations alleged in the Action against Defendants. (See Baumler Declaration, ¶2);

22 WHEREAS, on September 4, 2019, Plaintiff filed a complaint against Defendants KYL BBQ, Inc.
23 dba LA VACA BRAZILIAN GRILL; MAK BBQ, Inc. dba LA VACA BRAZILIAN GRILL; Keegan
24 Lee; and Hee Young Lee (hereinafter, collectively “Defendants”) in Los Angeles County Superior Court,
25 Case No. 19STCV31362 (hereinafter, “the Action”);

26 WHEREAS, in the complaint filed in the Action, Plaintiff individually sought overtime wage
27 compensation, compensation for meal and rest periods, penalties for inaccurate wage statements, penalties
28

1 for continuing wages, penalties for failure to provide employment records, unfair competition,
2 prejudgment interest, costs and attorney's fees;

3 WHEREAS, on December 9, 2019, Plaintiff filed a first amended complaint in Los Angeles
4 County Superior Court, Case No. 19STCV31362 whereby he individually sought overtime wage
5 compensation, compensation for meal and rest periods, penalties for inaccurate wage statements, penalties
6 for continuing wages, penalties for failure to provide employment records, unfair competition,
7 prejudgment interest, costs and attorney's fees (Causes Action 1-5 and 7);

8 WHEREAS, in the first amended complaint filed in the Action, Plaintiff asserted as an "aggrieved
9 employee" a cause of action based upon the Private Attorneys General Act of 2004 ("PAGA") (Cause of
10 Action No. 6) alleging violations of the Labor Code by Defendants; and

11 WHEREAS, Defendants deny all liability and/or wrongdoing asserted against them in the Action,
12 PAGA Notice Letter, or otherwise, and deny that they have committed any misconduct, statutory or
13 regulatory violation, wrongdoing, or any other actionable conduct whatsoever;

14 WHEREAS, on May 28, 2020, Plaintiff and Defendants (hereinafter, the "Parties") participated in
15 a full-day private mediation through third party professional neutral Christopher Barnes, Esq. and reached
16 agreement on terms of settlement of the Action, contingent upon the Court's approval of the settlement of
17 the PAGA claim (Cause of Action No. 6). (See Baumler Declaration, ¶3);

18 WHEREAS, prior to the mediation, Defendants produced timecards and payroll information
19 relevant to Plaintiff's individual claims and, during the course of the mediation, produced a sampling of
20 records for nine putative similarly aggrieved employees to facilitate analysis of potential liability under
21 PAGA. (See Lee Declaration, ¶2);

22 WHEREAS, there were 27 current and former employees who worked at the La Vaca Brazilian
23 Grill from the time period within one year prior to the filing of the Action (September 5, 2018) to date and
24 17 of those employees never or rarely worked overtime hours. (See Lee Declaration, ¶3);

25 WHEREAS, during the course of the mediation, Defendants produced financial records including
26 tax returns and profit and loss statements to facilitate analysis of Defendants' financial situation. (See Lee
27 Declaration, ¶4);

1 WHEREAS, the La Vaca Brazilian Grill locations have been closed from March 16, 2020 to June
2 12, 2020 and again from July 14, 2020 through the present due to the COVID-19 pandemic; Defendants
3 have sustained severe financial losses as a result; and Defendants are experiencing severe financial
4 hardship. (See Lee Declaration, ¶5-7);

5 WHEREAS, to conserve attorney's fees and costs, the Parties now wish to resolve Plaintiff's
6 claims;

7 WHEREAS, the Parties recognize that the issues presented in the Action are likely only to be
8 resolved with extensive and costly pretrial and trial proceedings, and that further litigation will cause
9 inconvenience, distraction, disruption, delay, and expense disproportionate to the potential benefits of
10 litigation. The Parties have taken into account the risk and uncertainty of the outcome inherent in any
11 litigation and the impact of the current COVID-19 pandemic on Defendants' business;

12 WHEREAS, the Parties are of the opinion that the PAGA Settlement Sum is fair, reasonable, and
13 adequate and is in the best interests of Plaintiff, the putative Similarly Aggrieved Employees, and
14 Defendants in light of all known facts and circumstances and the risks inherent in litigation;

15 WHEREAS concurrently with this Joint Stipulation the Parties have entered into a Stipulation for
16 Settlement and Dismissal of PAGA Claim to settle and resolve the PAGA claim in the Action, subject to
17 Court approval, and a Confidential Conditional Settlement Agreement and Release of the Plaintiff's
18 individual claims;

19 WHEREAS, Court approval of resolution of the sixth cause of action is required pursuant to
20 California Labor Code Section 2699(1)(2) which provides: "The superior court shall review and approve
21 any settlement of any civil action filed pursuant to this part. The proposed settlement shall be submitted
22 to the agency at the same time that it is submitted to the court."

23 **Terms of Proposed PAGA Settlement**

24 WHEREAS, the PAGA Settlement Agreement (Exhibit A) provides as follows:

- 25 • Defendants will pay a PAGA Settlement Sum of \$10,000.00 (Ten Thousand Dollars and
26 Zero Cents) which will be paid as follows pursuant to the provisions of California Labor
27 Code Section 2699(i):

28 **\$7,500.00** (i.e. 75% of the PAGA Settlement Sum) will be paid to the LWDA.

\$2,500.00 (i.e. 25% of the PAGA Settlement Sum) will be paid to the **27 individuals** who form the cohort of allegedly aggrieved individuals (“the Similarly Aggrieved”) as follows:

- **75%** of the penalty (\$1,875.00) shall be distributed to the Similarly Aggrieved Overtime Eligible Employees pro rata based upon the number of pay periods worked during the PAGA Claim Period. The term “Similarly Aggrieved Overtime Eligible Employees” means those current and former hourly employees who regularly worked overtime hours at the La Vaca Brazilian Grill located in Century City and/or Canoga Park from the time period within one year prior to filing the Action—i.e., September 5, 2018—through and including the date the Court approves the settlement (the “PAGA Claim Period”). Defendants represent that the total number of putative Similarly Aggrieved Overtime Eligible Employees during the PAGA Claim Period, including Plaintiff, is Ten (10). (See Lee Declaration, ¶3); and
- **25%** of the penalty (\$625.00) shall be distributed equally to the Similarly Aggrieved Non-Overtime Eligible Employees. The term “Similarly Aggrieved Non-Overtime Eligible Employees” means those current and former hourly employees who never or very rarely worked overtime hours at the La Vaca Brazilian Grill located in Century City and/or Canoga Park from the time period within one year prior to filing the Action—i.e., September 5, 2018—through and including the date the Court approves the settlement (the “PAGA Claim Period”). Defendants represent that the total number of putative Similarly Aggrieved Non-Overtime Eligible Employees during the PAGA Claim Period, including Plaintiff, is Seventeen (17). (See Lee Declaration, ¶3);
- The PAGA payment shall be non-reversionary. Any PAGA checks returned to the claims administrator as undeliverable or remaining un-cashed for more than one hundred twenty (120) calendar days after issuance will be distributed to the California State Controller’s Office’s Unclaimed Property Division.
- The PAGA payment will be distributed by third party administrator Phoenix Settlement

Administrators;

- A notice shall accompany the PAGA payments to the putative Similarly Aggrieved Employees. (See Baumler Decl. ¶ 7, Exhibit B.)
- Plaintiff shall pay the Administration cost of Phoenix Settlement Administrators;
- No costs or attorney fees will be deducted from the PAGA Settlement Sum. (See Baumler Decl. ¶ and Exhibit A.)

WHEREAS, a copy of this Joint Stipulation shall be served upon the LWDA prior to filing. (See Proof of Service.)

Factors Leading to Negotiated Settlement

WHEREAS, the proposed PAGA settlement of \$10,000.00 represents a negotiated compromise by the parties taking into account the respective strengths of each of the claims in the PAGA cause of action; the current economic crisis caused by COVID-19 and impact upon Defendants' buffet style business;

WHEREAS, in consideration of settlement the Parties were cognizant of the potential for reduction of penalties on the basis the Court could find the full penalty award unjust, arbitrary and oppressive or confiscatory pursuant to Labor Code §2699(e)(2);

WHEREAS, in analyzing the potential exposure for penalties under PAGA, Plaintiff considered the fact that 17 out of the 27 Similarly Aggrieved rarely or never worked overtime hours.

WHEREAS, taking into account the relative strengths and weaknesses of the different causes of action within the PAGA claim, in addition to the risks inherent within all litigation, the parties reached agreement (subject to the Court's approval) to resolve the PAGA claim for the sum of \$10,000.00.

The PAGA Settlement is Fair, Reasonable and Adequate

WHEREAS, the \$10,000.00 PAGA Settlement Sum embodies all of the key features of a settlement that is fair, reasonable and adequate and, as such, meets all the criteria necessary for approval. (Baumler Decl. ¶ 9, Fishman Decl. ¶ 2.)

WHEREAS, in conducting a review of a settlement, it is generally recognized that an "agreement . . . reached through arms-length negotiation between experienced parties whose negotiations were overseen by an experienced mediator . . . is entitled to a presumption of fairness." *See Anderson v. Nextel*

1 *Retail Stores, LLC*, 2010 U.S. Dist. LEXIS 43777, *44 (C.D. Cal. 2010). A presumption of fairness exists
2 here because the proposed PAGA settlement is the product of extensive arms-length negotiations brokered
3 by an independent mediator knowledgeable in wage and hour litigation and was negotiated by counsel
4 with significant experience in similar wage and hour litigation. (Baumler Decl., ¶ 9; Fishman Decl. ¶ 3.)

5 WHEREAS, the PAGA Settlement does not limit the rights of the Similarly Aggrieved (except
6 Plaintiffs) to pursue claims and remedies based on the alleged underlying violations. The California
7 Supreme Court has concluded that in the context of PAGA, “the nonparty employees, because they were
8 not given notice of the action or afforded any opportunity to be heard, would **not** be bound by the judgment
9 as to remedies other than civil penalties.” *Arias v. Superior Court*, 46 Cal.4th 923, 987 (2009). The
10 PAGA Settlement Agreement does not limit the rights of the Similarly Aggrieved (except Plaintiff) to
11 pursue individual wage and hour claims against Defendant. (See Exhibit A.)

12 WHEREAS, the courts have broad discretion in approving PAGA penalties. According to Labor
13 Code section 2699(e)(2), “[i]n any action by an aggrieved employee seeking recovery of a civil penalty .
14 . . a court may award a lesser amount than the maximum civil penalty amount specified by this part if,
15 based on the facts and circumstances of the particular case, to do otherwise would result in an award that
16 is unjust, arbitrary and oppressive, or confiscatory.”

17 WHEREAS, in *Nordstrom v. Comm’n Cases*, 186 Cal.App.4th 576, 589 (2010), the Court of
18 Appeals held the trial court did not abuse its discretion approving a wage and hour settlement that involved
19 PAGA penalties even though *no* settlement money was allocated to PAGA and, therefore, no portion of
20 the settlement was paid to the LWDA. *See also Navarro v. Ordaz Cultured Marble & Onyx, Inc.*, 2015
21 U.S. Dist. LEXIS 21374, *2-3 (N.D. Cal. 2015) [court approved \$20,000 PAGA settlement]; *see Franco*
22 *v. Ruiz Food Prods., Inc.*, 2012 U.S. Dist. LEXIS 169057, *14 (E.D. Cal. 2012) [approving PAGA
23 penalties in amount of \$10,000 for 2,055 employees asserting wage and hour violations]; *see Garcia v.*
24 *Gordon Trucking*, 2012 U.S. Dist. LEXIS 160052, *3 (E.D. Cal. 2012) [approving \$10,000 in PAGA
25 penalties for 1,868 employees in wage and hour case]; *see Chu v. Wells Fargo Investments, LLC*, 2011
26 U.S. Dist. LEXIS 15821, *1 (N.D. Cal. 2011) [approving PAGA penalties of \$7,500 for 2,752 employees
27 in wage and hour action].
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1 THEREFORE, the Parties believe that the PAGA Settlement is fair and reasonable and should be
2 approved.

3 IT IS SO STIPULATED.

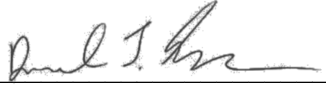
4 August
5 Date: ~~July~~ 17____, 2020

The Law Office of Nina Baumler

6
7 By: /s/ Nina Baumler
8 Nina Baumler,
Attorney for Plaintiff Edgar Gamboa Rocha

9 August 17
10 Date: ~~July~~ _____, 2020

BALLARD ROSENBERG GOLPER &
SAVITT, LLP

11
12 By 
13 David Fishman,
14 Attorney for Defendants KYL BBQ., Inc.,
15 MAK BBQ, Inc., Keegan Lee and Hee
16 Young Lee
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Declaration of Nina Baumler

I, Nina Baumler, declare under penalty of perjury:

1. I am an attorney at law licensed to practice in all of the Courts of the State of California and counsel for Plaintiff Edgar Gamboa Rocha. I have personal knowledge of the matters stated in this declaration. If called and sworn as a witness, I could and would competently testify to everything in this declaration.

2. On or about September 15, 2019, written notice of purported PAGA violations by certified mail was given to all named Defendants and the California Labor and Workforce Development Agency ("LWDA"), complying with the administrative requirements set forth in Labor Code § 2699.3.

3. On May 28, 2020, the parties participated in a full-day private mediation through third-party professional neutral Christopher Barnes, Esq., a highly respected mediator with significant expertise in complex wage and hour litigation and reached agreement on terms of settlement of the Action, contingent upon the Court's approval of the settlement of the PAGA claim (Cause of Action No. 6).

5. Prior to the mediation, Defendants produced timecards and payroll information relevant to Plaintiff's individual claims and, during the course of the mediation, produced a sampling of records for nine putative similarly aggrieved employees to facilitate analysis of potential liability under PAGA;

6. Subsequent to the mediation, the parties entered into two long-form settlement agreements i.e. the Confidential Individual Settlement Agreement and the PAGA Stipulation. A copy of the PAGA Stipulation is attached as Exhibit A.

7. A notice will be sent to the Similarly Aggrieved to accompany the PAGA Settlement Sum. A true and correct copy of the notice to be sent to the Similarly Aggrieved is attached hereto as Exhibit B.

8. I believe the \$10,000 PAGA Settlement Sum embodies all of the key features of a settlement that is fair, reasonable and adequate and, as such, meets all the criteria necessary for approval.

9. I have extensive experience litigating wage and hour matters in state and federal court. I have practiced as an attorney in California since 2008. I opened my solo practice in 2011, exclusively representing plaintiffs in employment cases. Approximately 80% of my practice is devoted to wage and

1 hour cases. Prior to 2008, I practiced as an employment attorney for three years in London, England at a
2 national law practice. In 2018, I was selected to Southern California Super Lawyers – Rising Star. I was
3 selected to the 2020 Southern California Super Lawyers in the field of Employment Litigation. I am the
4 Chair of the California Employment Lawyers Association Worker Outreach Committee.

5 I declare under penalty of perjury under the laws of the State of California that the foregoing is
6 true and correct and that this declaration was executed in El Segundo, California, on August 17, 2020.

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8 /s/ Nina Baumler

9 NINA BAUMLER
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Declaration of David Fishman

I, David Fishman, declare under penalty of perjury:

1. I am an attorney at law licensed to practice in all of the Courts of the State of California and counsel for Defendants KYL BBQ., Inc., MAK BBQ, Inc., Keegan Lee and Hee Young Lee. I have personal knowledge of the matters stated in this declaration. If called and sworn as a witness, I could and would competently testify to everything in this declaration.

2. In my opinion, the \$10,000.00 PAGA Settlement Sum embodies all of the key features of a settlement that is fair, reasonable and adequate and, as such, meets all the criteria necessary for approval.

3. I am a Partner at Ballard Rosenberg Golper & Savitt, LLP. I am a highly experienced employment attorney as I have exclusively practiced employment law in California since 2001. In 2009 and 2010, I was selected to Southern California Super Lawyers – Rising Star. I have extensive experience litigating wage and hour matters in state and federal court and since 2001 approximately 70% of my practice has been devoted to wage and hour cases. I have a published decision by the California Court of Appeal in *Ferra v. Loews Hollywood Hotel*, 40 Cal. App. 5th 1239 (2019), involving rounding and the meal / rest period premium wage rate of pay..

I declare under penalty of perjury under the laws of the State of California that the foregoing
August 17
is true and correct and that this declaration was executed in Encino, California, on July __, 2020.



DAVID FISHMAN

Declaration of Keegan Lee

I, Keegan Lee, declare under penalty of perjury:

1. I am a defendant in this action and I am an officer of Defendants KYL BBQ, Inc. and MAK BBQ, Inc. I have personal knowledge of the matters stated in this declaration. If called and sworn as a witness, I could and would competently testify to everything in this declaration.

2. Prior to conducting a mediation on May 28, 2020, Defendants produced timecards and payroll information relevant to Plaintiff's individual claims and, during the course of the mediation, produced a sampling of records for nine putative similarly aggrieved employees to facilitate analysis of potential liability under PAGA.

3. There were 27 current and former employees who worked at the La Vaca Brazilian Grill from the time period within one year prior to the filing of the Action (September 5, 2018) to date; and 17 of those employees never or rarely worked overtime hours.

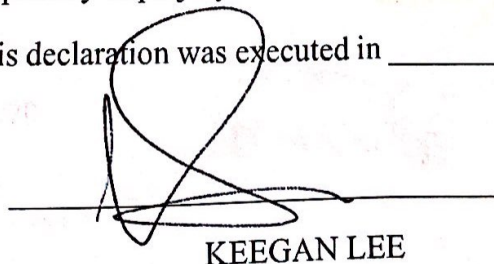
4. During the course of the mediation, Defendants produced financial records including tax returns and profit and loss statements to facilitate analysis of Defendants' financial situation.

5. La Vaca Brazilian Grill locations have been closed from March 16, 2020 to June 12, 2020 and again from July 14, 2020 through the present due to the COVID-19 pandemic.

6. Defendants KYL BBQ, Inc. and MAK BBQ, Inc. have suffered and continue to suffer severe financial hardship as a result of the COVID-19 crisis.

7. I have personally suffered, and continue to suffer, severe financial hardship as a result of the impact of COVID-19 on the La Vaca Brazilian Grill business.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed in _____, California, on July 21, 2020.



KEEGAN LEE

STIPULATION FOR SETTLEMENT OF PAGA CLAIM

I. RECITALS

WHEREAS, Defendant KYL BBQ, Inc. doing business as La Vaca Brazilian Grill operates a Brazilian fast food buffet concession located in the Westfield shopping mall, Century City, California;

WHEREAS, Defendant MAK BBQ, Inc. doing business as La Vaca Brazilian Grill operates Brazilian fast food buffet concession located in the Westfield shopping mall, Canoga Park, California;

WHEREAS, Defendant Keegan Lee is an officer of Defendants KYL BBQ, Inc. and MAK BBQ, Inc.;

WHEREAS, Defendant Hee Young Lee is the sole owner of Defendants KYL BBQ, Inc. and MAK BBQ, Inc.;

WHEREAS Plaintiff Edgar Gamboa Rocha (hereinafter “Plaintiff”) worked as a food preparer for Defendants KYL BBQ, Inc. and MAK BBQ, Inc. between approximately August 2016 and July 2017, January 2018 and April 2018, and again from May 2018 through August 2019;

WHEREAS, on September 4, 2019, Plaintiff filed a complaint against Defendants KYL BBQ, Inc. dba LA VACA BRAZILIAN GRILL; MAK BBQ, Inc. dba LA VACA BRAZILIAN GRILL; Keegan Lee; and Hee Young Lee (hereinafter, collectively “Defendants”) in Los Angeles County Superior Court, Case No. 19STCV31362 (hereinafter, “the Action”);

WHEREAS, in the complaint filed in the Action, Plaintiff individually sought overtime wage compensation, compensation for meal and rest periods, penalties for inaccurate wage statements, penalties for continuing wages, penalties for failure to provide employment records, unfair competition, prejudgment interest, costs and attorney’s fees;

WHEREAS, on or about September 5, 2019, Plaintiff filed a letter (“PAGA Notice Letter”) with California’s Labor and Workforce Development Agency (“LWDA”) relating to his claims and Labor Code violations alleged in the Action against Defendants;

WHEREAS, on December 9, 2019, Plaintiff filed a first amended complaint in Los Angeles County Superior Court, Case No. 19STCV31362 whereby he individually sought overtime wage compensation, compensation for meal and rest periods, penalties for inaccurate wage statements, penalties for continuing wages, penalties for failure to provide employment records, unfair competition, prejudgment interest, costs and attorney’s fees (Causes Action 1-5 and 7);

WHEREAS, in the first amended complaint filed in the Action, Plaintiff asserted as an “aggrieved employee” a cause of action based upon the Private Attorneys General Act of 2004 (“PAGA”) (Cause of Action No. 6) alleging violations of the Labor Code by Defendants; and

WHEREAS, Defendants deny all liability and/or wrongdoing asserted against them in the Action, PAGA Notice Letter, or otherwise, and deny that they have committed any misconduct, statutory or regulatory violation, wrongdoing, or any other actionable conduct whatsoever;

WHEREAS, on May 28, 2020, Plaintiff and Defendants (hereinafter, the “Parties”) participated in a full-day private mediation through third party professional neutral Christopher Barnes, Esq. and reached agreement on terms of settlement of the Action, contingent upon the Court’s approval of the settlement of the PAGA claim (Cause of Action No. 6);

WHEREAS, prior to the mediation, Defendants produced timecards and payroll information relevant to Plaintiff’s individual claims and, during the course of the mediation, produced a sampling of records for nine putative similarly aggrieved employees to facilitate analysis of potential liability under PAGA;

WHEREAS, during the course of the mediation, Defendants produced financial records including tax returns and profit and loss statements to facilitate analysis of Defendants’ financial situation;

WHEREAS, the La Vaca Brazilian Grill locations have been closed from March 16, 2020 to June 12, 2020 and again from July 14, 2020 through the present due to the COVID-19 pandemic and Defendants have sustained severe financial losses as a result;

WHEREAS, to conserve attorney’s fees and costs, the Parties now wish to resolve Plaintiff’s claims;

WHEREAS, the Parties recognize that the issues presented in the Action are likely only to be resolved with extensive and costly pretrial and trial proceedings, and that further litigation will cause inconvenience, distraction, disruption, delay, and expense disproportionate to the potential benefits of litigation. The Parties have taken into account the risk and uncertainty of the outcome inherent in any litigation and the impact of the current COVID-19 pandemic on Defendants’ business;

WHEREAS, the Parties are of the opinion that the PAGA Settlement Sum is fair, reasonable, and adequate and is in the best interests of the Plaintiff, the putative Similarly Aggrieved Employees, and Defendants in light of all known facts and circumstances and the risks inherent in litigation;

WHEREAS the Parties now hereby enter into this Stipulation for Settlement and Dismissal of PAGA Claim to settle and resolve the PAGA claim in the Action, subject to Court approval;

WHEREAS, the Parties agree that settlement of the PAGA cause of action in the Action is contingent upon the Court's approval of the terms of the PAGA settlement;

WHEREAS, the Parties have also entered into a Confidential Conditional Settlement Agreement and Release of the Plaintiff's individual claims; and

NOW THEREFORE, in view of the foregoing, and based on the mutual promises set forth below, the parties hereto agree as follows:

II. AGREEMENT

1. **Definitions.** As used herein, the following definitions shall apply:

- A. As used herein, the term **"the Action"** means the case of Edgar Gamboa Rocha v. KYL BBQ, Inc. et al, Case No. 19STCV31362.
- B. As used herein, the word **"Plaintiff"** means Edgar Gamboa Rocha.
- C. As used herein, the word **"Defendants"** means KYL BBQ, Inc. dba LA VACA BRAZILIAN GRILL; MAK BBQ, Inc. dba LA VACA BRAZILIAN GRILL; Keegan Lee; and Hee Young Lee.
- D. As used herein, the term **"the Parties"** means Edgar Gamboa Rocha; KYL BBQ, Inc. dba LA VACA BRAZILIAN GRILL; MAK BBQ, Inc. dba LA VACA BRAZILIAN GRILL; Keegan Lee; and Hee Young Lee.
- E. As used herein, the word **"Claims"** means any and all claims, demands, obligations, controversies, debts, attorneys fees and costs, expenses, damages, judgments, penalties, fines and liabilities of any kind or nature in law, equity or otherwise.
- F. The term **"PAGA"** means the California Labor Code Private Attorneys General Act of 2004, as amended (Labor Code §§ 2698 *et seq.*);
- G. The term **"PAGA Notice Letter"** means the letter dated September 5, 2019 filed by Plaintiff with the LWDA with respect to claims and Labor Code violations alleged in the Action;
- H. The term **"Gross Settlement Sum"** means the total amount Defendants shall pay in connection with the settlement of the Action. Subject to Court approval of this Agreement, the Gross Settlement Sum Defendants shall be required to pay is One Hundred Thousand Dollars (\$100,000.00).
- I. As used herein, the term **"Stipulation for PAGA Settlement"** means this Stipulation for Settlement of PAGA Claim.

- J. The term “**Similarly Aggrieved Employees**” means those current and former hourly employees who performed work at the La Vaca Brazilian Grill located in Century City and/or Canoga Park from the time period within one year prior to filing the Action—i.e., September 5, 2018—through and including the date the Court approves the settlement (the “PAGA Claim Period”). Defendants represent that the total number of putative Similarly Aggrieved Employees during the PAGA Claim Period, including Plaintiff, is Twenty Seven (27), of whom only Ten (10) regularly worked overtime hours.
- K. The term “**Similarly Aggrieved Overtime Eligible Employees**” means those current and former hourly employees who regularly worked overtime hours at the La Vaca Brazilian Grill located in Century City and/or Canoga Park from the time period within one year prior to filing the Action—i.e., September 5, 2018—through and including the date the Court approves the settlement (the “PAGA Claim Period”). Defendants represent that the total number of putative Similarly Aggrieved Overtime Eligible Employees during the PAGA Claim Period, including Plaintiff, is Ten (10).
- L. The term “**Similarly Aggrieved Non-Overtime Eligible Employees**” means those current and former hourly employees never or very rarely worked overtime hours at the La Vaca Brazilian Grill located in Century City and/or Canoga Park from the time period within one year prior to filing the Action—i.e., September 5, 2018—through and including the date the Court approves the settlement (the “PAGA Claim Period”). Defendants represent that the total number of putative Similarly Aggrieved Non-Overtime Eligible Employees during the PAGA Claim Period, including Plaintiff, is Seventeen (17).
- M. The term “**Confidential Conditional Settlement Agreement and Release**” means the Confidential Conditional Settlement Agreement and Release entered into concurrently herewith.
2. **Agreement Contingent Upon Court Approval of Settlement of the Action.** This Agreement, and the obligations of the Parties therein, are wholly contingent upon final approval by the Court of the settlement and compromise of the PAGA claim in the Action on the terms set forth in paragraphs 4 and 5, below. The Parties agree to cooperate and use their best efforts to submit a request for Court approval of this Agreement and timely provide requisite notice to the LWDA. Each Party unilaterally reserves the right to withdraw from this Agreement if the Court, the LWDA or any administrative agency acting within its authority, in any way modifies or fails to approve of the PAGA Settlement Sum or any material term(s) of this Stipulation for Settlement of PAGA Claim, unless such modification or rejection is solely due to inadequacy of the PAGA Settlement Sum. An order or ruling by the Court disapproving or denying this Agreement on the basis of requiring submission of supplemental briefs to clarify a point of law, provide additional facts, or cure evidentiary defects shall not be grounds for any Party to unilaterally withdraw from this Agreement, provided the material terms of this Agreement remain unaffected.

3. **Individual Claims.** The Parties have entered into a separate Confidential Conditional Settlement Agreement and Release of the Plaintiffs' individual claims.
4. **Private Attorneys General Act of 2004 ("PAGA").** In accordance with the provisions of the Stipulation for Settlement, Defendants shall, subject to Court approval of the Stipulation for PAGA Settlement, pay the PAGA Settlement Sum of Ten Thousand Dollars (\$10,000.00) to settle and resolve the Sixth Cause of Action alleged in The Action (based on PAGA). Payment of the PAGA Settlement Sum shall be made to Phoenix Settlement Administrators ("PSA") who shall administer the PAGA Settlement Sum as follows: the LWDA shall retain Seven Thousand Five Hundred Dollars (\$7,500.00) (*i.e.*, 75% of \$10,000.00), and Two Thousand Five Hundred Dollars (\$2,500.00) (*i.e.*, 25% of \$10,000.00) shall be distributed between and among the 27 putative Similarly Aggrieved Employees, as defined above, as follows: 75% of the penalty (\$1,875.00) shall be distributed to the Similarly Aggrieved Overtime Eligible Employees pro rata based upon the number of pay periods worked during the PAGA Claim Period; and 25% of the penalty (\$625.00) shall be distributed equally to the Similarly Aggrieved Non-Overtime Eligible Employees.

PAGA Payments to putative Similarly Aggrieved Employees shall be characterized as penalties and paid pursuant to an IRS Form 1099.

Plaintiff shall pay the cost of PSA's administration of the PAGA Settlement Sum.

Defendants shall provide PSA with the names and contact information of all putative Similarly Aggrieved Employees, as defined hereinabove, and specify the total weighted PAGA penalty amount due to each aggrieved employee, pursuant to the formula outlined hereinabove, for administration and disbursement of the PAGA penalties. The PAGA payment shall be non-reversionary. Any PAGA checks returned to the claims administrator as undeliverable or remaining un-cashed for more than one hundred twenty (120) calendar days after issuance will be distributed to the California State Controller's Office's Unclaimed Property Division. A notice shall accompany the PAGA payments to the putative Similarly Aggrieved Employees, in a form to be approved by the Court.

The Parties shall be jointly responsible for drafting the stipulation, motion, and/or joinder required to secure Court approval of the settlement of the PAGA cause of action. The Parties shall cooperate in the prompt preparation and filing of such stipulation, motion, and/or joinder. The Parties shall cooperate in good faith to resolve any issues identified by the Court preventing the Court's approval of this Stipulation for Settlement of PAGA Claim and Agreement. If requested by the Court, the Parties shall provide the Court with a copy of the Confidential Settlement Agreement and Release of the Plaintiffs' individual claims.

5. **Dismissal.** Upon Court approval and payment of all sums required by this Stipulation for Settlement of PAGA Claim, Plaintiff shall file a request for dismissal of the Action in its

entirety as to all Defendants with prejudice. Pursuant to California Civil Procedure Code 664.6, the Court shall retain jurisdiction to enforce the terms of this Agreement.

6. **Taxes.** The Parties understand and agree that no Party makes any representations, warranties or agreements or otherwise concerning any tax treatment of the settlement amount or any portion of the settlement amount. The Parties, and all of them, understand and agree that they will be responsible for the payment of any and all taxes, assessments, or other financial obligations, whether federal, state or local, which they owe in connection with the settlement sum.
7. **Reservation of Jurisdiction.** The terms of this Stipulation for Settlement of PAGA Claim may be enforced pursuant to Code of Civil Procedure section 664.6. It is admissible and subject to disclosure, despite the otherwise enforceable requirements of confidentiality, solely for the purpose of establishing in court that an agreement has been reached by the parties for purpose of enforcing and interpreting that agreement. (Evidence Code section 1123(a).) The prevailing party in any proceeding to enforce this settlement agreement shall be entitled to recover reasonable attorneys' fees and costs.
8. **No Admissions.** Nothing herein shall be deemed or construed to be an admission of any liability or fault in respect of any of the allegations or claims which could have been made by or against any of the Parties to this dispute, for any purpose.
9. **Ambiguities or Uncertainties.** This Stipulation for Settlement of PAGA Claim shall be equally and fairly interpreted and construed without reference to the identity of the Party or Parties who prepared this document, on the express understanding and agreement that the Parties participated equally in the negotiation and preparation of this Stipulation for Settlement of PAGA Claim or have had equal opportunity to do so. Accordingly, this Stipulation for Settlement of PAGA Claim shall be interpreted in accordance with California contract law.
10. **Survival of Executory Provisions.** Except as otherwise stated in this Stipulation for Settlement of PAGA Claim, any and all executory provisions under this Stipulation for Settlement of PAGA Claim shall survive the consummation of this Stipulation for Settlement of PAGA Claim and shall continue in full force and effect until fully performed and satisfied.
11. **Counterparts.** This Stipulation for Settlement of PAGA Claim may be executed in duplicate originals or in counterparts, each of which shall be deemed an original, but all of which together shall constitute one stipulation and agreement. A signature transmitted by facsimile shall be deemed valid and binding for all purposes.
12. **Invalidity of Provision.** Wherever possible, each provision in this Stipulation for Settlement of PAGA Claim shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Stipulation for Settlement of PAGA Claim shall be prohibited by or invalid by any such law, such provision shall be ineffective

only to the extent of such prohibition or invalidity without invalidating the remainder of such provision, or the remaining provisions of this agreement.

13. **Successors.** This Stipulation for Settlement of PAGA Claim shall be binding upon the administrators, executors, receivers, trustees, successors, assigns and heirs of the respective Parties.
14. **Further Papers.** Each Party hereto agrees to execute such further papers or documents as shall be necessary or proper in order to fulfill the terms, conditions and intent of this Stipulation for Settlement of PAGA Claim.
15. **Time of Essence.** Time is of the essence in this Stipulation for Settlement of PAGA Claim.

IN WITNESS WHEREOF, the Parties have executed this Stipulation for Settlement of PAGA Claim.

Dated: 07/24/20, 2020

Edgar
Edgar gamboa rocha (Jul 24, 2020 14:34 PDT)
EDGAR GAMBOA ROCHA

Dated: _____, 2020

FOR KYL BBQ, INC.

Dated: _____, 2020

KEEGAN LEE

Dated: _____, 2020

FOR MAK BBQ, INC.

Dated: _____, 2020

HEE YOUNG LEE

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15. **Time of Essence.** Time is of the essence in this Stipulation for Settlement of PAGA Claim.

IN WITNESS WHEREOF, the Parties have executed this Stipulation for Settlement of PAGA Claim.

Dated: _____, 2020

EDGAR GAMBOA ROCHA

Dated: 8/17, 2020

FOR KYL BBQ, INC.

Dated: 8/17, 2020

KEEGAN LEE

Dated: 8/17, 2020

FOR MAK BBQ, INC.

Dated: 8/14, 2020

HEE YOUNG LEE

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES – CENTRAL DISTRICT, UNLIMITED JURISDICTION

EDGAR GAMBOA ROCHA, an individual, and
Similarly Aggrieved Employees,

Plaintiff,

v.

KYL BBQ, INC., a California Corporation doing
business as LA VACA BRAZILIAN GRILL;
MAK BBQ, INC., a California Corporation;
KEEGAN LEE, an individual; HEE YOUNG
LEE, an individual; and DOES 1 through 50,
inclusive,

Defendants

Case No.: 19STCV31362

**NOTICE OF PRIVATE ATTORNEYS
GENERAL ACT (CALIFORNIA LABOR
CODE § 2698 ET SEQ.) SETTLEMENT
AWARD**

This is to notify you that you have been designated to receive a settlement award pursuant to the California Private Attorneys General Act (“PAGA”), California Labor Code § 2698 *et seq.*, in connection with your employment with KYL BBQ, Inc. and/or MAK BBQ, Inc. This settlement award arises from a lawsuit filed by Plaintiff Edgar Gamboa Rocha (“Plaintiff”) against KYL BBQ, Inc., MAK BBQ, Inc., Keegan Lee and Hee Young Lee (“Defendants”) in the Los Angeles County Superior Court, entitled Gamboa Rocha vs. KYL BBQ, Inc., Case No. 19STCV31362 (the “Lawsuit”).

The alleged violations that formed the basis for the claims under PAGA are as follows: failure to pay minimum and overtime wages; failure to provide all legally required meal periods and rest breaks; failure to provide accurate wage statements; and failure to pay all wages due upon termination of employment. Defendants deny all liability and/or wrongdoing asserted against them in the Lawsuit, or otherwise, and deny that they have committed any misconduct, statutory or regulatory violation, wrongdoing, or any other actionable conduct whatsoever.

Defendants defended against the Lawsuit and the parties entered into a settlement agreement that was approved by the Court, providing for payment of the enclosed settlement award for civil penalties under PAGA. The settlement award represents civil penalties under PAGA for certain individuals who were employed by KYL BBQ, Inc. and/or MAK BBQ, Inc. at any time between September 5, 2018 and the date of the Court’s approval of the settlement and does not affect any non-PAGA claims you may have.

Your payment is enclosed herewith and there is no action required of you in this matter.

If you wish to find out more about the settlement, you may do the following:

If you have any questions regarding this award or this case, you may contact the third-party Settlement Administrator as follows: (800) 523-5773.

PLEASE DO NOT CALL OR WRITE THE COURT ABOUT THIS NOTICE