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16

17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

18 **COUNTY OF LOS ANGELES**

19 CESAR ESCALANTE and FRANCESCA
KORTESMAKI, individually, and on behalf of
20 all aggrieved employees of Defendants in the
State of California,

21 Plaintiffs,

22 v.
23

24 URTH PAYROLL SERVICES, INC., a
California corporation and DOES 1
THROUGH 50, Inclusive,

25 Defendants.
26

Case No.: 20STCV25106

**PAGA SETTLEMENT AND RELEASE OF
CLAIMS**

1 This PAGA Settlement Agreement and Release of Claims ("Agreement") is entered into by
2 Plaintiffs Cesar Escalante and Francesca Kortesmaki ("Plaintiffs") and Defendant Urth Payroll Services,
3 Inc. ("Defendant") (Plaintiffs and Defendant are referred to collectively as the "Parties"). The terms and
4 conditions of the Agreement stated below are agreed to, and once approved by the Court, shall constitute
5 a settlement and compromise of the Action, as defined below. If this Agreement is not approved by the
6 Court, or is otherwise nullified, the Parties shall return to their positions preceding this Agreement unless
7 the Parties agree to seek reconsideration of the ruling or agree to seek Court approval of a renegotiated
8 agreement.

9 **I. RECITALS**

10 **A.** Plaintiff Escalante was employed by Defendant as a General Manager participating in a
11 12-week training program and was employed between June 4, 2019, and August 27, 2019. Plaintiff
12 Escalante was classified as an exempt employee and was paid on a salary basis.

13 **B.** On March 9, 2020, Plaintiff Escalante notified the California Labor and Workforce
14 Development Agency ("LWDA") and Defendant of his intent to assert the rights granted to him under the
15 Private Attorneys General Act ("PAGA").

16 **C.** On June 18, 2020, Plaintiff Escalante filed a representative action against Defendant in the
17 Superior Court of the State of California, County of Los Angeles, entitled *Cesar Escalante v. Urth Payroll*
18 *Services, Inc.*, Case No. 20STCV25106 (the "Action").

19 **D.** Plaintiff Kortesmaki was employed by Defendant as a Food Runner from July 31, 2019 to
20 June 6, 2021. Plaintiff Kortesmaki was classified as a nonexempt employee and was paid on an hourly
21 basis.

22 **E.** On October 13, 2021, Plaintiff Escalante submitted an amended notice to the LWDA and
23 Defendant, seeking to add Plaintiff Kortesmaki as a PAGA representative and asserting additional claims
24 for alleged health and safety violations.

25 **F.** Following Plaintiff Escalante's successful motion for leave to amend, on March 10, 2022,
26 Plaintiffs filed a First Amended Complaint. The complaint alleges that Defendant violated the Labor Code
27 by: (1) willfully misclassifying exempt employees; (2) failing to provide legally compliant meal periods;
28 (3) failing to provide legally compliant rest periods; (4) failing to timely pay all minimum and overtime

1 wages; (5) failing to timely pay all wages owed and due at the time of separation; (6) failing to furnish
2 accurate itemized wage statements; (7) failing to provide written notice of sick leave; (8) failing to
3 maintain accurate records; (9) failing to reimburse necessary business expenses; (10) engaging in
4 retaliation against employees who exercise their legal rights; and (11) failing to provide a safe and
5 healthful workplace. Plaintiffs sought to recover civil penalties on behalf of themselves and all other
6 current or former employees who were employed at an Urth Café restaurant in California during the
7 relevant time period.

8 **G.** Over the course of more than two and a half years, the Parties engaged in extensive
9 discovery and motion practice, including a motion to strike, a motion for a protective order and to sequence
10 discovery, multiple motions to compel discovery responses, a motion for summary judgment, and
11 ultimately, a motion to compel arbitration of Plaintiffs' individual PAGA claims following the United
12 States Supreme Court's decision in *Viking River Cruises v. Moriana* (2022) 142 S. Ct. 1906.

13 **H.** On October 31, 2022, the Court granted Defendant's motion to compel Plaintiffs'
14 individual PAGA claims to binding arbitration and stayed the representative portion of the Action.

15 **I.** On December 13, 2022, the Parties participated in a full day of mediation before Hon. Carl
16 J. West (Ret.), who has extensive experience mediating wage and hour claims. Following lengthy
17 negotiations, both during and after the mediation, the Parties reached an agreement to settle the claims
18 asserted in the Action.

19 **J.** This Agreement represents a compromise and settlement of the highly disputed claims.
20 Nothing in this Agreement is intended to be, or may be construed as, an admission by Defendant that any
21 of the allegations asserted in the Action have merit or that Defendant bears any liability.

22 **II. DEFINITIONS**

23 **A.** "**Action**" means the matter of *Cesar Escalante v. Urth Payroll Services, Inc.*, Case No.
24 20STCV25106, Los Angeles County Superior Court, Case No. 20STCV25106.

25 **B.** "**Administration Costs**" means all fees and costs incurred by the Settlement Administrator
26 to administer the settlement in accordance with this Agreement and any court orders.

27 **C.** "**Agreement**" means this PAGA Settlement Agreement and Release of Claims, including
28 any attached exhibits.

1 **D. “Attorneys’ Fees”** means the attorneys’ fees awarded by the Court to Plaintiffs’ Counsel,
2 which are not to exceed forty percent (40%) of the Maximum Settlement Amount, for the services
3 rendered.

4 **E. “Defendant”** refers to Urth Payroll Services, Inc.

5 **F. “Defense Counsel”** refers to Lagasse Branch Bell + Kinkead LLP, 4365 Executive Drive,
6 Suite 950, San Diego, CA 92121, (858)345-5080.

7 **G. “Effective Date”** means the date the Court approves the settlement and enters judgment in
8 the Action.

9 **H. “Group Data”** refers to the confidential list of members of the PAGA Representative
10 Group containing the full names, last known address, telephone number, Social Security numbers, and
11 dates the member of the PAGA Representative Group was employed by Defendant. The Group Data
12 information shall remain confidential and shall not be disclosed to anyone, including Plaintiffs’ Counsel,
13 except where previously disclosed and except to carry out reasonable efforts described below, or pursuant
14 to express written authorization by Defendant. The Settlement Administrator shall use due care with
15 respect to the storage, custody, use, and/or dissemination of the confidential information.

16 **I. “Individual PAGA Payment”** means the portion of the Net Settlement Amount that each
17 member of the PAGA Representative Group is entitled to receive under the terms of this Agreement.

18 **J. “Litigation Costs”** means litigation costs awarded by the Court to Plaintiffs’ Counsel for
19 the costs incurred by Plaintiffs’ Counsel in connection with the investigation, litigation, and resolution of
20 this Action.

21 **K. “LWDA”** means the California Labor and Workforce Development Agency.

22 **L. “LWDA Notices”** refers to the written notices to the LWDA dated June 18, 2020 and
23 October 13, 2021, respectively.

24 **M. “LWDA Payment”** means the amount payable to the LWDA from the Net Settlement
25 Amount.

26 **N. “Maximum Settlement Amount”** means six hundred and twenty-five thousand dollars
27 and zero cents (\$625,000.00) that Defendant agrees to pay to resolve the Action.

28 **O. “Net Settlement Amount”** means the Maximum Settlement Amount less the awarded

Attorneys' Fees, Litigation Costs, Service Awards, and Administration Costs.

P. "Notice of Settlement" means the Notice of Settlement and Release of Claims, substantially in the form attached as Exhibit A, which explains the settlement and Individual PAGA Payment.

Q. "PAGA" means the Private Attorneys General Act of 2004, codified in California Labor Code section 2698 et seq.

R. "PAGA Period" means the period of April 27, 2019 through and including the date of approval of this Agreement.

S. "PAGA Representative Group" means all individuals who were employed by Defendant at an Urth Caffe restaurant in the State of California at any time during the PAGA Period.

T. "Pay Periods Worked" means any pay period during which a member of the PAGA Representative Group performed work for Defendant on at least one day during the PAGA Period.

U. "Plaintiffs" means Plaintiffs Cesar Escalante and Francesca Kortesmaki.

V. "Plaintiffs' Counsel" means GrahamHollis, APC, 3555 Fifth Avenue, Suite 200, San Diego, California 92103, (619) 692-0800.

W. "Qualified Settlement Fund" means the qualified settlement fund established pursuant to U.S. Treasury Regulation section 468B-1, 29 C.F.R. § 468B-1.

X. "Released Parties" refers to Urth Payroll Services, Inc. and its past, present and future agents, employees, servants, officers, directors, partners, trustees, representatives, shareholders, stockholders, attorneys, parents, subsidiaries, equity sponsors, related companies/corporations and/or partnerships, divisions, assigns, predecessors, successors, insurers, consultants, joint ventures, joint employers, affiliates, alter-egos, and affiliate organizations, and all of their respective past, present, and future employees, directors, officers, agents, attorneys, stockholders, fiduciaries, parents, subsidiaries, and assigns.

Y. "Service Award" means the amount awarded by the Court to Plaintiffs for their efforts and risks associated with the Action, and their agreement to a general release of claims.

Z. "Settlement Administrator" refers to Phoenix Class Action Administration Solutions, a third-party administrator approved by the Court, who is to administer the settlement according to the terms

1 set forth in this Agreement and any Court order.

2 **III. SETTLEMENT TERMS**

3 **A. Monetary Consideration**

4 **1. Maximum Settlement Amount**

5 The Maximum Settlement Amount shall be six hundred twenty-five thousand dollars and zero
6 cents (\$625,000.00). The Maximum Settlement Amount shall include all payments made to the LWDA,
7 members of the PAGA Representative Group, Administration Costs, Service Awards, Attorneys' Fees,
8 and Litigation Costs. No portion of the Maximum Settlement Amount shall revert to Defendant.

9 It was estimated for purposes of mediation that during the period of April 27, 2019 through and
10 including December 31, 2022, there were 1,999 members in the PAGA Representative Group who worked
11 approximately 41,135 pay periods. This number is expected to increase proportionately to reflect the
12 passage of time between mediation and the date the Court enters an order approving the settlement.

13 **a. *Funding the Maximum Settlement Amount***

14 No later than twenty (20) calendar days after the Effective Date, Defendant shall wire the
15 Maximum Settlement Amount into the Qualified Settlement Fund set up by the Settlement Administrator.

16 **2. Net Settlement Amount**

17 In accordance with California Labor Code § 2699(i), the Net Settlement Amount shall be
18 distributed as follows: seventy five percent (75%) of the Net Settlement Amount shall be paid to the
19 LWDA as the LWDA Payment and twenty-five percent (25%) of the Net Settlement Amount shall be paid
20 to the members of the PAGA Representative Group based on the number of Pay Periods Worked during
21 the PAGA Period ("Individual PAGA Payments"), subject to Court approval.

22 **3. Administration Costs**

23 Administration Costs are not to exceed ten thousand five hundred dollars (\$10,500.00) based on
24 the size of the PAGA Representative Group and the distributions authorized under the terms of this
25 Agreement. All awarded Administration Costs shall be paid from the Maximum Settlement Amount as
26 outlined in this Agreement. Should the Court approve less than the amount requested, the difference shall
27 be included in the Net Settlement Amount. The Settlement Administrator will be responsible for issuing
28 all tax forms as required by law.

1 **4. Service Awards**

2 Plaintiffs' Counsel will request, and Defendant will not oppose, the payment of a Service Award
3 to each Plaintiff in an amount not to exceed ten thousand dollars and zero cents (\$10,000.00) to be paid
4 from the Maximum Settlement Amount. Should the Court approve less than the amount requested, the
5 difference shall be included in the Net Settlement Amount. The Service Awards will be reported to the
6 taxing authorities as miscellaneous information. The Settlement Administrator will be responsible for
7 issuing all tax forms (i.e., IRS Form 1099-MISC) as required by law for the Service Awards paid to
8 Plaintiffs pursuant to this Agreement.

9 The Service Awards are intended to be reasonable compensation for the time and effort expended
10 by Plaintiffs in connection with the initiation and maintenance of this Action, the risks associated with
11 bringing this Action, and in exchange for Plaintiffs' Released Claims.

12 Plaintiffs shall be solely and legally responsible to pay any and all applicable taxes on the Service
13 Awards and shall hold Defendant, Defense Counsel, and Plaintiffs' Counsel harmless from any claim or
14 liability for taxes, penalties, or interest arising as a result of the Service Awards pursuant to this
15 Agreement. Plaintiffs acknowledge and agree that Defendant, Defense Counsel, and Plaintiffs' Counsel
16 have made no representations or warranties regarding the tax consequences of payment of the Service
17 Awards, and Plaintiffs have not relied on any such representations or warranties.

18 **5. Attorneys' Fees and Litigation Costs**

19 Plaintiffs' Counsel will apply for, and Defendant will not oppose the application, an award of
20 attorneys' fees in the amount of forty percent (40%) of the Maximum Settlement Amount, amounting to
21 \$250,000.00, and reimbursement of Plaintiffs' Counsel's reasonable litigation costs not to exceed thirty
22 thousand dollars and zero cents (\$30,000.00). Plaintiffs' Counsel's attorneys' fees and litigation costs
23 shall be paid from the Maximum Settlement Amount. Should the Court approve less than the amount
24 requested, the difference shall be included in the Net Settlement Amount. The Settlement Administrator
25 will be responsible for issuing all tax forms as required by law for the Attorneys' Fees and Litigation Costs
26 paid to Plaintiffs' Counsel pursuant to this Agreement.

27 **B. Calculation of Individual PAGA Payments**

28 Twenty-five percent (25%) of the Net Settlement Amount shall be available members of the PAGA

Representative Group on a pro rata basis according to the number of Pay Periods Worked during the PAGA Period. The Individual PAGA Payment is to be calculated as follows: the number of the PAGA Representative Group member's Pay Periods Worked during the PAGA Period divided by the total number of Pay Periods Worked by all members of the PAGA Representative Group during the PAGA Period multiplied by twenty-five percent (25%) of the Net Settlement Amount.

1. Tax Treatment of Individual PAGA Payments

All Individual PAGA Payments shall be allocated as one-hundred percent (100%) civil penalties. The Settlement Administrator shall issue the appropriate tax forms.

C. Distribution

1. Qualified Settlement Fund

No later than fifteen (15) calendar days after the Effective Date, the Settlement Administrator will provide Defense Counsel with the account information for the Qualified Settlement Fund so that Defendant may wire the Maximum Settlement Amount to the Qualified Settlement Fund.

2. Group Data

No later than fifteen (15) calendar days after the Effective Date, Defendant shall provide the Settlement Administrator with an electronic spreadsheet containing the Group Data.

3. Distribution of Payments

No later than thirty (30) calendar days after the Effective Date, the Settlement Administrator will disburse from the Qualified Settlement Fund the Court-approved Individual PAGA Payments to members of the PAGA Representative Group, the LWDA Payment to the LWDA, Administration Costs to the Settlement Administrator, Services Award to Plaintiffs, and Attorneys' Fees and Litigation Costs to Plaintiffs' Counsel.

a. *Mailing of Individual PAGA Payments*

No later than seven (7) calendar days after receiving the Group Data, the Settlement Administrator shall run the names of all members of the PAGA Representative Group through the National Change of Address database and perform an Accurint (or substantially similar) in-depth skip trace to obtain the best possible mailing address prior to mailing the Individual PAGA Payment with the Notice of Settlement.

No later than thirty (30) calendar days after the Effective Date, the Settlement Administrator will

1 mail the Individual PAGA Payment, along with the Notice of Settlement to each member of the PAGA
2 Representative Group. If any Individual PAGA Payment is returned as undeliverable with a forwarding
3 address, the Settlement Administrator shall re-mail the Individual PAGA Payment along with the Notice
4 of Settlement to the forwarding address within seven (7) calendar days of receiving the returned mailing.
5 If any Individual PAGA Payment is returned as undeliverable, but the returned mailing does not include
6 a forwarding address, the Settlement Administrator shall have seven (7) calendar days from receipt of the
7 returned mailing to perform an in-depth skip trace for a more current address and re-mail the Individual
8 PAGA Payment along with the Notice of Settlement. The obligation to trace and re-send returned
9 Individual PAGA Payments shall cease after two (2) mailings or sixty (60) calendar days after the initial
10 mailing, whichever occurs first.

11 **4. Undeliverable/Uncashed Payments**

12 All Individual PAGA Payments issued to members of the PAGA Representative Group will expire
13 one hundred and eighty (180) calendar days from the date they are issued by the Settlement Administrator.
14 Any Individual PAGA Payments that remain undeliverable or uncashed following the one hundred eighty
15 (180) calendar day period will be void, and the Settlement Administrator shall issue the unclaimed funds
16 to the California State Controller in the name of the member of the PAGA Representative Group.

17 The PAGA Released Claims will be binding upon all members of the PAGA Representative
18 Group, as of the Effective Date, including those who do not cash their Individual PAGA Payment.

19 Neither Defendant, Defense Counsel, Plaintiffs, Plaintiffs' Counsel, nor the Settlement
20 Administrator will have any liability for lost or stolen Individual PAGA Payments, forged signatures on
21 Individual PAGA Payments, or unauthorized negotiation of the Individual PAGA Payments.

22 **D. Releases**

23 **1. PAGA Released Claims**

24 Upon the Effective Date, except as to the right to enforce the terms and conditions of the
25 settlement, Plaintiffs, in their representative capacity as private attorneys general and acting on behalf of
26 themselves, the State of California, the LWDA, and the PAGA Representative Group, release the Released
27 Parties of all claims pursuant to PAGA, based on the facts, legal theories, and primary rights asserted in
28 the original Complaint, the First Amended Complaint, and the LWDA Notices, and all claims that could

1 have reasonably been asserted in the Action based on the facts alleged, whether or not specifically
2 delineated as a claim or cause of action, including PAGA claims for (1) willful misclassification of exempt
3 employees in violation of Labor Code §§ 226.8(a) and 226.8(c); (2) failure to provide legally compliant
4 meal periods or compensation in lieu thereof in violation of Labor Code §§ 204, 226.7, 512, 558, 558.1,
5 1198, and Industrial Welfare Commission (“IWC”) Wage Order No. 5-2001; (3) failure to provide legally
6 compliant rest periods or compensation in lieu thereof in violation of Labor Code § § 204, 226.7, 1198,
7 and IWC Wage Order No. 5-2001; (4) failure to timely pay minimum, regular, and overtime wages in
8 violation of Labor Code §§ 204, 210, 223, 225.5, 510, 558, 558.1 1194, 1194.1, 1197, 1197.1, 1198, and
9 IWC Wage Order No. 5-2001; (5) failure to timely pay all wages due and owing upon separation of
10 employment in violation of Labor Code §§ 201-204; (6) failure to furnish accurate itemized wage
11 statements in violation of Labor Code §§ 226, 226.3 and IWC Wage Order No. 5-2001; (7) failure to
12 provide written notice of sick leave in violation of Labor Code § 246(i); (8) failure to maintain records in
13 violation of Labor Code §§ 226(a), 1174, 1174.1 and IWC Wage Order 5-2001; (9) failure to reimburse
14 for necessary work expenses in violation of Labor Code § 2802; (10) retaliation against employees who
15 exercised their rights to complain about unlawful and/or unsafe working conditions in violation of Labor
16 Code §§ 98.6, 1102.5, and 6310; and (11) to maintain and provide a safe and healthful place of
17 employment in violation of Labor Code § 6400 et seq. (collectively, the “PAGA Released Claims”). The
18 Released PAGA Claims shall cover the PAGA Period.

19 **a. No Right to Opt-Out**

20 The Parties acknowledge that no member of the PAGA Representative Group has the right to
21 request exclusion (i.e., opt-out of) the settlement.

22 **2. Plaintiffs’ Released Claims**

23 As of the Effective Date, Plaintiffs fully and finally release the Released Parties, from any and all
24 claims, known and unknown, under federal, state and/or local law, statute, ordinance, regulation, common
25 law, or other source of law arising from or related to Plaintiffs’ employment with Defendant (“Plaintiffs’
26 Released Claims”).

27 Plaintiffs’ Released Claims include, but are not limited to, all claims arising from or reasonably
28 related to the Action and/or LWDA Notices, including any and all claims or allegations in Plaintiffs’

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original Complaint and First Amended Complaint, as well as any claims or allegations in Plaintiffs' LWDA Notices. Plaintiffs' Released Claims include all claims for unpaid wages, including, but not limited to, failure to pay minimum and overtime wages; reimbursement for all necessary business expenses; payment for all hours worked, including off-the-clock work; failure to provide notice of paid sick leave; inaccurate wage statements; failure to maintain accurate employment records; unpaid meal and rest period premiums; penalties, including, but not limited to, recordkeeping penalties, wage statement penalties, minimum-wage penalties, and waiting-time penalties; and attorneys' fees and costs. Plaintiffs' Released Claims include all claims arising under the California Labor Code (including, but not limited to, sections 200, 201, 202, 203, 204, 210, 218, 218.5, 218.6, 223, 226, 226.3, 226.7, 226.8, 227.3, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1194.1 1197, 1197.1, 1197.2, 1198, 2698 et seq., 2802, and 2810); all claims arising under: the Wage Orders of the California Industrial Welfare Commission; the California Labor Code Private Attorneys General Act of 2004 ("PAGA"); California Business and Professions Code section 17200, et seq.; California Code of Civil Procedure section 1021.5; the California common law of contract; the FLSA, 29 U.S.C. section 201 et seq.; federal common law; and the Employee Retirement Income Security Act, 29 U.S.C. section 1001 et seq. ("ERISA"). Plaintiffs' Released Claims also include any and all claims for lost wages and benefits, retaliation, discrimination, harassment, punitive damages, and attorneys' fees and costs arising under federal, state, or local laws for discrimination, harassment, retaliation, and wrongful termination, such as, by way of example only, 42 U.S.C. section 1981, Title VII of the Civil Rights Act of 1964, the Americans With Disabilities Act, the California Fair Employment and Housing Act; and the law of contract and tort. This release excludes the release of claims not permitted by law. Plaintiffs' Released Claims include all claims, whether known or unknown. Even if Plaintiffs discover facts in addition to or different from those that they now know or believe to be true with respect to the subject matter of Plaintiffs' Released Claims, those claims will remain released and forever barred. Thus, Plaintiffs expressly waive and relinquish the provisions, rights and benefits of section 1542 of the California Civil Code, which reads:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

E. Duties of Settlement Administrator

The Settlement Administrator will be responsible for administering the settlement in accordance with this Agreement and any order of the Court. Specifically, the Settlement Administrator will be responsible for: establishing the Qualified Settlement Fund; calculating all payments, including Individual PAGA Payments; preparing, printing, and mailing the Individual PAGA Payment checks and accompanying Notice of Settlement to members of the PAGA Representative Group; disbursing the LWDA Payment to the LWDA; disbursing the Service Awards to Plaintiffs; disbursing the awarded Attorneys' Fees and Litigation Costs to Plaintiffs' Counsel; disbursing the Court approved Administration Costs to the Settlement Administrator; printing and providing all relevant tax forms; conducting all legally mandated tax filings, reports, or other tax related activities; providing a declaration of due diligence for submission to the Court upon completion of the terms of the Settlement; and for all other tasks as the Parties may mutually agree or the Court orders. The Settlement Administrator shall keep the Parties timely apprised of the performance of all Settlement Administrator responsibilities. All expenses and costs incurred in connection with administering the settlement are part of the Administration Costs.

Within seven (7) calendar days of completion of the administration of the Settlement, the Settlement Administrator shall provide a written declaration under oath to certify such completion to the Court and counsel for the Parties. Plaintiffs' Counsel shall file the declaration with the Court within five (5) business days of receipt.

F. Notification to the LWDA

Following full execution of this Agreement, Plaintiffs will submit this Agreement to the LWDA and will also seek Court approval of this Agreement in accordance with Labor Code section 2699(1)(2), which requires that a court review and approve any settlement of any civil action filed pursuant to the PAGA.

G. Settlement Approval

Plaintiffs' Counsel shall provide Defense Counsel with initial drafts of the moving papers seeking settlement approval for review and comment. The Parties shall work together in good faith to incorporate changes and finalize the motion for settlement approval.

H. No Effect on Employee Benefits

1 Amounts paid to Plaintiffs and the members of the PAGA Representative Group in accordance
2 with this Agreement do not count as earnings or compensation for purposes of any benefits (e.g., 401(k)
3 plans or retirement plans) sponsored by Defendant.

4 **I. Tax Liability**

5 The Parties make no representation as to the tax treatment or legal effect of the payments outlined
6 in this Agreement. The Parties are not relying on any representations or advice from Plaintiffs' Counsel
7 or Defense Counsel. Each party is relying exclusively on their own independent judgement or independent
8 tax counsel in connection with this Agreement.

9 **J. Circular 230 Disclaimer**

10 Each party to this Agreement (for purposes of this section, the "Acknowledging Party" and each
11 Party to this Agreement other than the Acknowledging Party, an "Other Party") acknowledges and agrees
12 that: (a) Neither Plaintiffs' Counsel nor Defense Counsel intend anything contained in this Settlement to
13 constitute advice regarding taxes or taxability, nor shall anything in this Settlement or any written
14 communication or disclosure between or among the Parties or their attorneys and other advisors, be relied
15 upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as
16 amended) or otherwise; (b) The Acknowledging Party (i) has relied exclusively upon his, her or its own,
17 independent legal and tax counsel for advice (including tax advice) in connection with this Agreement,
18 (ii) has not entered into this Agreement based upon the recommendation of any Other Party or any attorney
19 or advisor to any Other Party, and (iii) is not entitled to rely upon any communication or disclosure by
20 any attorney or advisor to any Other Party to avoid any tax penalty that may be imposed on the
21 Acknowledging Party; and (c) No attorney or advisor to any Other Party has imposed any limitation that
22 protects the confidentiality of any such attorney's or adviser's tax strategies (regardless of whether such
23 limitation is legally binding) upon disclosure by the Acknowledging Party of the tax treatment or tax
24 structure of any transaction, including any transaction contemplated by this Agreement.

25 **K. No Admission of Liability**

26 This Agreement shall not constitute an admission on behalf of Defendant of any form of liability
27 or the accuracy of any fact or allegation against either of them. Defendant specifically denies any and all
28 liability and that Plaintiffs, the State of California, or the PAGA Representative Group are entitled to any

1 civil penalties.

2 **L. Mutual Cooperation**

3 Plaintiffs, Defendant, Plaintiffs' Counsel, and Defense Counsel agree to fully cooperate with each
4 other to accomplish the terms of this settlement, including, but not limited to, execution of such documents
5 and to take such other action as may reasonably be necessary to implement the terms herein. The Parties
6 agree to use their best efforts to effectuate this settlement.

7 **M. Disputes Regarding Agreement**

8 If the Parties dispute the interpretation of this Agreement, they shall first attempt to resolve the
9 dispute informally through good faith negotiations, and if those efforts are unsuccessful, the Parties agree
10 that disputes arising out of or relating to this Agreement will be submitted to Hon. Carl J. West (Ret.) or
11 a mutually agreeable mediator for mediation. The Parties will equally split the cost of the mediator.

12 **N. No Comments to Press or Media**

13 The Parties and their counsel agree that they shall not disclose or discuss with any member or
14 representative of the press or media the conditions or terms of this Agreement or of the settlement prior
15 to approval. Plaintiffs shall not disparage Defendant in any fashion, and Defendant shall not disparage
16 Plaintiffs in any fashion. The Parties and their counsel further agree that they will not issue any press
17 releases or comment for publication in any media (including, but not limited to, print media, electronic
18 media, or the internet) regarding the Action and the conditions or terms of this Agreement.

19 **O. Continuing Jurisdiction**

20 The Court shall retain exclusive and continuing jurisdiction over the Action and this Agreement
21 for purposes of (a) enforcing this Agreement, (b) addressing any settlement administration matters that
22 may arise; and (c) addressing post-judgment matters as may be appropriate under court rules or applicable
23 law.

24 **P. Miscellaneous**

25 **1. Governing Law**

26 All terms and conditions of this Agreement and its exhibit will be governed and interpreted
27 according to the laws of the State of California, without giving effect to any conflict of law or choice of
28 law principles.

1 **2. Captions and Headings**

2 The captions, headings, section, and paragraph numbers in this Agreement are inserted for the
3 reader's convenience, and in no way define, limit, construe, or describe the scope or intent of the
4 provisions of this Agreement.

5 **3. No Prior Assignments**

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

10 **4. Settlement Binding on Successors**

11 This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their
12 respective heirs, spouses, trustees, executors, administrators, attorneys, agents, successors, and assigns.

13 **5. Execution in Counter Parts**

14 This Agreement may be executed in one or more counterparts. Electronic or facsimile signatures
15 will be accepted as original signatures. All executed counterparts and each of them will be deemed to be
16 one and of the same instrument. Any executed counterpart will be admissible in evidence to prove the
17 existence and contents of this Agreement.

18 **6. Integrated Agreement**

19 After this Agreement is signed and delivered by all Parties and their counsel, this Agreement and
20 its exhibit will construe the entire agreement between the Parties relating to the terms of the settlement,
21 and will supersede any prior or contemporaneous oral representations, warranties, covenants, or
22 inducements made to any party concerning the settlement or its exhibits, including the terms of the
23 settlement.

24 **7. Amendments or Modifications**

25 This Agreement may be amended or modified only by a formal written instrument signed by all
26 Parties or their successors-in-interest.

27 **8. Entire Agreement**

28 This Agreement and any attached exhibits constitute the entirety of the Parties' agreement, and no

oral or written representations, warranties or inducements have been made to any party concerning this Agreement or its exhibits other than the representations, warranties, and covenants contained and memorialized in this Agreement and its exhibits.

9. Authorization to Enter into Settlement

The Parties warrant and represent that they are expressly authorized by the Parties to whom they represent to negotiate this Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms. The person or persons signing this Agreement on behalf of Defendant represent and warrant that he/she/they were authorized to sign this agreement on behalf of Defendant. Plaintiffs represent and warrant that they are authorized to sign this Agreement and that they have not assigned any claims covered by this Agreement to any third-party.

10. Binding Agreement

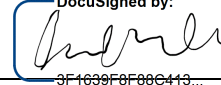
This Agreement shall become binding and enforceable upon its execution pursuant to California Code of Civil Procedure section 664.6.

IT IS SO AGREED.

3/2/2023

Dated: February , 2023

DocuSigned by:



Plaintiff Cesar Escalante

Dated: February , 2023

Plaintiff Francesca Kortesmaki

Dated: February , 2023

Defendant Urth Payroll Services, Inc.

By:

Printed Name, Title

oral or written representations, warranties or inducements have been made to any party concerning this Agreement or its exhibits other than the representations, warranties, and covenants contained and memorialized in this Agreement and its exhibits.

9. Authorization to Enter into Settlement

The Parties warrant and represent that they are expressly authorized by the Parties to whom they represent to negotiate this Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms. The person or persons signing this Agreement on behalf of Defendant represent and warrant that he/she/they were authorized to sign this agreement on behalf of Defendant. Plaintiffs represent and warrant that they are authorized to sign this Agreement and that they have not assigned any claims covered by this Agreement to any third-party.

10. Binding Agreement

This Agreement shall become binding and enforceable upon its execution pursuant to California Code of Civil Procedure section 664.6.

IT IS SO AGREED.

Dated: February , 2023

Plaintiff Cesar Escalante

Dated: February 28, 2023

Plaintiff Francesca Kortesmaki

Dated: February , 2023

Defendant Urth Payroll Services, Inc.

By: _____
Printed Name, Title

1 oral or written representations, warranties or inducements have been made to any party concerning this
2 Agreement or its exhibits other than the representations, warranties, and covenants contained and
3 memorialized in this Agreement and its exhibits.

4 **9. Authorization to Enter into Settlement**

5 The Parties warrant and represent that they are expressly authorized by the Parties to whom they
6 represent to negotiate this Agreement and to take all appropriate action required or permitted to be taken
7 by such Parties pursuant to this Agreement to effectuate its terms. The person or persons signing this
8 Agreement on behalf of Defendant represent and warrant that he/she/they were authorized to sign this
9 agreement on behalf of Defendant. Plaintiffs represent and warrant that they are authorized to sign this
10 Agreement and that they have not assigned any claims covered by this Agreement to any third-party.

11 **10. Binding Agreement**

12 This Agreement shall become binding and enforceable upon its execution pursuant to California
13 Code of Civil Procedure section 664.6.

14 **IT IS SO AGREED.**

15
16 Dated: February , 2023

Plaintiff Cesar Escalante

17
18
19 Dated: February , 2023

Plaintiff Francesca Kortesmaki

20
21
22 Dated: March 7 , 2023



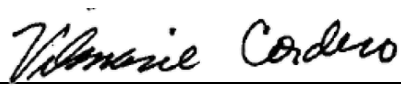
Defendant Urth Payroll Services, Inc.

23
24 By: Shallom Berkman, President
25 Printed Name, Title
26
27
28

1 **Approved as to Form:**

2 Dated: March 3, 2023

GRAHAMHOLLIS APC

3
4 By: 

Graham S.P. Hollis

Vilmarie Cordero

Dawn M. Berry

Allison E. Schubert

*Attorneys for Plaintiffs Cesar Escalante and
Francesca Kortesmaki*

5
6
7
8
9 Dated: April 3, 2023

LAGASSE BRANCH BELL + KINKEAD LLP

10
11 By: 

Jennifer S. Branch

Michael W. Healy

Skylar R. Pascal

Attorneys for Defendant Urth Payroll Services, Inc.

GRAHAMHOLLIS APC
3555 FIFTH AVENUE SUITE 200
SAN DIEGO, CALIFORNIA 92103

EXHIBIT A

[DATE]

[NAME]

[ADDRESS]

Re: *Cesar Escalante v. Urth Payroll Services, Inc.* – Notice of Settlement
Los Angeles County Superior Court, Case No. 20STCV25106

Dear [NAME],

You have received this notice because records indicate that you were employed at an Urth Caffè restaurant in the state of California at some time between April 27, 2019 and [DATE] (“PAGA Representative Group”). This notice relates to the settlement of the lawsuit, *Cesar Escalante v. Urth Payroll Services, Inc.*, Case No. 20STCV25106, pending in the Superior Court of the State of California, County of Los Angeles (“Lawsuit”). The Lawsuit contends that Defendant Urth Payroll Services, Inc. (“Defendant”): (1) misclassified exempt employees; (2) failed to provide legally compliant meal periods; (3) failed to provide legally compliant rest periods; (4) failed to timely pay all minimum and overtime wages; (5) failed to timely pay all wages owed and due at the time of separation; (6) failed to furnish accurate itemized wage statements; (7) failed to provide written notice of sick leave; (8) failed to maintain accurate records; (9) failed to reimburse necessary business expenses; (10) retaliated against employees who exercised their legal rights; and (11) failed to provide a safe and healthful workplace. As part of this settlement, the Court has ordered the enclosed settlement check.

The settlement was reached as a compromise and is not an admission by the Plaintiffs that the claims lack merit or by the Defendant of any liability or wrongdoing.

The enclosed settlement check represents your portion of the Court-approved settlement of claims under the Labor Code Private Attorney Generals Act (“PAGA”). The Court approved a settlement providing for a PAGA payment in the amount of [INSERT]. Seventy-five percent (75%) of that amount is being paid to the State of California. The remaining twenty-five percent (25%) is being paid to the members of the PAGA Representative Group, with each individual receiving a percentage share based on the number of pay periods worked between April 27, 2019 and [DATE]. The enclosed check is the amount you are entitled to under this formula based on Defendant’s records.

Please cash or deposit the check on or before its expiration date. Checks will not be re-issued after the void date. Checks that are not cashed within 180 days of issuance will be voided and the funds will be distributed to the Unclaimed Property Fund of the California State Controller and held in your name.

If you have any questions about this notice, please contact the Settlement Administrator, [NAME] at () - .

THIS NOTICE IS NOT AN EXPRESSION OF ANY OPINION BY THE COURT AS TO THE MERITS OF THE CLAIMS OR DEFENSES BY EITHER SIDE IN THE LAWSUIT. PLEASE DO NOT CONTACT THE COURT REGARDING THE SETTLEMENT.