

**SETTLEMENT AGREEMENT**  
*Jesus Aguilera v. Salmex Pizza, Inc.*  
*Case No: CIV DS 2014336*

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Plaintiff Jesus Aguilera has asserted claims against Defendant Salmex Pizza, Inc. (“Salmex”; Aguilera and Salmex are collectively “the Parties”), in the action styled *Aguilera v. Salmex Pizza, Inc.*, San Bernardino Superior Court, Case No. CIV DS 2014336 (the “Action”).

After a full day mediation with mediator Steve Serratore on October 13, 2021, and further post-mediation assistance from Serratore, the Parties agree to the following terms of this agreement (the “Settlement Agreement”) in settlement of all claims:

**Section 1: DEFINITIONS**

Unless otherwise defined herein, the following terms used in this Settlement Agreement shall have the meanings ascribed to them as set forth below. Whether defined below or not, terms appearing in this Settlement Agreement shall be interpreted consistent with the meaning ascribed in Labor Code section 26988, *et seq.*

1. “PAGA Period” means the time period from April 8, 2019, to the earlier of (i) entry of judgment in the Action approving this Settlement Agreement or (ii) December 21, 2021.
2. “Aggrieved Employees” means all hourly, non-exempt employees of Salmex employed in California at any time during the PAGA Period.
3. “Settlement Administrator” means the third-party administrator agreed upon by Parties to administer this Settlement, ILYM Group, Inc., to be approved by the Court, or such other third-party administrator approved by the Court.
4. “LWDA” means the Labor and Workforce Development Agency.
5. “Total Settlement Amount” means the all-inclusive sum of Three-Hundred Seventy-Five Thousand Dollars (\$375,000), which represents the total maximum amount payable under this Settlement Agreement, inclusive of everything, including all Attorneys’ Fees and Costs, PAGA penalties, the Service Payment, settlement administration costs, and all post-settlement approval efforts.
6. “Attorneys’ Fees Amount” means the amount of attorneys’ fees approved by the Court and payable from the Total Settlement Amount, not to exceed one-third (i.e., \$125,000) of the Total Settlement Amount.
7. “Cost Amount” means the amount of reimbursable costs actually expended by Aguilera’s counsel, excluding settlement administration costs, approved by the Court and payable from the Total Settlement Amount, not to exceed \$16,000.00.
8. “Administrator Amount” means the expense payable to the Settlement Administrator approved by the Court and payable from the Total Settlement Amount, not to exceed \$6,500.00.
9. “Service Payment Amount” means the amount approved by the Court and payable from the Total Settlement Amount, not to exceed \$7,500, payable to Aguilera in recognition of his effort in bringing the Action and obtaining the benefits of the Total Settlement Amount, and for executing the general release contained herein.
10. “Net PAGA Settlement Amount” means the amount payable from the Total Settlement Amount to the LWDA and Aggrieved Employees under Labor Code section 2699(i) after

deducting the Attorneys' Fees Amount, the Cost Amount, the Administrator Amount, and the Service Payment Amount.

11. "Effective Date" means the date the Court enters judgment in the Action approving of and consistent with this Settlement Agreement.
12. "Released Parties" means Salmex and its past, present, and future representatives, directors, officers, employees, agents, attorneys, affiliates, members and shareholders, as well as its and all of their respective parent companies, affiliated companies, subsidiary companies, affiliates, client(s), client(s) facilities, consultants, agents, insurers, attorneys, predecessors, assignors, and/or assigns and/or any other individual or entity that could be liable for the claims raised in the Action.
13. "Released Claims" means all claims for PAGA civil penalties and liabilities, including attorneys' fees and costs, that were alleged in Aguilera's Class and Representative Action Complaint filed in the Action or could have been alleged based on the facts, theories, or Labor Code sections discussed in the Complaint, including but not limited to unpaid minimum, regular, and overtime wages, failure to provide meal periods, failure to pay meal period premiums, failure to provide rest periods, failure to pay rest break premiums, failure to issue accurate and complete wage statements, failure to reimburse business expenses, and failure to timely pay wages at separation. This release includes, but is not limited to, claims for PAGA penalties for violations of California Labor Code sections 201-204, 210, 226, 226.3, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2802, and 2699 *et seq.*, and IWC Wage Order No. 5. This is a PAGA-only settlement and no underlying release for the putative class members was offered or given.
14. "Individual PAGA Payment" means the amount to be paid to each Aggrieved Employee based on the formula described herein.

## **Section 2: COURT APPROVAL**

Aguilera shall prepare, file and serve a motion to obtain approval of this Settlement Agreement by the Court, dismissal of the non-PAGA claims, and entry of judgment in the Action consistent with the terms of this Settlement Agreement. Dismissal of the class claims shall be without prejudice, and dismissal of Aguilera's individual, non-PAGA claims shall be with prejudice. Aguilera and Salmex shall cooperate in drafting of the motion, which shall set forth Salmex's position that it disputes liability and denies wrongdoing. Aguilera shall seek approval of, and Salmex shall not oppose, the Total Settlement Amount, Attorneys' Fees Amount, Cost Amount, Administrator Amount, and Service Payment Amount. Aguilera shall simultaneously submit a copy of this agreement to the LWDA and provide proof thereof to Salmex. Within 10 days of entry of judgment, Aguilera shall submit a copy of the order and judgment to the LWDA and provide proof thereof to Salmex.

Should the Court deny approval of the Total Settlement Sum or the releases described in Section 4, any Party may revoke acceptance of the Settlement Agreement by written notice to counsel for the other Party, in which case the Settlement Agreement shall be null and void. So long as the Court approves the Total Settlement Amount, any denial of Aguilera's application as to the Attorneys' Fees Amount, Cost Amount, Administrator Amount, or the Service Payment Amount, in whole or in part, shall not be grounds for Aguilera to revoke acceptance of the Settlement Agreement.

### **Section 3: PAYMENT OF TOTAL SETTLEMENT AMOUNT**

Within seven (7) business days after the Effective Date, Salmex shall provide the Settlement Administrator with information about the Aggrieved Employees. Salmex will in good faith compile from their records a list of Aggrieved Employees that will be in a computer-readable format, such as a Microsoft Excel spreadsheet, and shall include each Aggrieved Employee's full name, last known mailing address, last known telephone number, start date(s) of employment, end date(s) of employment, and Social Security numbers. Because Social Security numbers are included in the list, the Settlement Administrator will maintain the list in confidence, and access shall be limited to those with a need to use the list as part of the administration of the Settlement.

Within five (5) business days of receiving the Aggrieved Employees' information from Salmex, the Settlement Administrator will circulate to counsel for both Parties an anonymized spreadsheet containing the anticipated Individual PAGA Payments to each Aggrieved Employee and the data used to calculate said payments. The Settlement Administrator shall obtain approval from all counsel of the calculations before mailing Individual PAGA Payments.

Within sixty (60) days of the Effective Date, Salmex shall pay the Total Settlement Amount by depositing the Total Settlement Amount with the Settlement Administrator. In the event any person appeals from the judgment entered in the Action, Salmex shall not be obligated to pay the Total Settlement Amount unless the judgment is affirmed consistent with this Settlement Agreement, in which case Salmex shall pay the Total Settlement Amount by depositing the Total Settlement Amount with the Settlement Administrator within thirty (30) days after the Court of Appeal issues the remittitur.

Aguilera shall assume full responsibility and liability for taxes due on payments to Aguilera, including payment of the Attorneys' Fees Amount, the Costs Amount, and the Service Payment Amount.

Individual PAGA Payments made under this Settlement will be attributed 100% as penalties and paid via IRS Form 1099 issued to each Aggrieved Employee. Aggrieved Employees are solely responsible for all appropriate taxes due on any amounts paid to them under this Settlement Agreement. Nothing in this Settlement is intended to constitute legal or tax advice regarding local, state, or federal tax obligations and the Parties make no representations or warranties with respect to the tax consequences of any payment under this Settlement Agreement.

Payment of the Total Settlement Amount as described above shall be deemed satisfaction in full of the judgment entered in the Action, and shall relieve Salmex of all further obligations with respect to this Settlement Agreement and the Action. Upon request by Salmex, Aguilera shall file and serve an Acknowledgment of Satisfaction of Judgment.

### **Section 4: RELEASE AND WAIVER OF CLAIMS**

#### **4.01 Release by Aggrieved Employees**

Upon the Effective Date, all Aggrieved Employees, and the State of California shall be deemed to have fully, finally, and forever released, relinquished, and discharged each and all of the Released Parties from each and all of the Released Claims arising during the PAGA Period.

#### **4.02 General Release by Aguilera**

Upon the Effective Date, Aguilera shall be deemed to have fully, finally, and forever released the Released Parties from any and all claims, obligations, demands, actions, rights, causes of action, liabilities, of whatever kind and nature, character, and description, whether in law or equity, whether sounding in tort, contract, federal, state and/or local law, statute,

ordinance, regulation, common law, or other source of law, whether known or unknown, and whether anticipated or unanticipated, including unknown claims covered by Civil Code Section 1542, for any type of relief, including, without limitation, claims for wages, damages, unpaid costs, penalties, liquidated damages, punitive damages, interest, attorneys fees, litigation costs, restitution, or equitable relief arising from or related to his employment with the Released Parties. Without limiting the generality of the foregoing, the release of claims by Aguilera is a complete general release. The claims released herein by Aguilera include, but are not limited to, the Released Claims, as well as any other claims under any provision of the California Labor Code or any applicable California Industrial Welfare Commission Wage Orders, and claims under local, state, or federal discrimination statutes, including, without limitation, the California Fair Employment and Housing Act, California Government Code §§ 12940 et seq.; the Unruh Civil Rights Act, California Civil Code §§ 51 et seq.; the California Constitution; Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000 et seq.; the Americans with Disabilities Act, 42 U.S.C. §§ 12101 et seq.; the Employee Retirement Income Security Act of 1974, 29 U.S.C. §§ 1001 et seq.; the Age Discrimination in Employment Act and all of their implementing regulations and interpretive guidelines; claims for harassment, discrimination, retaliation and allegedly unpaid wages. Aguilera has reviewed the manner in which he was paid. Aguilera believes that after accounting for the consideration he will receive under this Agreement, he will receive more than any amounts, if any, that Aguilera contend he is arguably owed or could claim to be owed, even after accounting for all allegedly unpaid wages, penalties, interest.

With respect to these released claims as described in this Section, Aguilera shall be deemed to have expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights, and benefits he may otherwise have had pursuant to Section 1542 of the California Civil Code, which provides as follows:

**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.**

Aguilera understands and acknowledges that the significance and consequence of this waiver of California Civil Code Section 1542. Aguilera acknowledge that he consciously intends these consequences even as to claims for injuries that he does not know exist and which, if known, would materially affect his decision to execute this Agreement, regardless of whether the lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

## **Section 5: SETTLEMENT ADMINISTRATION**

Settlement Administrator shall administer payments of twenty-five percent (25%) of the Net PAGA Settlement Amount to the Aggrieved Employees pro rata based on the number of pay periods worked during the PAGA Period. Aguilera shall secure Settlement Administrator's agreement to provide settlement administration services in accordance with this Settlement Agreement in exchange for payment of the Administrator Cost. The Settlement Administrator shall run all the addresses provided by Salmex through the United States Postal Service NCOA database (which provides updated addresses for any individual who has moved in the previous four years who has notified the U.S. Postal Service of a forwarding address) to verify and/or obtain current address information.

No later than seventy-five (75) days after the Effective Date, the Settlement Administrator shall mail the Individual PAGA Payments, by first-class United States mail, postage prepaid, along

with the PAGA notice letter attached hereto as **Exhibit A**, to each Aggrieved Employee with directions to the Postmaster to return all undeliverable mailings to the Settlement Administrator. For each payment that is returned as undeliverable, the Settlement Administrator shall promptly attempt to locate the Aggrieved Employee by using an address refresher database, and will then perform a single re-mailing. The Settlement Administrator shall be responsible for preparation and issuance of all appropriate IRS form 1099s to Aggrieved Employees.

No later than seventy-five (75) days after the Effective Date, the Settlement Administrator will distribute the following payments: (1) the 75% share of civil penalties to the LWDA; (2) the Attorneys' Fees Amount; (3) the Costs Amount; (4) the Service Payment Amount to Aguilera; and (5) Court-approved administration costs to the Settlement Administrator.

The settlement checks issued to Aggrieved Employees shall remain valid for one hundred eighty (180) days after issuance. Thereafter, all uncashed checks shall void, and any funds remaining from the Net PAGA Settlement Amount shall be donated to St. Jude Children's Research Hospital, the parties' agreed upon non-profit organization, pursuant to CCP Section 384.

Within fifteen (15) business days of the date on which the last settlement check issued to Aggrieved Employees becomes void, the Settlement Administrator will provide an accounting under oath to the Parties of the amounts paid from the Settlement.

## **Section 6: MISCELLANEOUS PROVISIONS**

### **6.01 Notice, Default, Cure, Enforcement**

If Salmex fails to pay any portion of the Total Settlement Amount on the date due, it shall be in default of its obligations under this Settlement Agreement. Aguilera shall e-mail notice of the default to Salmex's counsel of record. Salmex will then have ten (10) business days from the date notice is e-mailed to cure the default. If the default remains uncured for ten (10) business days from the date notice is sent, then Aguilera may thereafter move the Court to enforce the judgment contemplated herein, pursuant to Code of Civil Procedure section 664.6 and all other applicable law.

### **6.02 Voluntary Agreement**

This Agreement is executed voluntarily and without duress or undue influence on the part of or on behalf of any of the Parties, or of any other person, firm or other entity. All Parties acknowledge that they had the opportunity to consult with legal counsel prior to entering into this Agreement.

### **6.03 Entire Agreement, Amendments**

This Settlement Agreement contains the entire understanding of the Parties hereto in respect of the subject matter contained herein. This Settlement Agreement supersedes all prior agreements and understandings among the Parties hereto with respect to the settlement of the Action. The terms and provisions of this Settlement Agreement may be amended only by (a) a written agreement that is signed by the Parties, or (b) stipulation by counsel for the Parties before the Court and expressly entered in the court minutes. Any waiver of any provision of this Settlement Agreement shall not constitute a waiver of any other provision of this Settlement Agreement unless expressly so indicated otherwise.

### **6.04 Assignment**

None of the rights, commitments, or obligations recognized under this Settlement Agreement may be express written consent of each other Party and their respective counsel hereto. The representations, warranties, covenants, and agreements contained in this Settlement

Agreement are for the sole benefit of the Parties under this Settlement Agreement, and shall not be construed to confer any right or to avail any remedy to any other person. Aguilera expressly warrants that he has not transferred to any person or entity any right or cause of action, or claim released by this Settlement Agreement.

#### 6.05 Counterparts, Electronic Signature

This Settlement Agreement, and any amendments hereto, may be executed in any number of counterparts and any Party and/or their respective counsel hereto may execute any such counterpart, each of which when executed and delivered shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument. It shall not be necessary in making proof of this Settlement Agreement or any counterpart hereof to produce or account for any of the other counterparts. The Parties intend to allow for the electronic imaging and storage of this Settlement Agreement, and the admissibility into evidence of such an image in lieu of the original paper version of this Settlement Agreement. Electronic signatures shall be deemed originals.

#### 6.06 Attorneys' Fees

Except as expressly provided herein, the Parties shall each and all bear their own costs in connection with the Action and the negotiation and execution of this Settlement Agreement.

#### 6.07 Ambiguity

In the event of an ambiguity under this Agreement, such ambiguity shall not be construed against either Party, as this Settlement Agreement has been negotiated at arm's length and the Parties have sought and been advised by counsel.

#### 6.08 Waiver of Right to Appeal

Provided that the Court's approval of this Settlement Agreement is consistent with the material terms thereof, Aguilera and his counsel hereby waive any and all rights to appeal the approval of the settlement, and the judgment therefore will become non-appealable at the time it is entered.

#### 6.09 No Admission, Non-Evidentiary Use

This Settlement Agreement and compliance with this Settlement Agreement shall not be construed as an admission by Salmex of any liability whatsoever, or as admission by Salmex of any violations of Aguilera's or the Aggrieved Employees' rights, violation of any order, law statute, duty or contract whatsoever. Salmex specifically disclaims any liability to Aguilera, the LWDA, or any Aggrieved Employee.

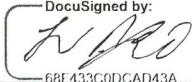
Except in connection with obtaining court approval of this Settlement Agreement, neither this Settlement Agreement nor any of its terms shall be offered or used as evidence by any of the Parties, or their respective counsel in any other action or proceeding; provided, however, this shall not prevent this Settlement Agreement from being used, offered, or received in evidence in any proceeding to enforce this Settlement Agreement.

*[Remainder of page intentionally left blank]*

**IN WITNESS WHEREOF**, the Parties have executed this Settlement Agreement on the date set forth.

Dated: 2/7/2022

**JESUS AGUILERA**

By:   
Jesus Aguilera

**SALMEX PIZZA, INC.**

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Fernando Tapia, President

**APPROVED AS TO FORM:**

Dated: 2/8/22

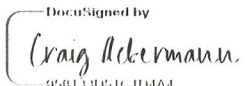
**MELMED LAW GROUP, P.C.**

By:   
Jonathan Melmed  
Kyle D. Smith

Attorneys for Plaintiff

Dated: 2/8/2022

**ACKERMANN & TILAJEF, P.C.**

By:   
Craig J. Ackermann

Attorneys for Plaintiff

Dated: \_\_\_\_\_

**ZALLER LAW GROUP, P.C.**

By: \_\_\_\_\_  
Anthony Zaller  
Michael Thompson  
Veenita Raj

Attorneys for Defendant

**IN WITNESS WHEREOF**, the Parties have executed this Settlement Agreement on the date set forth.

Dated: \_\_\_\_\_

**JESUS AGUILERA**

By: \_\_\_\_\_  
Jesus Aguilera

**SALMEX PIZZA, INC.**

Dated: 2/8/2022

By: \_\_\_\_\_  
Fernando Tapia, President

**APPROVED AS TO FORM:**

Dated: \_\_\_\_\_

**MELMED LAW GROUP, P.C.**

By: \_\_\_\_\_  
Jonathan Melmed  
Kyle D. Smith

Attorneys for Plaintiff

Dated: \_\_\_\_\_

**ACKERMANN & TILAJEF, P.C.**

By: \_\_\_\_\_  
Craig J. Ackermann

Attorneys for Plaintiff

Dated: 2/9/2022

**ZALLER LAW GROUP, P.C.**

By: \_\_\_\_\_  
Anthony Zaller  
Michael Thompson  
Veenita Raj

Attorneys for Defendant

# **Exhibit A**

*(PAGA Notice Letter)*

[DATE]

ILYM Group, Inc.  
14751 Plaza Drive, Suite J  
Tustin, California 92780

[Employee Name]  
[Employee Street Address]  
[City, State Zip]

**Re: PAGA Settlement Payment**

Dear Current or Former Salmex Pizza, Inc. (“Salmex”) Employee:

You have received this notice because Salmex’s records indicate that you have worked for Salmex at some time between April 8, 2019 through [the earlier of entry of judgment in the Action approving this Settlement Agreement or December 21, 2021]. This notice relates to the settlement of a lawsuit styled *Aguilera v. Salmex Pizza, Inc.*, San Bernardino Superior Court, Case No. CIVDS2014336 (the “Lawsuit”).

In the Lawsuit, Plaintiff Jesus Aguilera (“Plaintiff”) seeks civil penalties pursuant to the California Private Attorneys General Act (“PAGA”), a law which allows Plaintiff to attempt to recover penalties on behalf of the State of California and on behalf of employees who Plaintiff claims were “aggrieved” by alleged wage and hour violations on the part of Salmex including its alleged failure to pay for all hours worked, including minimum and overtime wages; failure to provide rest breaks and pay rest break premiums; failure to reimburse business expenses, failure to provide accurate itemized wage statements; and failure to timely pay wages and premiums due upon termination.

Salmex strongly disputes Plaintiff’s allegations and maintains that it has fully complied with all applicable wage and hour laws. The Court has not issued any ruling regarding the merits of the Lawsuit. Nonetheless, to avoid the cost and distraction of litigation, Salmex has made a business decision to settle the Lawsuit, which settlement has been approved by the Court. As part of the Settlement, Salmex agreed to pay a certain amount of penalties under PAGA. Under the PAGA statutes, penalties are divided between the State of California and aggrieved employees, with the State receiving 75 percent of the penalties. Under the Settlement, the Plaintiff and the State have released the following claims on behalf of the aggrieved employees:

All claims for PAGA civil penalties and liabilities, including attorneys’ fees and costs, that were alleged in Aguilera’s Class and Representative Action Complaint filed in the Action or could have been alleged based on the facts, theories, or Labor Code sections discussed in the Complaint, including but not limited to unpaid minimum, regular, and overtime wages, failure to provide meal periods, failure to pay meal period premiums, failure to provide rest periods, failure to pay rest break premiums, failure to issue accurate and complete wage statements, failure to reimburse business expenses, and failure to timely pay wages at separation. This release includes, but is not limited to, claims for PAGA penalties for violations of California Labor Code sections 201-204, 210, 226, 226.3, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2802, and 2699 et seq., and IWC Wage Order No. 5.

The Released Parties include Salmex and its past, present, and future representatives, directors, officers, employees, agents, attorneys, affiliates, members and shareholders, as well as its and all of their respective parent companies, affiliated companies, subsidiary companies, affiliates, client(s), client(s) facilities, consultants, agents, insurers, attorneys, predecessors, assignors, and/or assigns and/or any other individual or entity that could be liable for the claims raised in the Lawsuit.

As part of the settlement, Salmex agreed to pay \$375,000 which includes the following payments: at least \$55,000.00 to the aggrieved employees; at least \$165,000.00 to the State of California; \$125,000.00 to Plaintiff's counsel for attorneys' fees; up to \$16,000.00 to Plaintiff's counsel for its litigation costs; \$7,500 for an enhancement award to Plaintiff; \$6,500.00 for settlement administration costs. The enclosed settlement check represents your pro-rata portion of the Court-approved PAGA settlement to the aggrieved employees based on the number of pay periods you worked during the PAGA period.

You will not be retaliated against for cashing your check. Checks that are not cashed within 180 days of issuance will be voided and the funds will be distributed to St. Jude Children's Research Hospital.

Regardless of what you do with the settlement check, you will have released claims for penalties arising under PAGA as asserted in the Lawsuit.

If you have any questions about this notice, please contact the Settlement Administrator, ILYM Group, Inc., at [Insert Phone Number].

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 CASE. THIS NOTICE IS MERELY A SUMMARY OF THE SETTLEMENT FOR INFORMATIONAL PURPOSES. THE TERMS OF THE SETTLEMENT AGREEMENT AND JUDGMENT IN THE LAWSUIT CONTROL OVER ANY STATEMENT HEREIN.