

**CONFIDENTIAL SETTLEMENT AGREEMENT**  
**AND GENERAL RELEASE OF ALL CLAIMS**

Subject to Court approval by the Superior Court of the State of California for the County of Los Angeles ("Court"), Plaintiff Gaspar Baltazar ("Plaintiff" or "Baltazar"), and Defendant Elvira's Cha Cha Chicken ("Defendant") hereby agree to the following binding settlement ("Settlement" or "Settlement Agreement") of the lawsuit entitled *Gaspar Baltazar v. Elvira's Cha Cha Chicken*, Los Angeles Superior Court Case No. 20STCV47180 (the "Action").

**RECITALS**

1. Defendant is a Restaurant in California. Defendant employed Baltazar as a non-exempt employee from approximately October 2016 until December 5, 2019.
2. On May 27, 2020, Baltazar provided written notice pursuant to California Labor Code section 2699.3 to the California Labor Workforce Development Agency ("LWDA") and to Defendant by certified mail of specific provisions of the California Labor Code which Plaintiff alleged Defendant had violated, pursuant to California Labor Code 2699.3, including Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 227.3, 245.5, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, and Wage Orders including *inter alia*, Wage Order 5-2001.
3. In his PAGA notice, Baltazar alleged among other things that Defendant failed to pay all California non-exempt hourly employees for all hours worked by requiring employees to work off-the-clock; failed to pay all minimum wages and overtime wages owed including by failing to pay all overtime and double time at the correct regular rate of pay; failed to pay all premium wages owed for short, late or missed meal and rest periods; failed to pay all wages owed at discharge or resignation; failed to timely pay wages within the times permissible under Labor Code section 204; failed to provide complete and accurate wage statements; failed keep complete and accurate payroll records.
4. On December 20, 2020, Plaintiff filed the Action in Los Angeles Superior Court seeking civil penalties under PAGA based on the alleged Labor Code violations in his PAGA notice.
5. The Complaint alleges one (1) cause of action for the following: (1) Private Attorney General Act, Labor Code § 2698, *et seq.* The Complaint seeks civil penalties based on the following alleged Labor Code violations: (1) failure to pay minimum wage; (2) failure to pay overtime; (3) failure to pay premium wages for meal period violations; (4) failure to pay premium wages for rest periods violations; (5) failure to pay wages upon termination; (6) failure to timely pay wages during employment; (7) failure to provide accurate wage statements; and (8) failure to keep accurate payroll records.
6. The Parties engaged in discovery and information related to the claims alleged in this Action. Defendant also provided time records and wage statements of Aggrieved Employees' time and payroll data. The Parties have also conducted extensive independent investigations and evaluations of the claims and defenses in this matter. In December 2021, after exchanging confirmatory discovery and analyzing the merits of the claims and defenses asserted in the Action, the Parties came to a settlement that would cover all claims asserted in the Action and Baltazar's related LWDA notice.
7. In evaluating the Settlement, Plaintiff has considered the expense and length of continued proceedings necessary to litigate his case through trial and through any possible appeals, and the burdens of proof necessary to establish liability for the claims asserted in the Action, both generally and in response to

Defendant's defenses thereto. Based on the foregoing, Plaintiff has determined that the Settlement is fair and fulfills PAGA's objectives.

8. Defendant maintains that all of its employees have been compensated in compliance with the law, that it has and continues to have, legally compliant employment policies and practices throughout the Settlement Period (defined below) for all of its California non-exempt employees, and has denied and continue to deny each of the claims and contentions alleged by Plaintiff in the Action.
  9. Defendant denies any wrongdoing or legal liability arising out of any of the facts or conduct alleged in the Action, and believes that they have valid defenses to Plaintiff's claims. Neither this Settlement Agreement nor any document referred to or contemplated herein, nor any action taken to carry out this Settlement Agreement, may be construed as, or may be used as an admission, concession, or indication by or against Defendant of any fault, wrongdoing or liability whatsoever, or any of concession that a trial of this Action would be manageable.
  10. The Parties and their counsel recognize the expense and length of continued proceedings necessary to litigate the disputes through trial and through any possible appeals, and have also taken into account the uncertainty and risk of the outcome of further litigation, and the difficulties and delays inherent in such litigation. The Parties and their counsel are also aware of the burdens of proof necessary to establish liability for the claims alleged, and the affirmative and other defenses asserted. Thus, reaching this Settlement now has the potential for having a higher value today than it might have later if this litigation were to continue.
  11. Under California Law, the State may assess and collect civil penalties for employers for violations of certain provisions of the Labor Code. Cal. Lab. Code §§ 2699(a) Under PAGA, however, if an "aggrieved" employee gives written notice to the State and the employer of the specific provision of the Labor Code alleged to have been violated, and the State thereafter decides not to investigate, or does investigate and determines that a citation against the employer should not be issued, the employee may, "as an alternative" to enforcement by the State, bring a civil action under PAGA to recover the civil penalties "on behalf of himself or herself and other current or former employees." In such an action, the employee sues "as the proxy or agent of the state's labor law enforcement agencies ... In a lawsuit brought under [PAGA] the employee plaintiff represents the same legal right and interest as state labor law enforcement agencies - namely, recovery of civil penalties that otherwise would have been assessed and collected by the Labor Workforce Development Agency." *Arias v. Superior Court*, 6 Cal. 4th 969, 986 (2009). "[A]n aggrieved employee's action under the [PAGA] functions as a substitute for an action brought by the government itself" *Id.* "The government entity on whose behalf plaintiff's suit is always the real party in interest in the suit." *Iskanian v. CI.S Transportation Los Angeles UC*, 59 Cal. 4th 348, 382 (2014).
  12. Labor Code Section 2699 provides that "the superior court shall review and approve any settlement of any civil action filed pursuant to this part." Accordingly, the Parties will seek approval from the Court of the Settlement Agreement pursuant to California Labor Code Section 2699.
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## **PERSONS AND CLAIMS COVERED BY THE SETTLEMENT**

13. **Aggrieved Employees:** This Settlement covers all persons who were employed by Defendant as non-exempt hourly employees in California at any time during the period from December 20, 2019, through the date of the order approving the settlement ("Aggrieved Employees").
14. **Released Parties:** The Releases under this Agreement cover Defendant Elvira's Cha Cha Chicken, as well as individuals Elvira Garcia and Carlos Galvan, and Defendant's past, present and/or future, direct and/or indirect, officers, directors, members, managers, employees, agents, representatives, attorneys, insurers, partners, investors, shareholders, administrators, parent companies, subsidiaries, affiliates, divisions, predecessors, successors, assigns, and joint venturers ("Released Parties").
15. **Settlement Period:** The Settlement covers the period from December 20, 2019, through the date on which the Court enters an order approving the Settlement ("Settlement Period").
16. **Released Claims:** The Released Claims means any and all claims for which recovery for civil penalties, attorneys' fees and costs permissible under PAGA, whether known or unknown, which Plaintiff and/or the Aggrieved Employees had, or may claim to have, against Released Parties, arising out of the violations alleged in the Complaint or the PAGA Notice, including unpaid straight and overtime wages (including any work off-the-clock), failure to pay employees all minimum wages and overtime wages owed including by failing to pay all overtime and double time at the correct regular rate of pay, failure to provide compliant meal and rest breaks, failure to pay them all premium wages owed for short, late or missed meal and rest periods, failure to pay all wages owed at discharge or resignation; failure to timely pay wages within the time permissible under Labor Code Section 204, failure to provide complete and accurate wage statements; and failure to keep complete and accurate payroll records.
17. Plaintiff and Defendant expressly waive and relinquish all of the rights and benefits which any of them might otherwise have or claim to have under the provisions of Section 1542 of the Civil Code of the State of California, 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.

## **SETTLEMENT CONSIDERATION**

18. **Settlement Fund:** Defendant will pay a total of One-Hundred Thousand Dollars (\$100,000.00) ("Settlement Fund") in full satisfaction of all claims, rights, demands, liabilities and causes of action for civil penalties that otherwise could be assessed by the LWDA under the California Labor Code, Wage Orders, regulations, and/or other provisions of law alleged to have been violated in the Action. From the Settlement Fund will be deducted Plaintiff's General Release, Payment Attorneys' Fees and Costs to Plaintiff's Counsel, and Settlement Administration Costs. The remaining portion of the Settlement will be paid as civil penalties to the LWDA and Aggrieved Employees ("PAGA Penalties Fund"). The Settlement Fund is based on the understanding, which has been demonstrated by confirmatory discovery, that a total of approximately thirteen pay periods existed, and the number of Aggrieved Employees during a pay period consisted of at most 29 individuals.

19. PAGA Penalties Fund: As payment of civil penalties to the LWDA and Aggrieved Employees, Defendant agrees to pay a PAGA Penalties Fund of Thirty-Six Thousand Dollars (\$36,000.00) . Pursuant to the PAGA, 75% of the PAGA Penalties Fund, or Twenty-Seven Thousand Dollars (\$27,000.00) will be paid to the LWDA ("LWDA Payment") and the remaining Nine Thousand Dollars (\$9,000.00) will be paid to all Aggrieved Employees ("Aggrieved Employee Fund").
20. Attorneys' Fees and Costs: In full satisfaction of all claims Plaintiff may have for attorneys' fees, litigation costs, and expenses arising out of the Action, Defendant agrees not to oppose a request by Plaintiff's counsel, Dogra Law Group PC ("Plaintiff's Counsel") for an award of attorneys' fees of up to Thirty-Five Thousand Dollars and Zero Cents (\$35,000.00) and up to Ten Thousand Dollars and Zero Cents (\$10,000.00) in costs, to be paid from the Settlement Fund.
21. General Release Payment: For a general release of all claims Plaintiff might have against Defendant, including Plaintiff's individual claims pursuant to California Labor Code, Defendant agree to pay Plaintiff the total sum of Twenty Thousand Dollars (\$20,000.00) paid to Plaintiff ("General Release Payment") to be paid from the Settlement Fund. Upon receipt of the general Release Payment, Plaintiff, for himself and his heirs, successors and assigns, will be deemed to have fully released and discharged the Released Parties, from any and all claims, actions, charges, complaints, grievances and causes of action, of whatever nature, whether known or unknown which exist or may exist against the Released Parties as of the date of this Agreement, including but not limited to any and all tort claims, contract claims, wage claims, wrongful termination claims, disability claims, benefit claims, public policy claims, retaliation claims, statutory claims, personal injury claims, emotional distress claims, invasion of privacy claims, defamation claims, fraud claims, quantum meruit claims, and any and all claims arising under any federal, state or other governmental statute, law, regulation or ordinance, including but not limited to claims for violation of the Fair Labor Standards Act, the California Labor Code, the Wage Orders of California's Industrial Welfare Commission, other state wage and hour laws, the Americans with Disabilities Act, the Age Discrimination in Employment Act (ADEA), the Employee Retirement Income Security Act, Title VII of the Civil Rights Act of 1964, the California Fair Employment and Housing Act, the California Family Rights Act, the Family Medical Leave Act, California's Whistleblower Protection Act, California Business & Professions Code Section 17200 *et seq.*, and any and all claims arising under any federal, state or other governmental statute, law, regulation or ordinance. Plaintiff hereby expressly waives and relinquishes any and all claims, rights or benefits that it may have under California Civil Code section 1542, 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.* Plaintiff may hereafter discover claims or facts in addition to , or different from those which he now knows or believes to exist, but he expressly agrees to fully, finally, settles and release any and all claims against the Released Parties, known or unknown, suspected or unsuspected, which exist or may exist on behalf of or against the other at the time of execution of this Agreement, including, but not limited to, any and all claims relating or arising from Plaintiff's employment with Defendant. In no case shall Defendant be required to pay more than \$20,000.00 as a General Release Payment to Plaintiff. Even if the Court reduces or does not approve the requested General Release Payment, Plaintiff and Plaintiff's Counsel shall not the right to revoke this Settlement and it will remain binding.
22. Settlement Administration Costs: The Parties will retain Phoenix Settlement Administrators as the third-party settlement administrator ("Settlement Administrator"), to administer this

Settlement. The Settlement Administrator will be responsible for establishing a qualified settlement fund ("QSF") and issuing payments to Aggrieved Employees, the LWDA, Plaintiff and Plaintiff's Counsel. The third-party administration fees that are necessary to administer the Settlement shall be paid from the Settlement Fund up to a maximum payment of Two Thousand Dollars (\$2,500.00) ("Settlement Administration Costs"). If the actual cost of Settlement administration is less than \$2,500.00, any savings will be added to the PAGA Penalties Fund.

23. Court Approval of the Settlement and Distribution of Settlement Payment: The Parties will present this Settlement Agreement to the Court and will request that the Court issue an order ("Order") approving and incorporating by reference the terms and conditions of the Settlement Agreement, and dismissing the Action with prejudice. The Parties agree to fully cooperate in the drafting and/or filing of any further documents or filings reasonably necessary to be prepared or filed and shall take all steps that may be requested by the Court relating to, or that are otherwise necessary to the approval and implementation of the payment of PAGA penalties as described in this Agreement.
24. Notice to LWDA: Plaintiff will submit this Agreement and proposed settlement to the LWDA as required by California Labor Code Section 2699 at the time it is submitted to the Court for approval.
25. Effective Date: "Effective Date" means the date by when this Settlement is signed by Plaintiff and Plaintiff's Counsel.
26. Funding of the Settlement: Within twenty-one (21) days after the Effective Date, Defendant will deposit \$100,000.00 into the QSF to be established by the Settlement Administrator.
27. No Credit towards Benefits Plans: Individual PAGA Payments will not be used to calculate any additional benefits under any benefit plans to which any Aggrieved Employee may be eligible, including, but not limited to profit-sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, and any other benefit. Rather, it is the Parties' intention that this Settlement Agreement will not affect any rights, contributions, or amounts to which any Aggrieved Employee may be entitled under any benefits plans.
28. No Prior Assignments. The Parties and their counsel represent, covenant and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purportedly assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or right herein released and discharged.
29. Nullification of Settlement Agreement. In the event that the Court does not approve the Settlement as provided herein with prejudice then this Settlement Agreement, and any terms generated to bring it into effect, will be null and void, and the Parties will be returned to their original respective positions. If the Court does not approve the payment of PAGA penalties as described in this Agreement, the Parties agree to meet and confer to address the Court's concerns.
30. Continued Jurisdiction. After entry of the Order, the Court will have continuing jurisdiction solely for purposes of addressing: (i) the interpretation and enforcement of the terms of the Settlement, (ii) settlement administration matters, and (iii) such post-dismissal matters as may be appropriate under court rules or as set forth in this Settlement.

31. Stay of Litigation. The Parties agree that upon the signing of this Agreement the continuing litigation of this action shall be stayed absent any filings necessary to obtain approval of the settlement and the time to bring this action to trial shall be extended pending the outcome of the settlement process.
32. Entire Agreement. This Settlement Agreement constitutes the entirety of the Parties' settlement terms. No other prior or contemporaneous written or oral agreements may be deemed binding on the Parties.
33. Amendment or Modification. This Settlement Agreement may be amended or modified only by a written instrument, signed either by the Parties or their counsel, and approved by the Court.
34. Waiver of Certain Appeals. The Parties agree to waive appeals; except, that either Party may appeal any court order that materially modifies the Settlement Agreement's terms.
35. Authorization to Enter Into Settlement Agreement. Counsel for each of the Parties warrant and represent they are expressly authorized by the Parties whom they represent to negotiate this Settlement Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant to this Settlement Agreement to effectuate its terms and to execute any other documents required to effectuate the terms of this Settlement Agreement.
36. Binding on Successors and Assigns. This Settlement Agreement will be binding upon, and inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.
37. California Law Governs. All terms of this Settlement Agreement and Exhibits hereto will be governed by and interpreted according to the laws of the State of California.
38. Execution and Counterparts. This Settlement Agreement is subject only to the execution of all Parties. However, the Settlement Agreement may be executed in one or more counterparts. All executed counterparts and each of them, including electronic (e.g., DocuSign), facsimile and scanned copies of the signature page, will be deemed to be one and the same instrument.
39. Acknowledgement that the Settlement is Fair and Reasonable. The Parties believe this Settlement Agreement is a fair, adequate, and reasonable settlement of the Action and have arrived at this Settlement after arm's-length negotiations by experienced counsel.
40. Invalidity of Any Provision. Before declaring any provision of this Settlement Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest extent possible consistent with applicable precedents so as to define all provisions of this Settlement Agreement valid and enforceable. Should any part, term, or provision of this Agreement be declared or determined by any Court of competent jurisdiction to be wholly or partially illegal, invalid, or unenforceable the legality, validity, and enforceability of the remaining parts, terms, or provisions of this Agreement shall not be affected hereby. Said illegal, invalid, or unenforceable part, term, or provision shall be deemed not to be part of this Agreement.
41. Captions. The captions and section numbers in this Settlement Agreement are inserted for the reader's convenience, and in no way define, limit, construe or describe the scope or intent of the provisions of this Settlement Agreement.

42. Waiver. No waiver of any condition or covenant contained in this Settlement Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or constitute a further waiver by such party of the same or any other condition, covenant, right or remedy.
43. Enforcement Action. In the event that one or more of the Parties institutes any legal action or other proceeding against any other Party or Parties arising out of that other Party's or Parties' breach of this Agreement, the successful Party or Parties will be entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including expert witness fees in connection with any enforcement actions.
44. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms and conditions of this Settlement Agreement. Accordingly, this Settlement Agreement will not be construed more strictly against one party merely by virtue of the fact that it may have been prepared by counsel for one of the Parties, it being recognized that, because of the arm's-length negotiations between the Parties, all Parties have contributed to the preparation of this Settlement Agreement.
45. Representation By Counsel. The Parties acknowledge that they have been represented by counsel throughout all negotiations that preceded the execution of this Settlement Agreement, and that this Settlement Agreement has been executed with the consent and advice of counsel, and reviewed in full. The Parties further acknowledge that have had an opportunity to consult with their counsel regarding the fairness and reasonableness of this Settlement.
46. Cooperation and Execution of Necessary Documents. The Parties will cooperate in good faith and execute all documents to the extent reasonably necessary to effectuate the terms of this Settlement Agreement. If the Parties are unable to reach agreement on the form or concept of any document needed to implement the Settlement, or on any supplemental provisions that may become necessary to effectuate the terms of this Settlement, the Parties may seek the assistance of the Court to resolve such disagreement.
47. Binding Agreement: The Parties warrant that they understand and have full authority to enter into this Settlement, and further intend that this Settlement Agreement will be fully enforceable and binding on all parties, and agree that it will be admissible and subject to disclosure in any proceeding to enforce its terms.
48. Denial of Liability. The Parties expressly recognize that the making of this Agreement does not in any way constitute an admission or concession of wrongdoing on the part of Defendant. Nothing in this Settlement, nor any action taken in implementation thereof, nor any statements, discussions or communications, nor any materials prepared, exchanged, issued or used during the course of this Action, is intended by the Parties to constitute an admission of any violation of any federal, state, or local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity.
49. Neutral Employment Reference. Defendant agrees it will adopt a neutral reporting policy regarding any future employment references related to Plaintiff. In the event that any potential or future employers of Plaintiff request a reference regarding Defendant's employment of Plaintiff, Defendant shall only provide Plaintiff's dates of employment and job titles during employment. Defendant shall not refer to the Action or this Settlement; provided, however, that if Defendant is asked about the Action, Defendant may respond that it has been settled.

50. **Non-Disparagement.** Plaintiff agrees not to make any untruthful, malicious, disparaging or defamatory statements, allegations, comments or communications, regardless of form (whether written, oral, electronic, including but not limited to Glassdoor, Yelp, or otherwise), regarding Defendant, its employees, other past and current employees or Defendant's subsidiaries, divisions, affiliates, or services.
51. **Confidentiality/Limited Disclosure.** Plaintiff agrees that Plaintiff and his counsel will not publicize or disclose in any form, forum, or medium, or cause or knowingly permit or authorize the publicizing or disclosure of the contents of this Settlement Agreement, or of the basis for any claims or allegations which were or could have been made against the Released Parties which concern and are within the scope of this Settlement Agreement (hereafter collectively referred to as "Confidential Information") to any person, firm, organization or entity of any and every type, public or private, for any reason, at any time, without the prior written consent of Defendant unless otherwise compelled by operation of law. The Parties acknowledge their intention that the provisions of this Section 51 create no liability for disclosures made: (i) prior to Plaintiff's execution of this Settlement Agreement; (ii) by persons from public information released prior to Plaintiff's execution of this Settlement Agreement; (iii) pursuant to Sections 52 below to enforce the terms of this Settlement Agreement; or (iv) as otherwise compelled by operation of law. It is stipulated that a copy of this Settlement Agreement may be filed under seal in support of any motion for Court approval of Settlement of the PAGA Claim and any disclosure required by the Court. Plaintiff's Counsel further acknowledges that no disclosures shall be made to any publication or reporting service regarding settlements and verdicts.
52. The foregoing notwithstanding, Plaintiff acknowledges the confidentiality provisions of this Section 52 constitute a material inducement to Defendant to enter into this Settlement Agreement and represent that he has not directly or indirectly disclosed any Confidential Information to any third party prior to Plaintiff's execution of this Settlement Agreement.
53. Plaintiff is permitted to disclose Confidential Information to his spouse, tax advisors, and attorneys with whom Plaintiff chooses to consult regarding Plaintiff's consideration of this Settlement Agreement. However, each such person to whom Plaintiff discloses Confidential Information shall be bound to the confidentiality provisions hereof and any disclosure of Confidential Information by any such person so informed shall constitute a breach by Plaintiff of Section 52 above. Plaintiff is also permitted to disclose Confidential Information to any federal, state or local government agency. In response to inquiries from third parties concerning the status of this dispute or which would require the disclosure of Confidential Information, Plaintiff and Plaintiff's Counsel only will state that the dispute has been resolved.
54. It is agreed that in the event of a breach of the provisions 51 through 53 of this Settlement Agreement by Plaintiff, it would be impractical or extremely difficult to fix actual damages to Defendant. Therefore, Plaintiff agrees that in the event of such a breach, Plaintiff shall pay to Defendant, as liquidated damages, and not as penalty, the sum of Five Thousand Dollars and Zero Cents (\$5,000.00) per breach that represents reasonable compensation to Defendant for the loss incurred because of such a breach. The liquidated damages described herein do not preclude further damages for breach of contract including, but not limited to, seeking the return of the Settlement provided to Plaintiff.

**ACCEPTED AND AGREED:**

Plaintiff Gaspar Baltazar:

Signature: Baltazar

Date: 02 / 02 / 2022

Defendant Elvira's Cha Cha Chicken, Inc.

Signature: [Signature]

Name: Elvira Garcia

Its: \_\_\_\_\_

Date: 1/28/2022

APPROVED AS TO FORM

DOGRA LAW GROUP PC

[Signature]

Shalini Dogra,  
Attorney for Plaintiff Gaspar Baltazar  
Dated: February 2, 2022

MOSS LAW

[Signature]

Robert Moss  
Attorney for Defendant Elvira's Cha Cha Chicken  
Dated: