

Alicia R. Kennon (State Bar No. 240569)
akennon@wshblaw.com
Kristin A. Smith (State Bar No. 242643)
krsmith@wshblaw.com
WOOD, SMITH, HENNING & BERMAN LLP
1401 Willow Pass Road, Suite 700
Concord, California 94520-7982
Phone: 925 222 3400 ♦ Fax: 925 356 8250
Cell: (510) 282-3067

Attorneys for Defendants, OLIVE/BROADWAY ENTERPRISES, INC., DBA BOBBY SALAZAR'S TAQUERIA, ROBERT "BOBBY" SALAZAR

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR COUNTY OF FRESNO**

RODRIGO TOVAR,

Plaintiff,

v.

OLIVE/BROADWAY ENTERPRISES, INC.,
DBA BOBBY SALAZAR'S TAQUERIA,
ROBERT "BOBBY" SALAZAR; and DOES
1 through 20, inclusive,

Defendant.

Case No. 20CECG00579

**STIPULATION OF SETTLEMENT
UNDER PRIVATE ATTORNEYS
GENERAL ACT OF 2004; [PROPOSED]
ORDER**

Action Filed: February 11, 2020

Trial Date: January 10, 2022

The Parties hereto, Plaintiff Rodrigo Tovar ("Plaintiff") as a proxy for the California Labor and Workforce Development Agency ("LWDA"), and Defendants Olive/Broadway Enterprises, Inc. and dba Bobby Salazar's Taqueria, Inc. ("BST"); Robert "Bobby" Salazar ("Salazar"); Does 1 through 20 and all entities listed in Plaintiff's letter to the LWDA, inclusive (collectively, ("Defendants")), by and through their respective counsel of record, hereby stipulate and agree as follows:

1. WHEREAS, on May 5, 2020, counsel for Plaintiff sent a letter to the California Labor and Workforce Development Agency ("LWDA") and Defendants alleging violations of, *inter alia*, Labor Code sections 201, 202, 203, 204, 226(a), 226.8, 226.7, 510, 512, 558, 1174, 1194, 1197, 1197.1, 1198, and 2802, alleged to have occurred during Plaintiff's

FILED

MAY -4 2022

FRESNO COUNTY SUPERIOR COURT

By _____ DEPT. 502

1 employment with Defendant on behalf of Plaintiff and other purportedly aggrieved employees
2 (“LWDA Letter”).

3 2. WHEREAS, on February 18, 2020, Plaintiff filed this action alleging, *inter alia*, a
4 hostile work environment/harassment based on a medical condition, disability/medical condition
5 discrimination, a hostile work environment based on Fair Employment and Housing (“FEHA”)
6 violations, discrimination in violation of FEHA, wrongful termination in violation of public
7 policy, and defamation.

8 3. WHEREAS, on May 5, 2020, Plaintiff filed a First Amended Complaint, which
9 included the claims listed in the original Complaint and added claims for unfair competition in
10 violation of California Business and Professions Code section 17200, *et. seq.*, failure to provide
11 compliant meal breaks, failure to provide compliant rest periods, failure to provide accurate
12 itemized wage statements, and for penalties under Labor Code sections 201, 202, 203, 226.3 and
13 226.

14 4. WHEREAS, on August 19, 2020, Plaintiff filed a Second Amended Complaint,
15 which included the claims listed in the First Amended Complaint and added a claim under the
16 Private Attorneys General Act (“PAGA”), seeking to recover civil penalties for violations of
17 Labor Code sections 226.7, 512, 1174, 1197, and 226(a).¹

18 5. WHEREAS, subsequent to the filing of the Second Amended Complaint, the
19 Parties have engaged in informal and formal discovery through which Defendants have provided
20 information regarding the number of employees believed to have been affected by the alleged
21 violations during the relevant time period. The total number of aggrieved employees potentially
22

23 ¹ Plaintiff claims that he and other former and current employees of Defendants' were not
24 provided with either compliant rest periods nor compliant meal periods, were not paid the
25 minimum wage for all hours worked, and were not paid all wages owed. Plaintiff further alleges
26 that Defendants failed to maintain accurate employment records and that the wage statements
27 Defendants furnished to Plaintiff and other current and former employees were inaccurate in that
28 they failed to accurately show the correct over time rate for overtime worked, the gross wages
earned, the net wages earned, the total hours worked, all applicable hourly rates in effect during
the pay period and the corresponding number of hours worked at each hourly rate, and the correct
penalty payments for any missed meal periods or rest breaks.

1 affected by the PAGA Claims, as of the date of this order is 83.

2 6. WHEREAS, Defendants deny all of Plaintiff's allegations, both on factual and
3 legal bases.

4 7. WHEREAS, the Parties engaged in settlement negotiations primarily through their
5 respective attorneys: Brian D. Whelan, of Whelan Law Group ("Aggrieved Employees' Counsel")
6 and Alicia R. Kennon and Kristin A. Smith of Wood Smith Henning & Berman LLP, all
7 experienced litigators with knowledge of employment law and the PAGA.

8 8. WHEREAS, the Parties have reached agreement on the terms of settlement
9 regarding the PAGA claims ("Agreement") (and also Plaintiff's individual claims, by way of a
10 separate, confidential settlement agreement).

11 9. WHEREAS, Labor Code section 2699(l) requires that the court review and approve
12 any proposed settlement agreement pursuant to PAGA.

13 10. WHEREAS, Plaintiff and Aggrieved Employees' Counsel concluded—after taking
14 into account the sharply disputed factual and legal issues involved in the Action, the risks
15 attending further prosecution, the discovery and investigation conducted to date, and the
16 substantial benefits received and to be received pursuant to the compromise and settlement of the
17 Action, the nature of the claimed violations and the wide discretion of the Court to reduce civil
18 penalties imposed—that settlement on the terms herein set forth is in the best interest of all
19 interested parties, including the LWDA, and that the settlement adequately serves the deterrent
20 purposes of the PAGA.

21 11. WHEREAS, Plaintiff and Aggrieved Employees' Counsel have balanced their
22 evaluation of the validity and strength of the asserted claims against the problems of proof and the
23 legal standards governing the claims alleged. Based on this evaluation, Aggrieved Employees'
24 Counsel believes that the settlement reached satisfies the public policies of PAGA to punish past
25 violations and deter future violations of the Labor Code.

26 12. WHEREAS, similarly, Defendants and Defendants' counsel concluded there were
27 benefits associated with settling. Although Defendants deny the various allegations and
28 challenges the validity of each of the causes of action in the Action, Defendants took into account

1 the sharply disputed factual and legal issues involved in the Action, the risk attending further
2 defense, the expense, time, and burden of protracted litigation, and the desire to put the
3 controversy to rest. Based on these factors, Defendants and Defendants' counsel agreed to this
4 settlement without any admission of fault or liability. Nothing in this Agreement, nor any action
5 taken in implementation thereof, nor any statements, discussions or communications, nor any
6 materials prepared, exchanged, issued, or used during the course of the negotiations leading to this
7 Agreement, is intended by the Parties to constitute, nor will any of the foregoing constitute, be
8 introduced, be used or be admissible in any way in this case or any judicial, arbitral,
9 administrative, investigative, or other forum or proceeding as evidence of any violation of any
10 federal, state, or local law, statute, ordinance, regulation, rule, or executive order, or any obligation
11 or duty at law or in equity, against Defendants or any other Released Party (as defined in
12 paragraph 14, *infra*).

13 13. WHEREAS, the parties hereby agree to settle the PAGA claims at issue in the
14 Action ("the PAGA Settlement") for a total payment of \$5,000.00 and a dismissal with prejudice
15 of the PAGA claims in Plaintiff's operative complaint, the Second Amended Complaint.

16 14. WHEREAS, the persons covered by the PAGA Settlement will be Plaintiff and all
17 other hourly employees of Defendants who worked for Defendants at any time between February
18 18, 2019 and the date of this order (the "Aggrieved Employees") within California. The time
19 period covered by the PAGA Settlement will be from February 18, 2019 through the date of this
20 order ("the PAGA Timeframe"). The Released Parties include Defendants, and any of their
21 respective locations (including BST in the Tower District), their parents, predecessors, successors,
22 related companies, subsidiaries, affiliates, partners, officers, directors, managers, servants, agents,
23 employees, former employees, future employees, future entities, trusts, employment agencies and
24 professional employer organizations, and their employees, officers, agents, representatives,
25 attorneys, past or present, insurers, stockholders, fiduciaries, and other service providers, and their
26 successors and assigns, and all persons acting under, by, through, or in concert with any of them
27 (hereinafter collectively referred to as the "Released Parties"). Upon the Effective Date (the date
28 of this stipulated order), the LWDA and each of the Aggrieved Employees, including Plaintiff,

hereby voluntarily and knowingly release and forever discharge any and all claims seeking civil penalties under the PAGA predicated on any violation of Labor Code sections 226.7, 512, 1174, 1182.12, 1197, 226(a) and/or any claim for civil penalties under Labor Code sections 201, 202, 203, 226, and 226.3, arising from February 18, 2019 through the date of this order. This Agreement does not include a settlement for civil penalties for any violation of the Labor Code other than those listed in the Second Amended Complaint and/or Plaintiff's letter to the LWDA, which includes but not limited to Labor Code sections 226.7, 512, 1174, 1182.12, 1197, 226(a) and 226.3.

15. This Stipulation of Settlement shall not operate as a waiver of any of Plaintiff's individual (i.e., non-PAGA) claims, which are being resolved by a separate agreement. It is intended however, to settle all of the PAGA claims raised in the Second Amended Complaint.

16. WHEREAS, the Parties agree not to use a Settlement Administrator, but instead for Defendants to send all payments required under this Agreement.

17. WHEREAS, payment of any monies under this Agreement is condition upon the Court approving this Stipulation and entering the attached Order

18. WHEREAS, upon the condition precedent of paragraph 17, *infra*, within thirty (30) days of said condition's occurrence, Defendants shall send the total sum of \$5,000.00 (the "Gross PAGA Settlement Sum") to Aggrieved Employees as indicated herein. That payment shall be allocated as follows:

- a. \$500.00 representing 10% of the Gross PAGA Settlement Sum as attorneys' fees and costs incurred for prosecution of the PAGA Claim to Whelan Law Group ("Aggrieved Employees' Counsel") at 1827 E. Fir Ave., Suite 110, Fresno, CA 93720; and
- b. \$4,500.00 representing the amount of the net PAGA settlement sum after the foregoing deduction is made (the "Net PAGA Settlement Sum").

The Net PAGA Settlement Amount will be further allocated as follows:

- a. 25 percent (25%) of the remaining Net PAGA Settlement Sum to the Aggrieved Employees who worked during the PAGA Timeframe. Each employee will

1 receive a proportional share of the remaining Net PAGA Settlement Sum based
2 on the number of pay periods he/she was employed during the PAGA
3 Timeframe.

- 4 b. 75 percent (75%) of the remaining Net PAGA Settlement Sum shall be paid to
5 the LWDA in accordance with Section 2699(i) of the California Labor Code.
6 This payment shall be sent to the LWDA by Defendants.

7 19. WHEREAS, Defendants shall be responsible for the following:

- 8 a. Timely sending all applicable payment as detailed paragraph 18., *supra*.
9 Defendants will send each Aggrieved Employee their portion of the settlement
10 by U.S. First Class mail to that individual's last known address;
11 b. Sending with all payments made under this Agreement, a letter explaining this
12 Agreement to each Aggrieved Employee; and
13 c. Issuing IRS Form 1099 to all Aggrieved Employees and to Aggrieved
14 Employees' Counsel for all payments made in connection with this Agreement
15 and sent to same.

16 20. WHEREAS, the following conditions are applicable to all payments made under this
17 Agreement:

- 18 a. It will be conclusively presumed that any Aggrieved Employee's check was
19 received by said Aggrieved Employee if the payment check has not been
20 returned within thirty (30) days of the original mailing of the check;
21 b. All checks shall remain valid and negotiable for one hundred twenty (120)
22 calendar days from the date of their issuance. If there are uncashed checks
23 and/or unclaimed funds following this period, those payments will revert to
24 Defendants.

25 21. WHEREAS all Aggrieved Employees and Aggrieved Employees' Counsel shall be
26 solely responsible for the reporting all their share of any federal, state and/or municipal income or
27 other taxes on payments made pursuant to this Agreement, and shall hold Defendants and
28 Defendants' counsel free and harmless from any claims resulting from treatment of such payments

1 as non-taxable, including the treatment of such payments as not subject to withholding or
2 deduction for payroll and employment taxes. No party has made any representation to any of the
3 other Parties as to the taxability of any payments pursuant to this Agreement, including the
4 payments to any of the Aggrieved Employees, the payments to Aggrieved Employees' Counsel, or
5 otherwise as to the tax implications of any provision of this Agreement.

6 22. The Parties jointly request that the Court approve the penalties sought as part of the
7 PAGA Settlement and approve the dismissal of the PAGA claims in the operative complaint, the
8 Second Amended Complaint attendant therewith.

9 23. This Stipulation is made for the sole purpose of settling this Action. This
10 Stipulation and the settlement it evidences are made in compromise of disputed claims. Because
11 this Action was pleaded as a PAGA action, this Stipulation must receive approval by the Court.
12 Accordingly, the Parties enter into this Stipulation and associated settlement on a conditional
13 basis. If the Court does not enter an order granting approval of this Stipulation, this Stipulation
14 shall be deemed null and void; it shall be of no force or effect whatsoever; it shall not be referred
15 to or utilized for any purpose whatsoever; and the negotiation, terms and entry of the Stipulation
16 shall remain subject to the provisions of California Evidence Code sections 1119 and 1152,
17 Federal Rule of Evidence 408, and any other analogous rules of evidence that may be applicable.
18 If the Court does enter an Order granting approval of this Stipulation, the Parties shall file a
19 Request for Dismissal which includes a dismissal of the PAGA claims in the Second Amended
20 Complaint.

21 24. The Parties agree to cooperate in obtaining an order from the Court approving this
22 Stipulation and the associated settlement from the Court. The Parties further agree to fully
23 cooperate in the drafting and/or filing of any further documents or filings reasonably necessary to
24 be prepared or filed, shall take all steps that may be requested by the Court relating to, or that are
25 otherwise reasonably necessary to the approval and implementation of this Stipulation and shall
26 otherwise use their respective best efforts to obtain approval of and implementation of this
27 Stipulation and the associated settlement.

28 25. The Parties and their counsel agree that they will not issue any press releases,

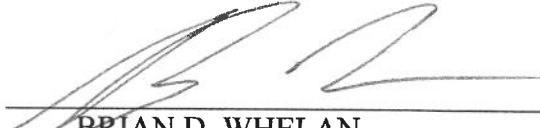
1 initiate any contact with the press, respond to any press inquiry or have any communication with
2 the press about the fact, amount, or terms of this Stipulation. In addition, the Parties and their
3 counsel agree that they will not engage in any advertising or distribute any marketing materials
4 relating to this Stipulation or this Action in any manner that identifies Defendants, including but
5 not limited to any postings on any websites maintained by Aggrieved Employees' Counsel.
6 Neither Plaintiff nor Aggrieved Employees' Counsel will discuss the terms or the fact of this
7 Agreement with third parties other than (1) their immediate family members, or (2) their
8 respective accountants or lawyers as necessary for tax purposes. Plaintiff and Aggrieved
9 Employees' Counsel agree not to publish any of the terms or conditions of this Stipulation in any
10 manner that identifies Defendants.

11 26. Aggrieved Employees' Counsel has calculated the attorneys' fees included in
12 paragraph 18.

13 **IT IS SO STIPULATED.**

14 DATED: May 4, 2022

WHELAN LAW GROUP

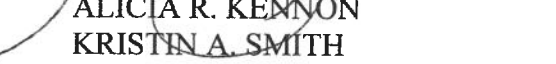
15
16 By: 

BRIAN D. WHELAN

Attorneys for Plaintiff Rodrigo Tovar

17
18
19 DATED: May 4, 2022

WOOD, SMITH, HENNING & BERMAN LLP

20
21 By: 
22 

ALICIA R. KENNON

KRISTINA A. SMITH

Attorneys for Defendants, OLIVE/BROADWAY
ENTERPRISES, INC., DBA BOBBY SALAZAR'S
TAQUERIA, ROBERT "BOBBY" SALAZAR

ORDER

Upon review of the foregoing stipulation entered into by and between the Parties in the above-referenced action, and good cause appearing therefor,

IT IS HEREBY ORDERED that the foregoing stipulation is hereby approved and the Court approves the Parties' PAGA Settlement pursuant to Labor Code § 2699(l).

DATED: 5/4/22

Rosemary McGinnis

Judge of the Superior Court