

PRIVATE ATTORNEY GENERAL ACT SETTLEMENT AGREEMENT AND RELEASE

This Private Attorney General Act Settlement Agreement and Release ("Settlement Agreement") is entered into by and between Kenyel Fairuza Lumbi ("Lumbi"), for herself and as a representative of the State of California and the Aggrieved Employees (as defined in Section 3(a)(4) below), on the one hand, and, on the other, Defendant Hwan's Enterprises, Inc. ("Hwan's Enterprises"), subject to approval by the Court. The term "Parties" as used herein shall refer to Lumbi and Hwan's Enterprises, as may be appropriate.

1. **Recitals.** This Settlement Agreement is made with reference to the following facts:

(a) Lumbi is a former employee of Hwan's Enterprises. Lumbi was employed by Hwan's Enterprises from approximately May 19, 2015 to June 23, 2019 as a cashier and a food preparer;

(b) On June 23, 2020, Lumbi's counsel, Windsor Troy, submitted a letter to the California Labor and Workforce Development Agency ("LWDA") on behalf of Lumbi, to notify the LWDA pursuant to the Private Attorneys General Act of 2004 ("PAGA"), Labor Code section 2698, *et seq.*) of Lumbi's intent to seek civil penalties under PAGA and all other remedies available under PAGA, including and not limited to: Labor Code sections 200, 201, 202, 203, 204, 210, 221, 225.5, 226, 226.3, 226.7, 226.8, 510, 512, 1194, 1194.2, 1197, 1197.1, 1199, and the applicable Industrial Welfare Commission Wage Orders in conformity with Labor Code section 2699.3 (the "PAGA Notice");

(c) On October 27, 2020, Lumbi filed her Complaint for Civil Penalties Pursuant to the Private Attorneys General Act of 2004 ("PAGA"), California Labor Code §2698, *et seq.* ("Complaint"), commencing a representative action under PAGA against Hwan's Enterprises, entitled *Kenyel Fairuza Lumbi, Plaintiff, v. Hwan's Enterprises, Inc., et al. and Does 1 to 25, Inclusive, Defendants*, Los Angeles County Superior Court Case No. 20NWCV00602 (the "Action"). The Complaint asserts (1) Failure to Pay Overtime; (2) Failure to Pay Hourly Wages; (3) Failure to Pay Minimum Wage; (4) Failure to Provide Itemized Wage Statements; (5) Failure to Provide Meal Breaks; (6) Failure to Provide Rest Breaks; (7) Constructive Termination in Violation of Public Policy; (8) Failure to Pay Final Wages Upon Termination or Following Resignation; (9) Sex Discrimination & Sexual Harassment; (10) Sexual Battery; (11) Disability Discrimination; (12) Failure to Accommodate; (13) Failure to Engage in the Interactive Process; (14) Failure to Prevent Harassment/Discrimination; (15) Retaliation in Violation of Public Policy; (16) Intentional Infliction of Emotional Distress; (17) Unfair Business Practices ("Individual Claims"); and (18) Civil Penalties under Private Attorney General Act ("PAGA Claim").

(e) On February 18, 2021, the Parties mediated the Action during a full-day mediation with Steve Cerveris, Esq., a well-respected mediator with considerable experience mediating wage-and-hour class and PAGA actions. At mediation, Hwan's Enterprises voluntarily produced payroll records for Lumbi and employee data for the Aggrieved Employees. The Action ended up getting resolved at mediation. Lumbi's Individual Claims are resolved under the terms set forth in a separate confidential settlement agreement, and the PAGA Claim is resolved under the terms set forth in this Settlement Agreement.

2. **Non-admission of Wrongdoing.** The Parties agree that neither this Settlement Agreement nor the furnishing of the consideration for this Settlement Agreement shall

be deemed or construed at any time for any purpose as an admission by the Released Parties of wrongdoing or evidence of any liability or unlawful conduct of any kind.

3. **Consideration.**

(a) In consideration for Lumbi signing this Settlement Agreement and complying with its terms, Hwan's Enterprises shall pay the maximum gross sum of TWENTY THOUSAND DOLLARS AND ZERO CENTS (\$20,000.00) (the "Total Settlement Amount") to resolve the PAGA Claim of the Action and Released Claims, which will be paid as follows:

(1) Attorneys' fees of up to 33.3% or 1/3 of the Total Settlement Amount which sum is SIX THOUSAND SIX HUNDRED AND SIXTY-SIX DOLLARS AND ZERO CENTS (\$6,666.66) and reimbursement of litigation costs and expenses up to the amount of ONE THOUSAND DOLLARS AND ZERO CENTS (\$1,000.00) (collectively, "Attorneys' Fees and Costs") to Lumbi's Counsel, which Hwan's Enterprises will not contest.

(2) The parties agree to allocate TWO THOUSAND DOLLARS AND ZERO CENTS (\$2,000.00) ("Settlement Administration Costs") of the Total Settlement for administration fees to Simpluris (the "PAGA Settlement Administrator"). If the parties estimated fees are too little, it can be adjusted and shall be paid from the Total Settlement Amount. If the actual administration fee is less than the Parties' estimated administration fees, the difference between the actual and estimated administration fees will revert to the participating settlement group members.

(3) The amounts stated in Paragraphs 1 – 2 above, once approved by the Court, shall be paid from the Total Settlement Amount. The balance remaining in the amount of TEN THOUSAND THREE HUNDRED THIRTY THREE DOLLARS AND THIRTY FOUR CENTS (\$10,333.34), is referred to as the "Net Settlement Amount."

(4) Seventy-five percent (75%) of the Net Settlement Amount, in the amount of SEVEN THOUSAND SEVEN HUNDRED FIFTY DOLLARS AND ZERO CENTS (\$7,750.00) shall be distributed to the LWDA ("LWDA Payment"); and the remaining twenty-five percent (25%), in the amount of TWO THOUSAND FIVE HUNDRED EIGHTY THREE DOLLARS AND THIRTY FOUR CENTS (\$2,583.34), shall be distributed to the Aggrieved Employees, defined solely for purposes of this Settlement as former and current hourly, non-exempt employees of Hwan's Enterprises who worked at its only business location at any time during the period between June 23, 2019 through the date on which the Court grants approval of the Settlement (the "Aggrieved Employees"). The Aggrieved Employees are estimated to consist of approximately 26 individuals who worked approximately 1,494 pay periods for the period June 23, 2019 to May 20, 2021. The 25% portion of the Net Settlement Amount payable to Aggrieved Employees is referred to as the "Employees' Portion."

(b) Because this is a settlement of PAGA claims for civil penalties only, no portion of the Settlement is allocated to unpaid wages. One Hundred Percent (100%) of the payments for Attorneys' Fees and Costs, and the Net Settlement Amount to be paid to the LWDA and Aggrieved Employees as described in Section 3(a) above will be treated and reported for tax purposes as non-wage payments and the Settlement Administrator will be responsible for issuing IRS Forms 1099 as required.

4. **Court Approval is Required.** Lumbi understands and agrees that the State of California and Aggrieved Employees, including Lumbi, would not receive the consideration specified in Section 3(a) above, except for Lumbi's execution of this Settlement Agreement, and the fulfillment of the promises contained herein, as well as the Court's approval of the Settlement.

5. **Disbursal of Settlement Funds/Dismissal of Action.**

(a) Subject to Section 4 above, Hwan's Enterprises shall remit to the PAGA Settlement Administrator the sums described more fully in Section 3(a) above, after all of the following has occurred: (i) the Settlement Agreement is fully executed by all Parties and their counsel; and (ii) the Court has entered an order approving the Settlement Agreement.

(b) Upon complete distribution of the Total Settlement Amount by the PAGA Settlement Administrator in accordance with this Settlement Agreement, the Settlement Administrator will notify the parties of distribution of the entire Total Settlement Amount, and within five (5) days of such notification, Lumbi will file a request for dismissal of the Action in its entirety with prejudice.

6. **Approval and Implementation of the PAGA Settlement.**

(a) The Parties will cooperate in obtaining an order from the Court approving this Settlement Agreement and dismissal of the Action based thereon, as described herein. The Parties further agree to cooperate in the drafting and/or filing of any further documents and/or filings reasonably necessary to be prepared and/or filed, and to take all steps that may be requested by the Court relating in order to obtain approval and implementation of this Settlement Agreement, and the payment described in Section 3(a) above.

(b) The Parties shall seek to obtain Court approval of this Settlement Agreement by way of an unopposed motion to be filed by Lumbi's Counsel. Lumbi's Counsel shall provide a draft of all documents to be submitted in connection with the motion to approve this Settlement Agreement to Soo Y. Park of Fisher & Phillips, LLP ("Hwan's Enterprise Counsel") for review prior to filing.

(c) The Parties expressly acknowledge that the Court's approval of the Settlement Agreement is a condition precedent to any payment described in this Settlement Agreement.

7. **Payment of PAGA Settlement Sum / Notice to Recipients.**

(a) Subject to Court approval of this Settlement Agreement, payment of the sums described in Section 3(a) above shall be made by Hwan's Enterprises by transmitting the amount of TWENTY THOUSAND DOLLARS (\$20,000.00), payable to the settlement account established by the PAGA Settlement Administrator for administration of this Settlement. The payment shall be payable within ten (10) calendar days of the Court's order granting approval of this Settlement Agreement. If the date by which payment by Hwan's Enterprise is due falls on a Saturday, Sunday or legal holiday in the State of California, then the due date shall be extended the next following day which is not a Saturday, Sunday or legal holiday in the State of California.

(b) Each Aggrieved Employee will be entitled to a *pro rata* share of 25% of the Net Settlement Amount (i.e., the Employees' Portion) based upon the number of pay

periods they each worked between June 23, 2019 through the date on which the Court grants approval of the Settlement ("Compensable Pay Periods"), based on Hwan's Enterprises payroll records. Specifically, to calculate each PAGA Settlement Member's share of the Employees' Portion ("Individual Settlement Share"), the PAGA Settlement Administrator shall: (i) for each Aggrieved Employee, divide the number of Compensable Pay Periods he or she individually worked by the total aggregate number of Compensable Pay Periods worked by all Aggrieved Employees, and then (ii) multiply this amount by the Employees' Portion to arrive at each Aggrieved Employee's Individual Settlement Share.

(1) One Hundred Percent (100%) of all Individual Settlement Shares are to be considered penalties and will not be subject to local, state or federal payroll tax withholdings. All Aggrieved Employees who cash, deposit, or otherwise negotiate their Individual Settlement Share checks shall receive an IRS Form 1099 for their Individual Settlement Share as required by the IRS.

(c) The Parties agree to retain Simpluris to serve as the PAGA Settlement Administrator;

(d) The PAGA Settlement Administrator shall distribute each Individual Settlement Share by way of check, along with a cover notice agreed to by the Parties and approved by the Court, in the following manner:

(1) No later than seven (7) calendar days after the Court's order granting approval of the Settlement, Hwan's Enterprises shall provide the PAGA Settlement Administrator with a list of all Aggrieved Employees (the "Aggrieved Employees List"), containing the following information for each Aggrieved Employee: (i) first and last name; (ii) last known address; (iii) social security number; and (iv) Compensable Pay Periods.

(2) The PAGA Settlement Administrator shall conduct one (1) National Change of Address ("NCOA") search for all individuals identified on the Aggrieved Employee List.

(3) No later than fourteen (14) calendar days after the PAGA Settlement Administrator's receipt of the Total Settlement Amount and Aggrieved Employee List, the PAGA Settlement Administrator shall mail the agreed-upon Notice, explaining the case and the payment, and Individual Settlement Share checks (together, the "PAGA Settlement Package") to all Aggrieved Employees by first-class United States mail. For each PAGA Settlement Package that is returned undeliverable, the PAGA Settlement Administrator shall promptly attempt to locate an alternate, updated address for the Aggrieved Employee at issue, by using an address refresher database and shall attempt one (1) re-mailing of the PAGA Settlement Package.

(4) The Individual Settlement Share checks issued to Aggrieved Employees shall remain valid for one hundred eighty (180) calendar days, and thereafter, shall be cancelled. Funds associated with cancelled checks shall be transmitted to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Code of Civil Procedure § 1500, *et seq.* in the respective names of those Aggrieved Employees who did not cash their settlement checks until such time as they claim their property. After the expiration of the 180-day check cashing period, as outlined above, the Settlement Administrator shall begin the process of transferring the funds in accordance with California Code of Civil Procedure §§ 1500–1582 and the timing requirements set forth by the Office of the State Controller.

(e) Also no later than fourteen (14) calendar days after the PAGA Settlement Administrator receives the Aggrieved Employees List and Total Settlement Amount, the PAGA Settlement Administrator shall transmit the LWDA Payment to the LWDA.

8. Release of Claims by Lumbi, Aggrieved Employees, and the State of California.

(a) Upon the Effective Date, and except as to the rights and obligations created by this Settlement Agreement, Lumbi and Aggrieved Employees, individually and on behalf of their heirs, executors, administrators, representatives, attorneys, successors and assigns, and the State of California, on behalf of itself and its administrators, representatives, and assigns, will be deemed to have knowingly and voluntarily released and forever discharged Hwan's Enterprises, including Hwan's Enterprises parent corporation, affiliates, subsidiaries, divisions, predecessors, insurers, successors and assigns, and their current and former employees, attorneys, officers, directors and agents thereof, both individually and in their business capacities, and their employee benefit plans and programs and the trustees, administrators, fiduciaries and insurers of such plans and programs (collectively, the "Released Parties"), to the full extent permitted by law, of and from the Action and from any and all claims asserted and unasserted, arising during the period from June 23, 2019 through the date on which the Court grants approval of the Settlement, for civil penalties under California Labor Code section 2698, *et seq.* ("PAGA") as well as any interest, fees, and costs available under PAGA, based on the factual allegations in the Complaint and in Lumbi's June 23, 2020 PAGA letter, and all claims that could have been alleged based on the factual allegations contained collectively therein, including, but not limited to, claims for failure to pay wages, failure to pay overtime, failure to provide compliant rest and meal periods; failure to pay one hour of regular pay for missed rest and meal periods, failure to timely pay wages upon termination, failure to provide compliant wage statements, and failure to maintain requisite payroll records; and for violations of Labor Code sections 200, 201, 202, 203, 204, 210, 221, 225.5, 226, 226.3, 226.7, 226.8, 510, 512, 1194, 1194.2, 1197, 1197.1, 1199 and applicable Industrial Welfare Commission Wage Orders in conformity with Labor Code section 2699.3.

9. **No Transfer/Assignment of Claims.** The Parties warrant and represent that they have not assigned or transferred or purported to assign or transfer to any person or entity all or any part of or any interest in any claim released under this Settlement Agreement.

10. Governing Law and Interpretation.

(a) This Settlement Agreement shall be governed and conformed in accordance with the laws of the State of California provided, however, that parol evidence shall not be admissible to alter, vary or supplement the term of this Settlement Agreement. Should any provision of this Settlement Agreement be declared illegal or unenforceable by any court of competent jurisdiction and cannot be modified to be enforceable such provision immediately shall become null and void, leaving the remainder of this Settlement Agreement in full force and effect.

(b) This Settlement Agreement is enforceable pursuant to CCP 664.6. In the event of a breach of any provision of this Settlement Agreement, any Party reserves the right to institute an action specifically to enforce any term or terms of this Settlement Agreement or seek damages for breach. In an action to enforce any term or terms of this Settlement Agreement or to seek damages for breach of this Settlement Agreement, the prevailing Party in that action shall be entitled to recover reasonable attorney's fees and costs from the non-prevailing Party.

11. **Amendment.** This Settlement Agreement may not be modified, altered or changed except in writing and signed by both Parties wherein specific reference is made to this Settlement Agreement, subject to approval by the Court.

12. **Miscellaneous.**

(a) This Settlement Agreement may be signed in counterparts, each of which shall be deemed an original, but all of which, taken together shall constitute the same instrument. A signature made on a faxed or electronically mailed copy of the Settlement Agreement or a signature transmitted by facsimile or electronic mail shall have the same effect as the original signature.

(b) The section headings used in this Settlement Agreement are intended solely for convenience of reference and shall not in any manner amplify, limit, modify or otherwise be used in the interpretation of any of the provisions hereof.

(c) This Settlement Agreement was the result of negotiations between the Parties and their respective counsel. In the event of vagueness, ambiguity or uncertainty, this Settlement Agreement shall not be construed against the Party preparing it, but shall be construed as if both Parties prepared it jointly.

(d) If Lumbi or Hwan's Enterprises fails to enforce this Settlement Agreement or to insist on performance of any term, that failure does not mean a waiver of that term or of the Settlement Agreement. The Settlement Agreement remains in full force and effect anyway.

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IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily
executed this Settlement Agreement as of the date set forth below:

Date: 4/20/2021, 2021

PLAINTIFF

DocuSigned by:

Kenyel Fairuza Lumbi
KENYEL FAIRUZA LUMBI
Individually and On Behalf of the State of
California and Aggrieved Employees

Date: 4/22/, 2021

HWAN'S ENTERPRISES, INC.

ICK HWAN CHO
By: ICK HWAN CHO, CEO

Approved as to form:

Date: April 20, 2021

WINDSOR TROY

By:

ANAL DE LA TORRE
ANAL DE LA TORRE
Attorney for Plaintiff KENYEL FAIRUZA
LUMBI

Date: April 23, 2021

FISHER & PHILLIPS, LLP

By:

SOO Y. PARK
SOO Y. PARK
Attorney for Defendant
HWAN'S ENTERPRISES, INC.