

PAGA SETTLEMENT AGREEMENT

Subject to Court approval by the Superior Court of the State of California for the County of Los Angeles ("Court"), Plaintiff Francisco Gutierrez ("Plaintiff" or "Gutierrez"), and Defendants Frida Restaurant Americana, LLC and Frida Americana Management, LLC ("Defendants") (collectively the "Parties") hereby agree to the following binding settlement ("Settlement" or "Settlement Agreement") of the lawsuit entitled *Francisco Gutierrez v. Frida Restaurant Americana, LLC et al.*, Los Angeles Superior Court Case No. 20STCV39369 (the "Action").

RECITALS

1. Defendants are restaurateurs in California. Defendants employed Gutierrez as a non-exempt bus boy and food runner from approximately January 2009 through January 2020.
2. On June 19, 2020, Gutierrez provided written notice pursuant to California Labor Code section 2699.3 to the California Labor Workforce Development Agency ("LWDA") and to Defendants by certified mail of specific provisions of the California Labor Code which Plaintiff alleged Defendants 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 IWC Wage Orders including *inter alia*, Wage Order 5-2001.
3. In his PAGA notice, Gutierrez alleges among other things that Defendants 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; failed to pay vacation time; and failed to pay sick time.
4. On October 14, 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; (8) failure to keep accurate payroll records; (9) failure to pay sick time; and (10) failure to pay vacation time.

6. The Parties engaged in an informal exchange of documents and information related to the claims alleged in this Action. Defendants also provided a 20% random sampling of Aggrieved Employees' time and payroll data. The Parties have also conducted extensive independent investigation and evaluations of the claims and defenses in this matter. In May of 2021, after exchanging informal 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 Gutierrez'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 Defendants' defenses thereto. Plaintiff has also taken into account the uncertainty and risk of the outcome of further litigation, and the difficulties and delays inherent in such litigation. Plaintiff has also taken into account Defendants' representation of financial distress and concerns of their inability to pay a larger judgment (Defendants shall provide a declaration to Plaintiff in support of their claims of financial distress). Based on the foregoing, Plaintiff has determined that the Settlement is fair and fulfills PAGA's objectives.

8. Defendants maintain that all of their employees have been compensated in compliance with the law, that they have and continue to have, legally compliant employment policies and practices throughout the Settlement Period (defined below) for all of its California non-exempt employees, and have denied and continue to deny each of the claims and contentions alleged by Plaintiff in the Action.

Defendants deny 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 Defendants of any fault, wrongdoing or liability whatsoever, or of any concession that a trial of this Action would be manageable.

9. 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.

10. Under California Law, the State may assess and collect civil penalties from 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 issue, 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." *Id.* 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*, 46 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 the plaintiff files suit is

always the real party in interest in the suit.” *Iskanian v. CLS Transportation Los Angeles LLC*, 59 Cal. 4th 348, 382 (2014). Civil penalties recovered by aggrieved employees shall be distributed as follows: 75 percent to the State and 25 percent to the aggrieved employees. Cal. Lab. Code § 2699(i).

11. Labor Code section 2699(I)(2) provides that “[t]he 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(I)(2).

PERSONS AND CLAIMS COVERED BY THE SETTLEMENT

12. Aggrieved Employees: This Settlement covers all persons who were employed by Defendants as non-exempt hourly employees in California at any time during the period from June 19, 2019, through the date of the order approving the settlement (“Aggrieved Employees”).

13. Released Parties: The Releases under this Agreement cover Defendants and Defendants’ 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”).

14. Settlement Period: The Settlement covers the period from June 19, 2019, through the date on which the Court enters an order approving the Settlement (“Settlement Period”).

15. Released Claims: The Released Claims means any and all claims for the 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 times permissible under Labor Code section 204; failure to provide complete and accurate wage statements; failure to keep complete and accurate payroll records; failure to pay vacation time; failure to pay sick time; violations of Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 227.3, 245.5, 246(i), 510, 512(a), 551, 552, 1174(d), 1194, 1197, 1197.1, 1198, and IWC Wage Orders including *inter alia*, Wage Order 5-2001 ("Released Claims").

Gutierrez and Defendants 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

16. Settlement Fund. Defendants will pay a total of Seventy Thousand Dollars (\$70,000.00) ("Settlement Fund") in full satisfaction of all claims, rights, demands, liabilities and causes of action for civil penalties that otherwise could have been assessed and collected 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 as specified in Paragraphs 18-20. The remaining portion of the Settlement Fund will be paid as civil penalties to the LWDA and Aggrieved Employees ("PAGA Penalties Fund"). The Settlement Fund is based on Defendants' representation that Aggrieved Employees worked a total of 2,665 pay periods between June 19, 2019, and May 5, 2021. If the actual number of pay periods during this time frame increases by more than ten percent (10%) of the 2,665 pay period estimate, i.e., more than 267 pay periods, the Settlement Fund will increase proportionally with any pay periods in excess of 2,932.

17. PAGA Penalties Fund. As payment of civil penalties to the LWDA and Aggrieved

Employees, Defendants agree to pay a PAGA Penalties Fund of Twenty-Nine Thousand Eight Hundred Seventy-Nine Dollars and Eighty-Four Cents (\$29,879.84). Pursuant to PAGA, 75% of the PAGA Penalties Fund, or Twenty-Two Thousand Four Hundred Nine Dollars and Eighty-Eight Cents (\$22,409.88), will be paid to the LWDA ("LWDA Payment"), and the remaining 25%, or Seven Thousand Four Hundred Sixty-Nine Dollars and Ninety-Six Cents (\$7,469.96), will be paid to all Aggrieved Employees ("Aggrieved Employee Fund") according to the following formula:

- 17(a) Defendants will calculate: (i) the total number of pay periods worked by each Aggrieved Employee during the Settlement Period, and (ii) the total number of pay periods worked by all Aggrieved Employees during the Settlement Period. The Parties agree that the number of pay periods worked by each Aggrieved Employee may be determined by counting the number of paychecks issued to that Aggrieved Employee, and assuming that each paycheck represents one pay period worked.
- 17(b) To determine each Aggrieved Employee's payment ("Individual PAGA Payment"), the Parties agree to use the following formula:
$$\text{Settlement Payment} = \text{Aggrieved Employee Fund} \times (\text{Pay Periods Worked by Individual Aggrieved Employee During the Settlement Period} \div \text{Total Pay Periods Worked by All Aggrieved Employees during Settlement Period}).$$
- 17(c) Aggrieved Employees will be mailed a check for their Individual PAGA Payments by the Settlement Administrator.

18. 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, Defendants agree not to oppose a request by Plaintiff's counsel, Payne Nguyen, LLP ("Plaintiff's Counsel"), for an award of attorney's fees of up to Twenty-Eight Thousand Dollars and Zero Cents (\$28,000.00) and documented costs not to exceed Two Thousand One Hundred Twenty Dollars and Sixteen Cents (\$2,120.16) ("Attorneys' Fees and Costs") to be paid from the Settlement Fund.

19. General Release Payment. For a general release of all claims Plaintiff may have against Defendants, including Plaintiff's individual claims pursuant to California Labor Code, Defendants agree to pay Plaintiff the total sum of Seven Thousand Five Hundred Dollars (\$7,500) 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 relinquish any and all claims, rights or benefits that they 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 and forever settle 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 to or arising from Plaintiff's employment with Defendants. In no case shall Defendants be required to pay more than \$7,500 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 have the right to revoke this Settlement, and it will remain binding.

20. 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 establishing a qualified settlement fund ("QSF") and issuing payments and required tax forms to Aggrieved Employees, the LWDA, Plaintiff and Plaintiff's Counsel. Defendants shall pay for third-party administration fees that are necessary to administer the Settlement from the Settlement Fund up to a maximum payment of Two Thousand Five Hundred 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 and distributed in accordance with Paragraph 17.

21. Court Approval of the Settlement and Distribution of Settlement Payments. 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 Court's approval of the Order is a precondition to Defendants' obligation to make any monetary payments pursuant to this Settlement Agreement. 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.

22. Notice to LWDA. Plaintiff will provide submit this Agreement and proposed settlement to the LWDA as required by Labor Code Section 2699(1)(2) at the same time that it is submitted to the

Court for approval.

23. Effective Date. "Effective Date" means the date by which the Court enters and Order approving the Settlement Agreement and Notice of such Order is provided to Defendants.

24. List of Aggrieved Employees. Within 14 calendar days after the Effective Date, Defendants will provide, on a confidential basis, the Settlement Administrator a complete list of all Aggrieved Employees ("Aggrieved Employee List"). The Aggrieved Employee List will be formatted in Microsoft Office Excel and will include each Aggrieved Employee's full name; last known mailing address; Social Security number; the respective number of pay periods during which each Aggrieved Employee worked during the Settlement Period; and any other relevant information needed to calculate and distribute the Individual PAGA Payments. The Settlement Administrator shall not distribute or use the Aggrieved Employee List or any information contained therein for any purpose other than to administer this Settlement.

25. Funding of the Settlement. Within sixty (60) days after the Effective Date, Defendants will deposit Thirty-Five Thousand Dollars and Zero Cents (\$35,000.00) of the Settlement Fund, into the QSF to be established by the Settlement Administrator, and within six (6) months of the first payment, Defendants will deposit the remaining Thirty-Five Thousand Dollars and Zero Cents (\$35,000.00) into the QSF. Within 7 calendar days of the funding of the Settlement Fund, the Settlement Administrator will issue payments to: (a) Aggrieved Employees; (b) the LWDA; (c) Plaintiff; (d) Plaintiff's Counsel and (e) itself. The Settlement Administrator, and not Defendant, will issue the required tax forms for all payments issued under this Settlement.

26. Individual PAGA Payments. The Settlement Administrator will issue each Aggrieved Employee a check for his or her share of the PAGA Penalties Fund, the Individual PAGA Payments, along with an explanatory letter, in English and Spanish, in the form of **Exhibit A**. Prior to mailing, the Settlement Administrator will perform a search based on the National Change of Address Database for information to update and correct for any known or identifiable address changes. Any checks returned as non-deliverable on or before the check cashing deadline will be sent promptly via regular First-Class U.S.

Mail to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator will promptly attempt to determine the correct address using a skip-trace, or other search using the name, address or Social Security number of the Aggrieved Employee involved, and will then perform a single re-mailing. Checks will remain negotiable for 180 days. For any check to an Aggrieved Employee that has not been returned as undeliverable but has not been cashed after 120 days, the Settlement Administrator shall mail a reminder postcard or other notice that the time to cash the check is approaching. Funds represented by Individual PAGA Payment settlement checks returned as undeliverable and those settlement checks remaining un-cashed for more than 180 days after issuance shall become null and void, and any monies remaining in the distribution account shall be distributed to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Civil Code § 1500 *et seq.*, for the benefit of those Aggrieved Employees who did not cash their checks until such time that they claim their property. All Individual PAGA Payments will be treated as miscellaneous income for which, if required by law, a 1099 will be issued.

27. Release of PAGA Claims. Upon the Effective Date, the Parties agree this Settlement shall be effective as a full and final accord and satisfaction, and settlement of and as bar to, the Released Claims during the Settlement Period. The Parties further agree this Settlement shall be binding on Plaintiff, and on the LWDA, the State of California, and the Aggrieved Employees, who shall fully release and forever discharge Defendants and the Released Parties from any and all Released Claims during the Settlement Period. As a result of this release, the Aggrieved Employees will be unable to bring a claim under PAGA, or recover civil penalties under any pending PAGA lawsuit, for any of the Released Claims that arose during the Settlement Period. In addition, Plaintiff will be unable to bring any claims against Defendants and the Released Parties relating to their employment by Defendants.

28. No Credit Toward 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 plan. 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 benefit plans.

29. No Prior Assignments. The Parties and their counsel represent, covenant, and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to 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.

30. 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 documents 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.

31. 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.

32. 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.

33. 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.

34. 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.

35. 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.

36. 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.

37. 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.

38. 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.

39. 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.

40. 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.

41. 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.

42. 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.

43. 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.

44. 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 incurred in connection with any enforcement actions.

45. 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.

46. 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.

47. 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 content 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.

48. 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.

49. 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 Defendants. 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.

50. No Publicity. Plaintiff and Plaintiff's Counsel agree not to publicize this Settlement, including the fact of the Settlement, its terms or contents, and the negotiations underlying the Settlement, in any manner or form, directly or indirectly, to any person or entity, except as shall be legally or contractually required to effectuate the terms of the Settlement. For the avoidance of doubt, this section means Plaintiff and Plaintiff's Counsel agree not to issue press releases, communicate with, or respond to any media or publication entities, publish information in manner or form, whether printed or electronic, on any medium or otherwise communicate, whether by print, video, recording or any other medium, with any person or entity advertising or promoting the Settlement, including the fact of the Settlement, its terms or contents and the negotiations underlying the Settlement. However, nothing in the provision shall be construed from as preventing the Parties from taking following actions: (a) Plaintiff's counsel shall be allowed to refer to the Action the Settlement in other litigations to support their adequacy as attorneys or to justify an award of attorney's fees; (b) the Parties shall have the right to disclose the Settlement as may be required under federal or state tax and/or securities laws or under Generally Accepted Accounting Principles; (c) Plaintiff's Counsel shall be permitted to post a neutral statement about the Action and Settlement on their websites, but shall not publish the case name, case number, or names of any Parties; (d) Plaintiff's counsel may communicate with Aggrieved Employees or their representatives about this

Resolution; and (d) the Parties or their representatives may communicate with accountants or legal advisors regarding the Resolution.

51. Neutral Employment Reference. Defendants agree that they 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 Defendants' employment of Plaintiff, Defendants shall only provide Plaintiff's dates of employment, job titles during employment, and final rate of pay. Defendants shall not refer to the Action or this Settlement; provided, however, that if Defendants are asked about the Action, Defendants may respond that it has been settled.

IN WITNESS WHEREOF, this Settlement Agreement is executed by the Parties and their duly authorized attorneys as of the day and year herein set forth.

IT IS SO AGREED:

Dated: 6-11-2021

PLAINTIFF FRANCISCO GUTIERREZ

Francisco Gutierrez

Plaintiff Francisco Gutierrez, personally
and as a private attorney general for and proxy or
agent of the California Labor Workforce Development
Agency

Dated: 6/1/21

**DEFENDANT FRIDA RESTAURANT
AMERICANA, LLC**

Ber Oberfeld
Name: BER OBERFELD
Title: MANAGER
On Behalf of Defendant Frida Restaurant Americana,
LLC

Dated: 6/1/21

**DEFENDANT FRIDA AMERICANA
MANAGEMENT, LLC**

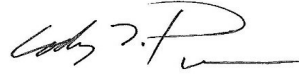
Ber Oberfeld

Name: **BER OBERFELD**
Title: **MANAGER**
On Behalf of Defendant Frida Americana
Management, LLC

APPROVED AS TO FORM:

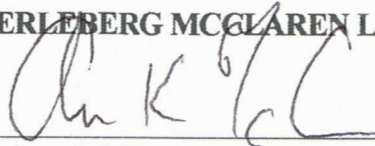
Dated: June 15, 2021

PAYNE NGUYEN, LLP



Cody Payne
Kim N. Nguyen
Attorneys for Plaintiff Francisco Gutierrez

PERLEBERG MCCLAREN LLP



Dated: 6/2/2021

Anthony McClaren
Attorney for Defendants Frida Restaurant Americana,
LLC and Frida Americana Management, LLC