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10 Attorneys for Plaintiff

11 THIEU DINH

12 and Aggrieved Employees

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA

14 FOR THE COUNTY OF SAN DIEGO

15 THIEU DINH (a.k.a. "TONY" DINH), an
16 Individual, on behalf of himself and all other
17 aggrieved employees of Defendants in the
18 State of California,

19 Plaintiff,

20 vs.

21 CAO-CAO NAIL 2000 OF UTC, LLC;
22 DUNG KIM CAO, an Individual; and DOES
23 1-10, Inclusive,

24 Defendants.

ELECTRONICALLY FILED

Superior Court of California,
County of San Diego

05/11/2021 at 02:47:00 PM

Clerk of the Superior Court
By Kristin Sorianosos, Deputy Clerk

Case No. 37-2020-00017596-CU-OE-CTL

UNLIMITED CIVIL CASE

UNOPPOSED MOTION

**DECLARATION OF JANINE R.
MENHENNET IN SUPPORT OF
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S NOTICE OF MOTION
AND MOTION FOR APPROVAL OF
SETTLEMENT OF CIVIL ACTION
AND NEGOTIATED PENALTIES
PURSUANT TO THE PRIVATE
ATTORNEYS' GENERAL ACT OF
2004**

DATE: OCTOBER 1, 2021

TIME: 10:30 A.M.

DEPT: C-70

HON. CAROLYN CAIETTI

RESERVATION NUMBER: 2376352

1 I, Janine R. Menhennet, declare as follows:

2 1. I am counsel of record for plaintiff Thieu Dinh in the above-entitled action. I have
3 personal knowledge of the facts contained herein, and if called as a witness, would and could
4 competently testify thereto.

5 2. Attached hereto as Exhibit 1 is a true and correct copy of the Settlement Agreement
6 reached in this matter, allocating the individual settlement, attorneys' fees, and penalties pursuant
7 to the Private Attorneys' General Act, Labor Code §2698, *et seq.* ("PAGA").

8 3. Attached hereto as Exhibit 2 is a true and correct copy of the proposed notice and postcard
9 to be sent to aggrieved employees, awaiting Court approval.

10 4. Attached hereto as Exhibit 3 is a true and correct copy of the notice sent to the California
11 Labor and Workforce Development Agency ("LWDA") notifying it of Mr. Dinh's claims under
12 the Labor Code.

13 5. The LWDA did not respond to Plaintiff's notice.

14 6. I prepared discovery and responded to discovery the parties mutually propounded during
15 this litigation. This exchange of verified discovery responses and documents, including wage and
16 hour data, assisted us in evaluating the merits and value of the claims and exposure in this matter.
17 The parties exchanged further information during the course of settlement discussions. This
18 exchange of evidence allowed the parties to reach a settlement that all parties believe is adequate,
19 reasonable, and fair for all parties.

20 7. Through discovery, it was determined that employees were paid on a weekly basis,
21 meaning that there have been approximately 100 pay periods from the date of the beginning of the
22 PAGA period (June 8, 2019), through the date of filing this motion. Discovery also revealed that
23 there are approximately 40 aggrieved employees.

24 8. While this is not a class action, I have been approved as class counsel in class and
25 representative actions in several cases, including:

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- 1 • *Lawson v. Staples Contract & Commercial Inc.*, Los Angeles Superior Court case
2 number BC542237, February 25, 2019. (\$550/hour)
- 3 • *Santana v. Rady Children's Hospital, San Diego*, San Diego Superior Court case
4 number 2014-00022411, January 25, 2019. (\$550/hour)
- 5 • *Montoya v. Full Steam Staffing*, Monterey Superior court case number M128639.
6 (\$550/hour)
- 7 • *Schwartz v. Bank of the West*, San Francisco Superior Court case number CGC 14-
8 538955, December 6, 2018. (\$550/hour)
- 9 • *Jones v. Abercrombie & Fitch*, Central District of California case number 15-cv-00105,
10 November 19, 2018. (\$550/hour)
- 11 • *Gutierrez v. Save Mart Supermarkets*, San Mateo Superior Court case number
12 CIV530955. (\$550/hour)
- 13 • *Nijmeh v. Bon Appetit*, Santa Clara Superior Court case number 16CV294127, May 18,
14 2018. (\$550/hour)
- 15 • *Hicks v. Poway Academy of Hair Design, Inc.*, San Diego Superior Court case number
16 2014-00026517, August 22, 2017. (\$550/hour)
- 17 • *Ryan/Elkins v. Dignity Health*, Sacramento Superior Court case number 2013-
18 00147371. (\$550/hour)
- 19 • *Castro v. Home Depot U.S.A., Inc.*, Los Angeles Superior Court case number
20 BC577885, November 15, 2017. (\$550/hour)
- 21 • *Syed v. M.I. Swaco*, Eastern District of California case number 12-cv-01718-DAD, July
22 26, 2017. (\$550/hour)
- 23 • *Saldana v. Amazon.com, LLC*, Western District of Kentucky case number 14-cv-00290,
24 October 31, 2016. (\$550/hour)
- 25 • *Horn v. Rise Medical Staffing, LLC*, Eastern District of California case number 17-cv-
26 01967, July 6, 2020. (\$575/hour)
- 27 • *Martin v. Aircraft Service Int'l, Inc.*, San Francisco Superior Court, CGC-18-566072,
July 16, 2020. (\$575/hour)

-3-

DECLARATION OF JANINE R. MENHENNET ISO
MEMORANDUM OF POINTS AND AUTHORITIES ISO
PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR
APPROVAL OF SETTLEMENT OF CIVIL ACTION AND
NEGOTIATED PENALTIES PURSUANT TO THE PRIVATE
ATTORNEYS' GENERAL ACT OF 2004

1 I declare under penalty of perjury under the laws of the State of California that the
2 foregoing is true and correct. Executed this 11th day of May, 2021, at San Diego, California.

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6 Janine R. Menhennet
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EXHIBIT 1

SETTLEMENT AND RELEASE AGREEMENT
INCLUDING PRIVATE ATTORNEYS GENERAL ACT CLAIMS

Re: *Thieu Dinh v. Cao-Cao Nail 2000 of UTC, LLC, et al.*
LWDA Case No.: LWDA-CM-795345-20
San Diego Superior Court Case No.: 37-2020-00017596-CU-OE-CTL

This Settlement Agreement and Release Agreement Including Private Attorneys General Act (“PAGA”) Claims (the “Agreement”) is made by and between Thieu Dinh a.k.a. Tony Dinh (“Plaintiff”) for himself and on behalf of the state of California; and Cao-Cao Nail 2000 of UTC, LLC (“Cao-Cao” or “Defendant”) and Dung Kim Cao a.k.a. Stephanie Cao (“Ms. Cao” or “Defendant”). Cao-Cao and Ms. Cao are collectively referred to as “Defendants.” Plaintiff and Defendants are collectively referred to herein as the “Parties” and may be individually referred to as a “Party.”

The Parties agree that the Action (as defined in Section I. C. below) against Defendants shall be, upon approval by the Court, ended, settled, resolved, and concluded without any admission of fault or liability and for the consideration set forth below, including but not limited to a release of claims by Plaintiff and the PAGA Settlement Group Members.

This Agreement is made in consideration of the following facts:

I. RECITALS

A. WHEREAS certain disputes have arisen between the Parties concerning their employment relationship, including Plaintiff, and all other Cao-Cao employees including both Janitors and Technicians, who performed services for Defendants between June 8, 2019 and the present, inclusive.

B. WHEREAS, on July 1, 2020, Plaintiff submitted a letter to the LWDA and mailed it via certified mail to Defendants (the “LWDA Notice”), in accordance with the requirements of Labor Code section 2699.3(a)(1)(A), to notify the LWDA of the alleged violations of the California Labor Code by Defendants arising from Plaintiff’s employment with Cao Cao. The LWDA Notice alleged that Defendants had violated California Labor Code sections 201-203, 204, 208, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1194, 1194.2, 1197, 1198 and 2802. The LWDA Notice also indicated Plaintiff intended to pursue a representative civil action under PAGA against Defendants. The LWDA declined to investigate the alleged violations, permitting Plaintiff to initiate a PAGA action in court.

C. WHEREAS Plaintiff filed the action entitled *Thieu Dinh (a.k.a. “Tony” Dinh) v. Cao-Cao Nail 2000 of UTC, LLC; Dung Kim Cao; and Does 1-10, Inclusive*, as amended 9/28/20, which is currently pending in the San Diego Superior Court as Case No. 37-2020-00017596-CU-OE-CTL, based on the disputes described in Paragraph A above (the “Action”). In the First Amended Complaint (the “Complaint”), Plaintiff asserted ten (10) claims, including but not

limited to those for monetary and punitive damages and equitable relief both individually and on a representative basis under PAGA.

D. WHEREAS Defendants deny all of the allegations in the Action and various causes of action asserted in the Complaint, including, without limitation, Plaintiff's individual claims, and the PAGA Claims (as defined below) and deny they have committed any misconduct, statutory or regulatory violation, wrongdoing, or any other actionable conduct.

E. WHEREAS the Parties engaged in a substantial exchange of documents and information during discovery. The Parties reached this Agreement only after extensive discovery and investigation were performed.

F. WHEREAS the Parties engaged in meaningful early settlement negotiations that led to them reaching this Agreement pre-mediation.

G. WHEREAS the Parties understand, acknowledge, and agree that this Agreement constitutes a compromise of Plaintiff's and the representative PAGA Claims as well as Plaintiff's individual claims, and that it is the desire and intention of the Parties to effect a final and complete resolution of Plaintiff's individual claims as well as the PAGA Claims that Plaintiff and all Cao-Cao employees have against Defendants or any persons or companies affiliated with Defendants. The Parties further acknowledge that this Agreement is a compromise of disputed claims and that nothing in this Agreement shall be construed as an admission of liability by any Defendant.

H. WHEREAS the Parties believe and agree that this Agreement provides for a fair, adequate, and reasonable resolution of the PAGA Claims and Plaintiff's individual claims, and have arrived at the settlement in extensive, arms-length negotiations, taking into account all relevant factors, present and potential.

I. WHEREAS, under California law, the State may assess and collect civil penalties from employers for violations of certain provisions of the Labor Code. *See* California Labor Code sections 2699(a) *et seq.* Under PAGA, however, if an aggrieved employee or representative gives written notice by online filing with the LWDA and by certified mail to 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. *See* California Labor Code sections 2699.3(a)(1)(A)-(a)(2)(C). Civil penalties recovered by aggrieved employees shall be distributed as follows: 75 percent to the State and 25 percent to the aggrieved employees. *See* California Labor Code section 2699(i).

J. WHEREAS California Labor Code section 2699(l)(2) requires Court approval of any penalties sought as part of a proposed settlement agreement pursuant to PAGA.

K. WHEREAS the Parties mutually desire to enter into a Settlement and Release Agreement with respect to Plaintiff's individual claims and the PAGA Representative Claims.

NOW, THEREFORE, in consideration of the promises and agreements contained herein, the Parties agree and covenant as follows:

II. DEFINITIONS

Unless otherwise defined herein, the following terms used in this Agreement shall have the meanings ascribed to them as set forth below:

A. "Court Approval Date" means the date the Court grants approval of this Agreement by signing and filing the Final Order.

B. "Court" means the San Diego Superior Court.

C. "Defense Counsel" or "Counsel for Defendants" means:

KAREN L. WISHNEV, Bar No. 201751

CRAIG D. FULLER, Bar No. 158482

FULLER LAW GROUP P.C.

9565 Waples St., Suite 200

San Diego, CA 92121

Telephone: (858) 450-4050

Facsimile: (858) 450-4051

kwishnev@fullerlawgroup.co

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D. "Final Order" means the final Court order entered in this Action in accordance with the terms herein, the Court adopting and approving this Agreement (and the terms of Settlement described herein), dismissing the PAGA claims with prejudice and the Court retaining jurisdiction over the enforcement, implementation, construction, administration, and interpretation of the Settlement.

E. "LWDA" means the state of California Labor and Workforce Development Agency.

F. "PAGA Claims" means claims for PAGA penalties, pursuant to Labor Code section 2699 *et seq.* that: (1) arose or may be alleged to have arisen at any time from June 8, 2019 up to and including the Court Approval Date, and (2) are based on or arise from alleged violations of the Labor Code provisions alleged in the Complaint and/or the LWDA Notice, and which arise from the facts alleged therein; and the related California Code of Regulations and related sections of the applicable Industrial Welfare Commission Wage Orders, which arise from the facts alleged in the Complaint and/or the LWDA Notice.

G. “PAGA Settlement Group Members” means Plaintiff and all current and former employees employed by Defendants in any position, including but not limited to Janitor, Nail Technician or Technician (and whether designated by Defendants as contractors or employees), in the state of California at any time from June 8, 2019 through the Court Approval Date, who are included in the Putative Aggrieved Employee List. There are approximately forty (40) individuals that compose the PAGA Settlement Group Members.

H. “PAGA Plaintiffs” or “Aggrieved Employees” means Plaintiff, and all current and former employees employed by Defendants in any position, including but not limited to Janitor, Nail Technician or Technician in the state of California at any time from June 8, 2019 through the Court Approval Date.

I. “Plaintiff’s Counsel” or “Counsel for Plaintiff” means:

NATHAN N. KASED, Bar No. 251400
JANINE R. MENHENNET, Bar No. 163501
KASED LAW GROUP APC
2535 Kettner Boulevard, Suite 2A2
San Diego, CA 92101
Telephone: (619) 333-6373
Facsimile: (619) 399-3040
nathan@kasedlegal.com
janine@kasedlegal.com

J. “Aggrieved Employee List” means a complete list of all current and former employees that Defendants will diligently and in good faith compile from their records and provide to the Claims Administrator within ten (10) business days after the Court Approval Date. The Aggrieved Employee List will be formatted in a readable spreadsheet and will include (if available) each Aggrieved Employee’s full name; last known mailing address and telephone number; Social Security number; and hire and termination dates.

K. “Aggrieved Employee Penalty Payment” means the portion of the Settlement Sum that shall be paid to each PAGA Settlement Group Member per the terms and conditions of this Agreement. The Aggrieved Employee Penalty Payment is referred to as the “Net PAGA Proceeds” in the Letter to Payees entitled “Notice of Representative Action Settlement” attached as an Exhibit to this Settlement and Release Agreement.

L. “Settlement” means the Parties’ Agreement, as detailed herein, to dispose of the Action as to all Defendants.

M. “Settlement Sum” means the total gross settlement amount of Two Hundred Twenty-Five Thousand Dollars and Zero Cents (\$225,000.00) to be paid by Defendants to fully and finally settle, resolve and conclude this Action as to all Defendants, without any admission of fault or liability. Under no circumstances shall the Settlement Sum exceed \$225,000.00. The Settlement

Sum expressly includes amounts to be paid to Plaintiff for the settlement, release and dismissal of his individual claims (the “Incentive Payment”).

N. “Incentive Payment” means the payment of Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00) that Defendants have agreed to pay Plaintiff as an incentive. The Incentive Payment will be deducted from the Settlement Sum.

III. TERMS OF THE AGREEMENT

A. EFFECTIVE DATE

The effective date of the Settlement and release of Plaintiff’s and PAGA Plaintiffs’ claims shall be the date by which all of the following have occurred (“Effective Date”):

1. The Court has approved this Agreement (the “Court Approval Date”); and
2. The Court has entered the Final Order.

B. LIMITED RELEASE - PAGA

Upon the Effective Date, the LWDA and the PAGA Settlement Group Members including Plaintiff Dinh and each of the PAGA Plaintiffs, shall fully release and forever discharge any and all PAGA Claims, including but not limited to any such claims seeking civil penalties under California Labor Code Sections 558 and 2698 *et seq.* predicated on the alleged California Labor Code violations asserted in the First Amended Complaint, filed September 28, 2020, as well as the underlying LWDA Notice, (which include California Labor Code Sections 201-203, 204, 208, 210, 221, 224, 226, 226(a), 226.3, 226.7, 351, 510, 512, 558, 1174, 1174.5, 1194, 1194a, 1194.2, 1197, 1197.1, 1198, 2802 and 2698) during the period June 1, 2019 through the Effective Date, (hereinafter the “Released PAGA Claims”) against Cao-Cao Nail 2000 of UTC, LLC, Dung Kim Cao a.k.a. Stephanie Cao and/or Cao-Cao’s past and present parents, subsidiaries, affiliated companies or corporations, members, managers, officers, directors, shareholders, partners, agents, family members, insurers, and/or any other individual or entity which could be liable for the acts of omissions of Cao-Cao or Ms. Cao (hereinafter “Released Parties”). To the extent an alleged PAGA violation arises directly from the operative facts pled in the Complaint and implicates the same primary rights and defenses being settled here, those claims are settled and released to the fullest extent permitted under applicable law.

It is expressly understood and agreed that this limited release does not release Defendants from liability, if any, to any nonparty PAGA employee for any claims against Defendants or Released Parties other than the PAGA Claims for civil penalties asserted in the Action, or effect a waiver of claims, if any, a nonparty PAGA employee may have, individually, against Defendants for unpaid wages or for violations of any statute other than PAGA.

C. PARTIES' MUTUAL RELEASES

Plaintiff and Defendants, for themselves and their assigns and successors, fully and forever release and discharge the other, and each of them, and their family members and each of their current, former and future parents, subsidiaries, related entities, predecessors, successors, members, managers, officers, directors, shareholders, partners, agents, employees, insurers and assigns and/or any other individual or entity which could be liable for the acts of omissions (collectively "Releasees"), with respect to all claims, liabilities, and causes of action, of every nature, kind and description, in law, equity or otherwise, and to the greatest extent permitted by law that have arisen, occurred or existed at any time before the execution of this Agreement, including all claims, liabilities, and causes of action arising out of or relating to the events, transactions, and circumstances which are the subject of the Lawsuit.

Civil Code section 1542 Waivers. To that end, Plaintiff and Defendants specifically acknowledge and waive the benefits of the provisions of Section 1542 of the Civil Code of the state of California (together with similar provisions of any other state), 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 and Defendants understand and acknowledge the significance and consequence of this waiver of California Civil Code § 1542 is that even if a Releasee should eventually suffer additional damages arising out of or in any manner related to any and all events, circumstances, and interactions between the Parties occurring or arising out of the allegations in the LWDA Notice and the Complaint, including but not limited to wage and hour, employment benefits, gratuities, Fair Employment and Housing Act ("FEHA"), civil conversion, injunctive relief, punitive damages, pain and suffering, emotional distress and any others which are the subject matter of the claims asserted in the Action, the Releasee will not be able to make any claim for those damages. Furthermore, Plaintiff and Defendant acknowledge that they intend these consequences even as to claims for damages that may exist as of the date of this release, but are not known to exist, and which, if known, would materially affect a Party's decision to execute this release, regardless of whether the Party's lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

D. APPROVAL AND IMPLEMENTATION OF SETTLEMENT

1. Cooperation. The Parties will cooperate in seeking approval of the Settlement described in this Agreement, including by drafting and filing the Motion for Approval and Order to be initially prepared by Plaintiff's Counsel. Prior to filing with the Court, Plaintiff's Counsel agrees to provide a copy of the proposed Motion for Approval and Order to Defense Counsel and thereafter meet and confer in good faith regarding the content thereof. The Parties further agree

to fully cooperate in the drafting, filing and execution of any further documents or filings reasonably necessary to be prepared or filed and shall take all steps or any action as may reasonably be necessary to implement the terms of this Settlement Agreement, including any that may be requested by the Court relating to the approval and implementation of the Settlement.

2. Court Approval. Because this Action includes PAGA Claims, this Agreement requires review and approval by the Court. *See* California Labor Code section 2699(1)(2). Accordingly, the Parties enter into this Agreement on a conditional basis. This Agreement is expressly contingent upon the Court's approval of this Settlement and the terms and material conditions of this Agreement (including, but not limited to, issuance of and entry of the Final Order in accordance therewith).

Plaintiff's Counsel will file by no later than fifteen (15) days after the date this Agreement is fully executed, a Motion for Approval and Order approving this Agreement. Concurrent with the filing of the Motion for Approval and Order, Plaintiff's Counsel shall also serve the Motion for Approval and Order to the LWDA. If the Court does not grant the request for approval and issue the Final Order (including but not limited to, dismissing the PAGA Claims with prejudice in their entirety, and entering the Final Order in accordance with the terms and conditions of this Agreement), under substantially similar material terms, the Parties agree to meet and confer to address the Court's concerns and determine whether resolution of the Action can be obtained in a manner consistent with the Court's concerns. Under no circumstances may a modified settlement be entered by the Court without a written agreement signed by all Parties.

3. Settlement Sum. In exchange for the releases, obligations, and promises set forth in this Agreement (and subject to the terms and conditions contained in this Agreement), Defendants agree to pay the Settlement Sum, which is the total and all-inclusive amount Defendants will be obligated to pay under the Settlement. Other than payment of the portion of the Settlement Sum specifically allocated to settle the PAGA Claims, there shall be no other PAGA Claims payments arising out of or related to Putative Aggrieved Employees' allegations, for the time period from June 8, 2019 up to and including the date the Court enters the Final Order, asserted against Defendants or any of the Released Parties on behalf of Plaintiff, the state of California, any PAGA Settlement Group Member or any other individual or entity.

4. Settlement Sum Allocation. The Parties agree that the settlement proceeds shall be allocated as follows:

(a) Attorneys' Fees and Costs: Plaintiff's Counsel may apply to the Court for up to One Hundred Thousand Dollars (\$100,000.00) of the total Settlement Sum ("Fees and Costs Combined Amount") as the combined total of both attorneys' fees and actual costs available pursuant to PAGA, which provides for the recovery of attorneys' fees and costs, and in accordance with Plaintiff's Counsel's fee agreement with Plaintiff. The Fees and Costs Combined Amount shall be deducted from the Settlement Sum. Any modification of such application by the Court shall not (i) affect the enforceability of the Settlement Agreement, (ii) provide any of the Parties with the right to terminate the Settlement Agreement, or (iii) impose

any obligation on the Defendants to increase the Settlement Sum or otherwise increase the consideration paid in connection with the Settlement. Plaintiff's Counsel's entitlement to attorneys' fees and costs is a material condition of this Settlement but the Fee Amount awarded is not. Plaintiff shall not appeal the Fees and Costs Combined Amount awarded by the Court.

(b) Claims Administration Fees: All Claims Administration expenses shall be paid from the Fees and Costs Combined Amount and shall not exceed Seven Thousand Dollars and No Cents ("\$7,000.00"). Claims administration expenses paid to an outside Claims Administration service must come out of the Fees and Costs Combined Amount. The Parties agree to retain Phoenix Settlement Administrators to serve as the Claims Administrator in this matter. In the event the Settlement is not approved, Plaintiff and Defendants will each pay half of the Settlement Administrator's reasonable fees incurred as of that time.

(c) Payment of PAGA Penalties: The total sum available for payment of PAGA penalties shall be calculated by deducting the Fees and Costs Combined Amount including the Claims Administration Fees and the Incentive Payment from the \$225,000.00 Settlement Sum. (This will yield the "Net Settlement Amount"). Of the Net Settlement Amount, seventy-five percent (75%) shall be distributed to the LWDA ("LWDA Penalty Payment"); and the remaining twenty-five percent (25%) shall be distributed to the PAGA Settlement Group Members ("Putative Aggrieved Employee Penalty Payment"). The Parties have earmarked \$100,000.00 as the Net Settlement Amount, subject to Court Approval, with \$75,000.00 of the Net Settlement Amount to be paid by the Claims Administrator to the LWDA and the remaining \$25,000.00 for payment of Aggrieved Employee penalties.

The Aggrieved Employee Penalty Payment for each PAGA Settlement Group Member shall be calculated so as to arrive at equal payments for each PAGA Settlement Group Member (i.e., by dividing the remaining 25% of the Net Settlement Amount into equal portions, based on the number of claimants listed on the Aggrieved Employee List).

5. Claims Administrator Agreement. The Claims Administrator, as a condition of appointment, will agree to be bound by this Agreement with respect to the performance of its duties and its compensation.

6. Funding and Distribution Process. The processes for distributing the settlement proceeds due (a) PAGA Settlement Group Members, (b) the LWDA, (c) Plaintiff's Counsel for Attorneys' Fees and Costs and (d) Plaintiff's Incentive Payment, respectively, are set forth in the sections below.

(a) PAGA Settlement Group Member Distribution.

PAGA Settlement Group Member Distribution shall proceed as follows:

(1) Transmittal of Aggrieved Employee List to Claims Administrator. Within ten (10) business days after the Court Approval Date, Defendants shall transmit to the Claims Administrator the Aggrieved Employee List.

(2) Transmittal of Settlement Sum to Claims Administrator. Within twenty (20) business days after the Effective Date, Defendants will transmit to the Claims Administrator the Settlement Sum. The transmittals of the Aggrieved Employee List and the Settlement Sum shall wholly satisfy the entirety of Defendants' obligations with respect to the funding and disbursement process.

(3) Aggrieved Employee Penalty Payment. Within ten (10) business days of receipt of the Settlement Sum, the Claims Administrator will disburse, via U.S. Mail, to each Aggrieved Employee, an Aggrieved Employee Penalty Payment, via check, to the physical address set forth in the Aggrieved Employee List, for each PAGA Settlement Group Member (the "Settlement Check").

(4) Notice to Aggrieved Employees. PAGA Settlement Group Members who receive their Aggrieved Employee Penalty Payments will receive with the payment a Notice explaining the reason for the payment, the content of which will be set forth in both English and Vietnamese and agreed upon by the Parties prior to execution of this Settlement and attached as Exhibit 1 hereto. Such mailing as described in this paragraph shall be conclusive evidence of payment of the Aggrieved Employee Penalty Payments and shall satisfy any and all due process requirements.

(5) Reminder to Payees. If any PAGA Settlement Group Member's Settlement Check is not cashed within 60 days after mailing, the Claims Administrator will send the PAGA Settlement Group Member a postcard informing the recipient that unless the check is cashed in the next 60 days, it will expire. The postcard will also offer to replace the check if it was lost and not cashed. The postcard shall provide the PAGA Settlement Group Members with a period of 30 days from the date of the postcard for the PAGA Settlement Group Member to request the replacement. This postcard shall be written in English and Vietnamese and agreed upon by the Parties prior to execution of this Settlement.

(6) Unclaimed Funds. Settlement Checks issued to PAGA Group Settlement Members will expire and become unclaimed funds one hundred and twenty (120) days from the date they are issued by the Claims Administrator, as reflected by the date printed on the check. Any unclaimed funds after the 120-day period shall be forwarded to the Department of Industrial Relations' Unpaid Wage Fund.

(b) Payment to LWDA

Within ten (10) business days of receipt of the Settlement Sum, the Claims Administrator shall send a check to the LWDA as and for the LWDA Penalty Payment, in the amount calculated pursuant to the terms of this Settlement.

(c) Payment of Attorneys' Fees and Costs to Plaintiff's Counsel

Within ten (10) business days of receipt by the Claims Administrator of the Settlement Sum, the Claims Administrator will disburse from the Settlement Sum an amount sufficient to pay the Fees and Costs Combined Amount less the Claims Administration Fees, in the amount ordered by the Court in the form of a check payable to "Kased Law Group APC" delivered to Plaintiff's Counsel via U.S. Mail. This amount shall be for \$100,000.00 less the Claims Administration Fees.

(d) Incentive Payment to Plaintiff

Within ten (10) business days of receipt by the Claims Administrator of the Settlement Sum, the Claims Administrator will disburse from the Settlement Sum the Incentive Payment of \$25,000.00 in the form of a check payable to "Thieu Dinh" delivered to Plaintiff's Counsel via U.S. Mail. The Claims Administrator shall first obtain from Plaintiff's counsel and provide Defense Counsel with a completed and executed IRS Form W-9 for Plaintiff.

7. Tax Indemnity. The Incentive Payment to Plaintiff constitutes payment for non-wages, shall be reported on an IRS Form 1099, and shall not be subject to local, state or federal tax withholding by Defendants. The Aggrieved Employee Penalty Payments are penalties, shall be reported on an IRS Form 1099 (to the extent required by law), and will not be subject to local, state or federal tax withholding. Plaintiff and each PAGA Settlement Group Member will be responsible for paying all applicable state, local and federal income taxes on their respective amounts received pursuant to this Settlement, and they shall not seek any indemnification from the Released Parties in this regard. Plaintiff and Plaintiff's Counsel shall cooperate with Defendants and provide documentation to the extent possible and as reasonably requested to demonstrate any payment of taxes made by Plaintiff and/or any PAGA Settlement Group Member should any taxing authority challenge the allocation of the Settlement Payments and/or Aggrieved Employee Penalty Payments.

In the event the taxing authority asserts that the characterization of Plaintiff's Settlement Payments hereunder is inappropriate and/or Plaintiff fails to pay any tax liability resulting from the payments made hereunder, and Defendants are made to pay any taxes, settlements, interest, penalties and/or other sums (hereinafter collectively referred to as "Tax Payments") to a taxing authority as a result of the payments made to Plaintiff, Plaintiff shall fully indemnify and reimburse Defendants for any and all such Tax Payments upon demand and reasonable verification of sums paid.

8. No Additional Attorneys' Fees or Costs. The Parties agree to bear their own attorneys' fees and costs related to this Action, except as specifically provided above with respect to the payment of the Fees and Costs Combined Amount to Plaintiff's counsel, and Plaintiff's Counsel waives any and all rights to further attorneys' fees and costs from Defendants in connection with this Action.

E. NOTICE TO PARTIES

All notices, transmittals or other communications given between the Parties under this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by U.S. mail, at the addresses stated above for Defense Counsel and Plaintiff's Counsel, with a copy sent via electronic mail.

F. REPRESENTATIONS AND WARRANTIES

In further consideration for payment of the PAGA settlement amounts, Plaintiff represents and warrants that he has the right and exclusive authority to execute this Agreement. Each Party to this Agreement also represents and warrants to, and agrees with, each other Party hereto as follows:

1. Each Party has carefully read, knows and understands the full contents of this Agreement and is voluntarily entering into this Agreement after having received independent legal advice from his, her or its attorneys with respect to the advisability of making the settlement provided for herein and the advisability of executing this Agreement.
2. Each Party to this Agreement has investigated the facts relevant to this settlement and this Agreement, and all matters pertaining thereto, to the full extent that each Party deems necessary.
3. Each separately set forth term of this Agreement is contractual, not merely a recital.
4. Each of the Parties has had an adequate opportunity to read, review, and consider the effect of the language of this Agreement, and has agreed to its terms.

G. LIMITATIONS ON USE OF THIS SETTLEMENT

1. No Admission. Defendants dispute that Plaintiff or any PAGA Settlement Group Member are entitled to any additional wages other than those already paid and/or any penalties and dispute the allegations and each and every cause of action in the Action. This Agreement is entered into solely for the purpose of compromising highly disputed claims. This Agreement and the payment of the Settlement Sum and the other considerations recited herein represent the compromise of disputed claims. Nothing in this Agreement is intended as or may be construed as an admission of liability, unlawful conduct, or wrongdoing by Defendants (and any of the Released Parties) in any way, shape or form, and Defendants and the Released Parties deny any such liability or wrongdoing, any violation by any of them of any federal, state or local law, ordinance or regulation, or of any violation of any policy or procedure, or of any liability or wrongdoing whatsoever.

2. Non-Evidentiary Use. Except for purposes of effectuating the Settlement pursuant to this Agreement and for Defendants (and/or a Released Party) to establish that a PAGA Settlement Group Member has resolved any of his/her claims released through this Agreement, and

regardless of whether the Final Order occurs, neither this Agreement nor any of its terms (including but not limited to, the payment of the Settlement Sum) nor the Settlement itself will be construed as, offered, or admitted in evidence as, received as, or deemed to be evidence, in any further proceeding in the Action, or any other civil, criminal, and/or administrative action or proceeding, for any purpose adverse to Defendants or any of the Released Parties, including but not limited to, evidence of a presumption, concession, indication, or admission by Defendants or any of the Released Parties of any liability, fault, wrongdoing, omission or damage. To be clear, this Agreement is admissible for purposes of obtaining Court approval of the Settlement, and for purposes of enforcing the Settlement.

3. Nullification. If (a) the Court should for any reason fail to approve this Settlement consistent with the material specific terms agreed to by the Parties and set forth herein, (b) the Court should for any reason fail to enter the Final Order, or (c) the Final Order is not entered, reversed, modified, or declared or rendered void, then this Agreement shall automatically be considered null and void *ab initio*, shall be of no force or effect whatsoever, and shall not be referred to or used for any purpose whatsoever unless the Parties shall subsequently agree in writing that the remaining provisions shall remain in full force and effect. An example of a material change in the terms includes a change in the economic terms of the Settlement.

In that instance, (i) neither this Agreement nor any of the related negotiations or proceedings shall be of any force or effect; and (ii) all Parties to this Agreement and the pleadings in this Action shall stand in the same position they were as of March 1, 2021, prior to the negotiation of this Agreement, without prejudice to either Party; and (iii) Defendants will not have any obligation to pay any portion of the Settlement Sum to anyone under the terms of this Agreement (except for the Settlement Administrator's reasonable fees incurred if the Settlement is not approved, which fees will be split 50/50 between Plaintiff and Defendants). If this Agreement is invalidated through any proceeding within the Action, Plaintiff will return any disbursements from the Settlement Sum under his or her counsel's control to Defendants.

4. Confidentiality. Plaintiff and Plaintiff's Counsel represent and agree that they have not and will not issue any public announcement, publication, publication, or otherwise disclose the Agreement, the terms thereof, the claims, demands or allegations alleged by Plaintiff, or any facts alleged to exist as support thereof, including information gathered in discovery, to anyone, including the press, media, websites, or any service which reports litigation, verdicts or settlements. Plaintiff and Plaintiff's Counsel will not issue any press or other media releases or have any communication with the press or media or anyone other than family members, clients, PAGA Settlement Group Members, financial advisors, retained experts, and vendors related to settlement administration, regarding the Settlement. Information regarding the settlement may be disclosed to the Court if requested or in response to information disclosed by Defendants. The requirement to obtain approval of the Settlement and dismissal of the PAGA Claims is a limited exception to obligations of Plaintiff and Plaintiff's Counsel under this provision.

H. MISCELLANEOUS PROVISIONS

1. Choice of Law: The rights and obligations of the Parties under this Agreement shall be construed and enforced in accordance with, and governed by, the laws of the state of California, and all Parties agree to personal jurisdiction in California. California law shall govern the interpretation of this Agreement even if a choice of law analysis under state or federal law would dictate that another forum's law be applied.

2. Severance: Except as otherwise provided herein, if any provision of this Agreement is held to be invalid by a court of competent jurisdiction, that provision shall be deemed severed and deleted from this Agreement, and neither that provision nor its severance and deletion shall affect the validity of the remaining provisions. Notwithstanding the foregoing, no portion of any release contained herein may be deemed severed or deleted from this Agreement, except upon waiver in writing by the applicable Released Parties and/or Releasees.

3. Additional Terms.

(a) This Agreement is binding upon, and shall inure to the benefit of, the Parties hereto and their respective agents, employees, representatives, officers, directors, parents, subsidiaries, assigns, heirs, executors, administrators, insurers, and successors in interest.

(b) Given that all Parties hereto had the opportunity to draft, review, and edit the language of this Agreement, no presumption for or against any Party arising out of drafting all or any part of this Agreement may be applied in any action relating to, connected to, or involving this Agreement. Accordingly, the Parties hereby waive the benefit of any legal principle or rule providing that, in cases of uncertainty, the language of a contract should be interpreted against the Party who caused the uncertainty to exist.

(c) This Agreement may be executed in counterparts. A signature by way of facsimile or .pdf shall serve as an original for all purposes.

(d) Headings in this Agreement are included solely for convenience and shall not control the meaning or interpretation of any provision of this Agreement.

4. Entire Agreement. This Agreement, including Exhibits, sets forth the entire agreement between the Parties hereto and fully supersedes any and all prior and/or supplemental understandings, whether written or oral, between the Parties concerning the subject matter of this Agreement. Plaintiff acknowledges that he has not relied on any representations, promises or agreements of any kind made to him in connection with his decision to accept the terms of this Agreement, except for the representations, promises and agreements herein. Any modification to this Agreement must be in writing and signed by Plaintiff and Defendants.

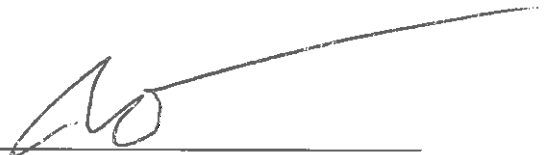
Re: *Thieu Dinh v. Cao-Cao Nail 2000 of UTC, LLC, et al.*
LWDA Case No.: LWDA-CM-795345-20
San Diego Superior Court Case No.: 37-2020-00017596-CU-OE-CTL

IV. SIGNATURES

IN WITNESS WHEREOF, the Parties knowingly and voluntarily execute this Settlement and Release Agreement Including Private Attorneys General Act Claims as of the dates set forth below.

Agreed to by Plaintiff:

Dated: May 10-2021


Thieu Dinh a.k.a. Tony Dinh, Plaintiff

Agreed to by Defendants:

Dated: _____

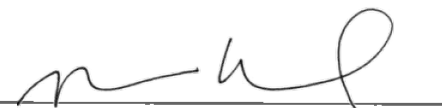
Dung Kim Cao a.k.a. Stephanie Cao
Managing Member
For Defendant Cao-Cao Nail 2000 of UTC,
LLC

Dated: _____

Dung Kim Cao a.k.a. Stephanie Cao,
Defendant

APPROVED AND ACKNOWLEDGED BY PLAINTIFF'S COUNSEL:

Dated: May 10, 2021


Nathan N. Kased
Kased Law Group APC
Attorneys for Plaintiff, Thieu Dinh and
Aggrieved Employees

[SIGNATURES CONTINUED ON NEXT PAGE]

Re: *Thieu Dinh v. Cao-Cao Nail 2000 of UTC, LLC, et al.*

LWDA Case No.: LWDA-CM-795345-20

San Diego Superior Court Case No.: 37-2020-00017596-CU-OE-CTL

IV. SIGNATURES

IN WITNESS WHEREOF, the Parties knowingly and voluntarily execute this Settlement and Release Agreement Including Private Attorneys General Act Claims as of the dates set forth below.

Agreed to by Plaintiff:

Dated: _____

Thieu Dinh a.k.a. Tony Dinh, Plaintiff

Agreed to by Defendants:

Dated: 05-10-2021

Dung Kim Cao a.k.a. Stephanie Cao
Managing Member
For Defendant Cao-Cao Nail 2000 of UTC,
LLC

Dated: 05-10-2021

Dung Kim Cao a.k.a. Stephanie Cao,
Defendant

APPROVED AND ACKNOWLEDGED BY PLAINTIFF'S COUNSEL:

Dated: _____

Nathan N. Kased
Kased Law Group APC
Attorneys for Plaintiff, Thieu Dinh and
Aggrieved Employees

[SIGNATURES CONTINUED ON NEXT PAGE]

Re: *Thieu Dinh v. Cao-Cao Nail 2000 of UTC, LLC, et al.*

LWDA Case No.: LWDA-CM-795345-20

San Diego Superior Court Case No.: 37-2020-00017596-CU-OE-CTL

APPROVED AND ACKNOWLEDGED BY DEFENSE COUNSEL:

Dated: 05-10-2021



Karen L. Wishnev

Craig D. Fuller

Fuller Law Group P.C.

Attorneys for Defendants, Cao-Cao Nail

2000 of UTC, LLC and Dung Kim Cao

a.k.a. Stephanie Cao

EXHIBIT 2

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO**

**Dinh v. Cao Cao Nail 2000 of UTC, LLC, et al.
(Case No. 37-2020-00017596-CU-OE-CTL)**

*A court authorized this notice. This is not a solicitation.
This is not a lawsuit against you, and you are not being sued.
However, your legal rights are affected whether you act or do not act.*

NOTICE OF REPRESENTATIVE ACTION SETTLEMENT

YOU ARE HEREBY NOTIFIED that a proposed representative action settlement in the case entitled, *Thieu Dinh v. Cao-Cao Nail 2000 of UTC, LLC, et al.*, Case No. 37-2020-00017596-CU-OE-CTL, (the “Action”) filed in the San Diego County Superior Court and currently before the Honorable Carolyn Caietti, Department C-70 (the “Court”), has been reached between the Named Plaintiff THIEU DINH a.k.a. Tony Dinh (“Plaintiff” or “PAGA Representative”), and Cao-Cao Nail 2000 of UTC, LLC and Dung Kim Cao, Defendants. (“Defendants”), collectively referred to as the “Parties”. “Complaint” means the operative First Amended Complaint which was filed by Plaintiff on September 28, 2020, in the San Diego Superior Court, entitled *Thieu Dinh v. Cao-Cao Nail 2000 of UTC, LLC, et al.*, Case No. 37-2020-00017596-CU-OE-CTL.

The Court granted approval of the settlement of the Action, which included individual claims by Plaintiff for alleged Labor Code violations and personal claims, as well as a representative claim for civil penalties under California’s Private Attorneys General Act of 2004 (“PAGA”). The Parties settled the entire action and have allotted a portion of the settlement toward the PAGA claim of which you may share. Under California law, 75% of the settlement sum must be submitted to the California Labor & Workforce Development Agency (the “LWDA”). **The remaining 25% (“Net PAGA Proceeds”) will be split among all former and current employees of Defendants who may have been subjected to the alleged wage and hour violations by Defendants during the period June 8, 2019 up to and including [INSERT COURT APPROVAL DATE] (the “PAGA Claim Period”). You have been identified as one of these potentially affected workers. (“Aggrieved Employee”).**

Enclosed is your \$ [REDACTED] share of the Net PAGA Proceeds. Your share is calculated by dividing the Net PAGA Proceeds by the number of Aggrieved Employees during the PAGA Claim Period to arrive at a *pro rata* share.

If you do NOT cash your check within the time limits stated on the check (120 days), you will NOT receive any monies from the Net PAGA Proceeds.

The Court ordered this Notice of Settlement be sent to you because you may be an Aggrieved Employee. This Notice of Settlement informs you of the settlement and your legal rights under the PAGA settlement.

If you have questions, you can call the Administrator’s number, or Plaintiff’s counsel’s number, listed below.

PLEASE DO NOT WRITE OR TELEPHONE THE COURT OR THE OFFICE OF THE CLERK FOR INFORMATION REGARDING THIS SETTLEMENT.

Plaintiff’s counsel:

Nathan Kased, Kased Law Group, 2535 Kettner Blvd., Suite 2A2, San Diego, California 92101.
PHONE: 619.333.6373

**TÒA ÁN CAO CẤP CỦA NHÀ NƯỚC CALIFORNIA
QUẬN SAN DIEGO**

**Đình v. Cao Cao Nail 2000 của UTC, LLC, et al.
(Trường hợp số 37-2020-00017596-CU-OE-CTL)**

*Một tòa án đã cho phép thông báo này. Đây không phải là một lời chào mời.
Đây không phải là một vụ kiện chống lại bạn, và bạn sẽ không bị kiện.
Tuy nhiên, quyền lợi hợp pháp của bạn bị ảnh hưởng cho dù bạn hành động hay không hành động.*

THÔNG BÁO VỀ VIỆC GIẢI QUYẾT HÀNH ĐỘNG ĐẠI DIỆN

BẠN ĐÃ ĐƯỢC THÔNG BÁO rằng đề xuất giải quyết hành động đại diện trong trường hợp có tên là Thiệu Đình kiện Cao-Cao Nail 2000 của UTC, LLC, et al., Vụ án số 37-2020-00017596-CU-OE-CTL, (sự “Hành động”) đã được đệ trình lên Tòa án Thượng thẩm Quận San Diego và hiện tại là trước Carolyn Caietti Danh dự, Cục C-70 (“Tòa án”), đã đạt được giữa Nguyên đơn có tên THIEU DINH hay còn gọi là Tony Dinh (“Nguyên đơn” hoặc “PAGA Người đại diện”), và Cao-Cao Nail 2000 của UTC, LLC và Dũng Kim Cao, Bị cáo. (“Bị đơn”), được gọi chung là “Các bên”. “Khiếu nại” có nghĩa là Khiếu nại sửa đổi đầu tiên có hiệu lực được Nguyên đơn nộp vào ngày 28 tháng 9 năm 2020, tại Tòa án Cấp cao San Diego, có tên là Thiệu Đình kiện Cao-Cao Nail 2000 của UTC, LLC, et al., Vụ án số 37-2020-00017596-CU-OE-CTL.

Tòa án đã chấp thuận việc giải quyết Hành động, bao gồm các khiếu nại cá nhân của Nguyên đơn về cáo buộc vi phạm Bộ luật Lao động và khiếu nại cá nhân, cũng như yêu cầu đại diện về các hình phạt dân sự theo Đạo luật Tổng chương lý riêng của California năm 2004 (“PAGA”). Các Bên đã giải quyết toàn bộ hành động và đã phân bổ một phần giải quyết cho khiếu nại PAGA mà bạn có thể chia sẻ. Theo luật của California, 75% số tiền dàn xếp phải được nộp cho Cơ quan Phát triển Lực lượng Lao động & Lao động California (“LWDA”). 25% còn lại (“Tiền thu được từ PAGA ròng”) sẽ được chia cho tất cả nhân viên cũ và hiện tại của Bị đơn, những người có thể đã bị Bị cáo buộc tội vi phạm tiền lương và giờ làm trong khoảng thời gian từ ngày 8 tháng 6 năm 2019 đến và bao gồm [CHÈN TÒA ÁN NGÀY PHÊ DUYỆT] (“Thời gian xác nhận quyền sở hữu PAGA”). Bạn đã được xác định là một trong những người lao động có khả năng bị ảnh hưởng này. (“Nhân viên hằng hái”).

Kèm theo đó là phần chia sẻ \$ [REDACTED] của bạn trong Số tiền thu được từ PAGA ròng. Phần của bạn được tính bằng cách chia Số tiền thu được ròng của PAGA cho số Nhân viên thu được trong Thời gian yêu cầu PAGA để đạt được phần chia theo tỷ lệ.

Nếu bạn KHÔNG chuyển tiền mặt cho séc của mình trong thời hạn nêu trên séc (120 ngày), bạn sẽ KHÔNG nhận được bất kỳ khoản tiền nào từ Tiền thu được ròng của PAGA.

Tòa án đã ra lệnh gửi Thông báo về Dàn xếp này cho bạn vì bạn có thể là một Nhân viên Có năng lực. Thông báo về việc dàn xếp này thông báo cho bạn về dàn xếp và các quyền hợp pháp của bạn theo dàn xếp PAGA.

Nếu có thắc mắc, bạn có thể gọi đến số của Quản trị viên hoặc số của luật sư tư vấn của Nguyên đơn, được liệt kê bên dưới.

VUI LÒNG KHÔNG VIẾT HOẶC ĐIỆN THOẠI CHO TÒA ÁN HOẶC VĂN PHÒNG CỦA CLERK ĐỂ BIẾT THÔNG TIN LIÊN QUAN ĐẾN VIỆC THIẾT LẬP NÀY.

Luật sư của nguyên đơn:

Nathan Kased, Kased Law Group, 2535 Kettner Blvd., Suite 2A2, San Diego, California 92101.

ĐIỆN THOẠI: 619.333.6373

Câu hỏi? Gọi cho các quản trị viên dàn xếp của
Phoenix (800) 523-5773

Questions? Call Phoenix Settlement
Administrators (800) 523-5773
phoenixclassaction.com

EXHIBIT 3



Reply to:
2535 Kettner Boulevard, Suite 2A2
San Diego, CA 92101

July 1, 2020

VIA ONLINE SUBMISSION
PAGAFilings@dir.ca.gov

VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED

Dung Kim Cao
President / Managing Member
Cao-Cao Nail 2000 of UTC, LLC
9068 Libra Drive
San Diego, CA 92126

J Douglass Jennings Jr
Agent for Service of Process
Cao-Cao Nail 2000 Of UTC, LLC
3655 Nobel Drive, Suite 200
San Diego, CA 92122

Re: Notice Pursuant to Labor Code § 2699.3(a) re: Thieu “Tony” Dinh and all Aggrieved Employees

To Whom It May Concern:

This letter serves as notice to the Labor & Workforce Development Agency (“LWDA”) of the Labor Code violations of Dung Kim Cao and Cao-Cao Nail 2000 of UTC, LLC, d/b/a Nails 2000 of UTC (individually, “Ms. Cao,” and “Nails 2000,” or collectively, “Employers”). We submit this notice in accordance with Labor Code § 2699.3(a).

Employers formerly employed our client, Thieu Dinh (“Mr. Dinh”). We submit this notice on behalf of our client and all other aggrieved employees that were employed by Dung Kim Cao and Cao-Cao Nail 2000 of UTC, LLC, d/b/a Nails 2000 of UTC. In compliance with Labor Code § 2699.3(a)(1), Mr. Dinh furnished Employers with a copy of this notice by certified mail. Unless the LWDA proceeds against Employers, Mr. Dinh intends to pursue a representative civil action against Employers, in accordance with Labor Code § 2698, *et seq.*

Mr. Dinh has already filed a civil complaint for his individual claims and will amend his complaint to include claims under the Private Attorneys General Act if the LWDA does not intend to investigate Mr. Dinh’s claims. A true and correct copy of the complaint on file in San Diego Superior Court is attached hereto as Exhibit A.

I. Labor Code Violations

Employers have violated at least the following specifically enumerated Labor Code sections, in addition to any other Labor Code sections implicated by the actions described in the Facts & Theories and Liability & Damages portions of this notice letter: §§ 201 through 203, 204, 208, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1194, 1194.2, 1197, 1198, and 2802.

San Diego
2535 Kettner Boulevard, Suite 2A2
San Diego, CA 92101
P: +1 619.333.6373 | F: +1 619.399.3040

Los Angeles
400 Continental Boulevard, 6th Floor
El Segundo, CA 90245
P: +1 310.697.3200

II. Facts & Theories

Nails 2000 is a nail salon operating out of a single facility located 7770 Regents Road, Suite 112, San Diego, California 92122. Its services include manicures, pedicures, facials, and waxing. On information and belief, Nails 2000 has operated continuously from this location throughout the relevant liability periods.

Nails 200 maintains typical hours of operation from 9 a.m. to 7 p.m. Mondays through Saturdays and 10 a.m. to 6 p.m. on Sundays.

Nails 200 has employed approximately 30 or more employees in various capacities, most of whom are nail technicians and/or manicurists. Some of the nail technicians and/or manicurists are unlicensed or were unlicensed during the relevant liability periods.

On information and belief:

a. Nail technicians and/or manicurists working at Nails 2000 have not been able to set their own rates for salon services;

b. All payments received for work performed by nail technicians and/or manicurists working at Nails 2000 have been processed by Ms. Cao and/or one of her designated cashiers on behalf of the salon only and not any individual nail technician or manicurist;

c. Ms. Cao has kept for herself a portion of credit card tips left by customers for the nail technicians and/or manicurists and/or the salon tip pool;

d. For each pedicure sale fulfilled by a nail technician and/or manicurist, Ms. Cao has assessed a \$2.00 surcharge that she deducts from the gross sale price of the pedicure to keep for herself;

e. Nail technicians and/or manicurists are not permitted to set their own work schedules and, instead, have been required to be at the salon during all operating hours and beyond;

f. All customers that have frequented the salon are customers of the salon generally, and not of any individual nail technician and/or manicurist;

g. Nail technicians and/or manicurists do not pay Employers rent for the service space they occupy in the salon; and

h. Nail technicians and/or manicurists genuinely have perceived themselves as employees of Employers and not in business for themselves.

Accordingly, employees at Nails 2000 were properly considered employees and not independent contractors. To the extent Employers classified them as independent contractors, Employers have violated Labor Code section 226.8.

Mr. Dinh commenced employment with Ms. Cao and Nails 2000 on or about June 1, 2019. He worked for Employers through on or about July 22, 2019, at which time he received a message from Ms. Cao informing him that his employment was terminated. Mr. Dinh, who suffered a work-related fall at the salon on July 20, 2019, and was injured, was terminated the day after he asked about workers' compensation coverage. He was told, "there isn't any." Labor Code §3700.5; 2810.5.

Prior to his termination, Mr. Dinh worked on Thursdays, Fridays, and Saturdays from 10:00 a.m. to 8:00 p.m. His duties included cleaning each station between clients as well as keeping the entire salon clean throughout the day, towel service, refilling supplies, and cleaning the restroom. Mr. Dinh was paid \$12.00 per hour. Despite working a ten-hour shift, Mr. Dinh, and other similarly aggrieved employees, were not paid at an overtime rate for hours beyond eight in a workday, in violation of IWC Wage Order 2(A)(1). Employers paid Mr. Dinh, and other similarly aggrieved employees working full-time hours, half in cash and half in check to obscure their hours so that they appeared to be part-time employees. Labor Code §510.

Throughout Mr. Dinh's employment with Nail 2000, the Company did not maintain any written policies relating to meal and rest breaks. Despite working a ten-hour shift, Mr. Dinh and other similarly aggrieved employees were not authorized or permitted to take a 30-minute, uninterrupted meal break, completely relieved of all duties. Also, throughout his employment, Mr. Dinh and other similarly aggrieved employees were not authorized to take or apprised of their right to take a paid, 10-minute rest break for every four hours or major fraction thereof worked. Stylists/nail technicians would hurriedly eat when they had a moment, but as soon as a customer came, or Ms. Cao instructed them to complete a task, they would return to work. Labor Code §226.7.

Additionally, Employers took improper deductions from their employees' earnings. To begin, employees were not paid an hourly wage for all their time worked. Rather, they were paid 60% of the amount paid by each customer that they serviced. Furthermore, from this 60% that was supposed to be paid to the employee, Ms. Cao and Nails 2000 would deduct the costs of materials for certain services. For example, Employers would deduct \$2.00 if the service provided was a "spa pedicure" and \$2.00 if the service provided was a gel pedicure. Ms. Cao and Nails 2000 would also deduct \$4.00 per day from each of their employees to pay for Mr. Dinh's labor. So, for instance, if 20 nail technicians were working on one of Mr. Dinh's work days, each technician would be charged \$4.00 such that Ms. Cao and Nails 2000 would have charged their nail technician employees \$80.00 that day to pay to Mr. Dinh. This is an impermissible deduction which only benefits this employer, in violation of both California and federal law. *See, Davis v. Farmers Ins. Exchange*, 245 Cal.App.4th 1302, 1332-33 (2016). The many deductions from pay made by Ms. Cao and Nails 2000 also result in a failure to indemnify employees for all necessary expenditures or losses incurred by the employees in direct consequence of the discharge of his or her duties. Labor Code §2802. Lastly, Ms. Cao and Nails 2000 improperly withheld a portion of each tip left to their employees. As a result of these practices, Employers failed to pay their employees at least minimum wage for each hour worked.

Also, as a result of the pay scheme employed by Ms. Cao and Nails 2000, employees were forced to perform unpaid, off-the-clock work, as they were not paid for any duties that they performed outside of a direct service to a paying customer at which time they received a portion of what the customer paid. They were not paid for any other duties, such as cleaning, preparing workstations, or completing other tasks that Ms. Cao instructed them to complete. Employees were also not paid for their stand-by time despite being under the control of Employers and required to be in the salon throughout their shift to be ready the moment a customer walked in and requested service(s). Labor Code §204.

As a result of the failure to pay employees an overtime rate for overtime hours, a failure to pay at least minimum wage for each hour worked, and a failure to provide California Labor Code-compliant meal and rest breaks, or break premium payments in lieu of the compliant breaks, the Ms. Cao and Nails 2000 failed to issue accurate wage statements to Mr. Dinh throughout his employment. All other employees are similarly aggrieved in that they either received no pay statements at all, or they received inaccurate pay statements not accounting for all hours worked, overtime wages, and meal and rest break premiums. Lastly, employers failed to keep the records required in subdivision (a) of Labor Code 226.

Page 4
Dung Kim Cao
Cao-Cao Nail 2000 of UTC, LLC
July 1, 2020

To date, Mr. Dinh has not been paid all wages due to him, in violation of California's final pay laws. On information and belief, other employees who separated from Nails 2000 were not paid their final wages on separation, in violation of California's final pay laws.

III. Conclusion

The facts articulated above violate provisions of the Labor Code identified in this writing. By virtue of this letter, we hereby notify the LWDA of Employers' violations. In accordance with Labor Code § 2699.3(a)(2)(A), please notify us within 60 days, at our San Diego office address, whether you will investigate this matter.

Very truly yours,
Kased Law Group APC

A handwritten signature in black ink, appearing to read 'Nathan N. Kased', with a stylized flourish at the end.

Nathan N. Kased

NK:jm
cc: Mr. Dinh