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8 SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF SAN FRANCISCO

10 DANIEL BARTON; LUIS DE LA
TORRE; NENAD NINO JOVICIC;
11 MELVIN PICOLO; GREGORY PETRI;
MARK MARCO CANDELA; SPIRO
12 GEORGOPOLOUS; MARILYN
KITAGAWA; LUCA ORTOLANI; RUY
13 CAMPOSECO

14 Plaintiffs,

15 v.

16 NORTH BEACH RESTAURANT, INC.;
17 NORIS ORSI; STEPHEN DAVID
MAYER; AND DOES 1 TO 100,

18 Defendants.
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Case No. CGC-21-590019

**MOTION FOR APPROVAL OF PAGA
SETTLEMENT (LABOR CODE §2699(l));
DECLARATION OF ALLAN A.
VILLANUEVA**

**[PROPOSED] ORDER GRANTING
APPROVAL OF PAGA SETTLEMENT
FILED SEPARATELY**

Action Filed: February 26, 2021

Trial Date: None Set

Hearing Date: January 28, 2022

Time: 9:15 a.m.

Dept. 304

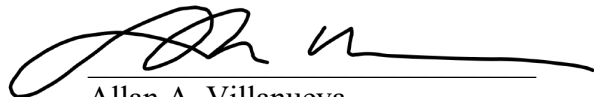
1 TO ALL INTERESTED PARTIES AND THEIR RESPECTIVE ATTORNEYS OF
2 RECORD:

3 PLEASE TAKE NOTICE THAT on **January 28, 2022, at 9:15 a.m., in Department 304** of
4 the San Francisco Superior Court, located at 400 McAllister Street, San Francisco, CA 94102-4514,
5 the Honorable Ethan P. Schulman presiding, Plaintiffs and Defendants will jointly move for
6 approval of the PAGA settlement. This motion is made pursuant to Labor Code §2699(1)(2), which
7 provides, “The superior court shall review and approve any settlement of any civil action filed
8 pursuant to this part.”

9 This motion is based upon this Notice, the attached Memorandum of Points and
10 Authorities; the Declaration of Allan A. Villanueva in support thereof; the pleadings and records on
11 file in this action; and on such other and further evidence as the Court may consider at or before the
12 hearing on this application.

13 Date: December 27, 2021

LAW OFFICE OF ALLAN A. VILLANUEVA

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16 Allan A. Villanueva
17 Attorney for Plaintiffs
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. FACTS**

3 Plaintiffs are ten restaurant workers, eight of whom were servers, and two were bartenders,
4 who worked for North Beach Restaurant. North Beach Restaurant is located at 1512 Stockton St,
5 San Francisco, CA 94133, and is the only restaurant owned, managed and/or operated by Defendant
6 North Beach Restaurant, Inc. (NBRI). Plaintiffs are informed that Defendant Noris Orsi is a
7 shareholder and Defendant Stephen David Mayer is a Director of NBRI. Two of the ten plaintiffs
8 have returned to work at North Beach Restaurant.

9 The restaurant was closed from March 15, 2020, until sometime in August / September 2021,
10 due to the Covid-19 pandemic and the City's and State's shelter-in-place orders. This closure has
11 had a tremendous negative impact on NBRI's revenues and income.

12 On September 28, 2020, *Plaintiff Daniel Barton* served Defendants and the Labor and
13 Workforce Development Agency (LWDA) with a PAGA notice, a true and correct copy of which is
14 attached as Exhibit A to the declaration of Allan A. Villanueva.

15 In the PAGA notice, *Plaintiff Barton* alleged that the servers and bartenders worked off-the-
16 clock for which they were not paid either the minimum, regular, or overtime wages; were not
17 provided with lawful meal and rest breaks and thus were owed the one-hour premium under Labor
18 Code §226.7; required to sign false statements of hours worked; and were not paid the one-hour
19 minimum wage premium when they worked a split shift. Plaintiffs alleged that the above violations
20 resulted in inaccurate wage statements, and liability for waiting time penalties.

21 On February 26, 2021, Plaintiffs filed a wage and hour case for minimum wages, including
22 for split shifts; overtime wages; liquidated damages; meal and rest break premiums; conversion of
23 tips; statutory penalties for late payment of wages, wage statement violations, and waiting time;
24 restitution under the Unfair Competition Law; and civil penalties under the Private Attorney's
25 General Act (PAGA).

26 After having conducted discovery, the Parties engaged Patrick Kelly, Esq. to mediate the
27 matter on November 10, 2021, in an effort to resolve the entire matter.
28

1 On November 10, 2021, the Parties reached an agreement to settle both the Plaintiffs'
2 individual claims and the PAGA claims. The Parties memorialized the terms of the PAGA
3 settlement in a PRIVATE ATTORNEYS GENERAL ACT ("PAGA") SETTLEMENT
4 AGREEMENT ("PAGA Settlement Agreement"), a true and correct copy of which is attached as
5 Exhibit B to the declaration of Allan A. Villanueva.

6 The PAGA Settlement Agreement provides, in relevant part:

- 7 • The settlement is "subject to the approval of the Court in accordance with California
8 Labor Code section 2699(1)(2)."
- 9 • "If the Court does not grant approval of the Settlement, then the Settlement [both
10 individual claims and PAGA claims] will become null and void."
- 11 • "NBR shall pay no more than \$20,000.00. Seventy-five percent (75%) of the Net
12 Settlement Amount will be distributed to the LWDA and the remaining (25%) will be distributed to
13 the PAGA Settlement Group Members pursuant to the below provisions regarding calculation of
14 each Member's share."
- 15 • "Net Settlement Amount" means the amount that is available for distribution of the
16 LWDA Payment and as Settlement Shares to the PAGA Settlement Group Members after deduction
17 of fees ("PAGA Settlement Administration Fees") from the Total Settlement Amount. The PAGA
18 Settlement Administration Fees will be paid to the Settlement Administrator, ILYM Group, Inc.
19 ("ILYM Group)."
- 20 • "DEFENDANT represents that there are approximately 20 individuals that compose
21 the PAGA Settlement Group Members."
- 22 • "The Settlement Shares and the LWDA Payment will be paid out of the Settlement
23 Amount within fourteen (14) calendar days after the Settlement becomes Final."

24 Plaintiffs respectfully request the Court pursuant to Labor Code §2699(1), to review and
25 approve the PAGA settlement reached by the parties.

26 **II. LEGAL ARGUMENT**

27 **A. Public Policy Encourages Settlement**

28 California's public policy has long been to encourage settlement over litigation in the

1 interests of efficiency and economy for the courts and for the parties involved. See, e.g., *Kaufman v.*
2 *Goldman* (2011)195 Cal. App. 4th 734, 745; *Osumi v. Sutton* (2007) 151 Cal. App. 4th 1355, 1359;
3 *Zhou v. Unisource Worldwide, Inc.* (2007)157 Cal. App. 4th 1471, 1475; *Brown v. Guarantee Ins.*
4 *Co.* (1957)155 Cal. App. 2d 679, 696.

5 **B. Purposes of PAGA**

6 California law provides for civil penalties for violations of certain Labor Code provisions.
7 (See, e.g., §§ 210, subd. (a), 225.5, 226.3, 256, 2699, subd. (f).) Prior to the enactment of PAGA,
8 many of these penalties were “ ‘enforceable only by the state’s labor law enforcement agencies.’ ”
9 *Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348, 381.

10 In enacting PAGA, “[t]he Legislature declared that adequate financing of labor law
11 enforcement was necessary to achieve maximum compliance with state labor laws, that staffing
12 levels for labor law enforcement agencies had declined and were unlikely to keep pace with the
13 future growth of the labor market, and that it was therefore in the public interest to allow aggrieved
14 employees, acting as private attorneys general, to recover civil penalties for Labor Code violations.”
15 *Arias v. Superior Court* (2009) 46 Cal.4th 969, 980.

16 PAGA thus “augment[ed] the limited enforcement capability of the [LWDA] by empowering
17 employees to enforce the Labor Code as representatives of the [LWDA]” (*Iskanian*, supra, 59
18 Cal.4th at p. 383) and “deputizing [them] to prosecute Labor Code violations on the state’s behalf”
19 (*id.* at p. 360).

20 An authorized PAGA plaintiff “acts as ‘ “the proxy or agent of the state’s labor law
21 enforcement agencies” ’ and ‘ “represents the same legal right and interest as” ’ those agencies—‘
22 “namely, recovery of civil penalties that otherwise would have been
23 assessed and collected by the [LWDA].” ’ [Citation.]” *ZB, N.A. v. Superior Court* (2019) 8 Cal.5th
24 175, 185. “The civil penalties recovered on behalf of the state under the PAGA are distinct from the
25 statutory damages to which employees may be entitled in their individual capacities.” *Iskanian* at
26 381.

27 **C. Standard for Approving PAGA Settlements**

1 Labor Code §2699(l)(2) provides, “The superior court shall review and approve any
2 settlement of any civil action filed pursuant to this part. The proposed settlement shall be submitted
3 to the agency at the same time that it is submitted to the court.”

4 The court has broad discretion to approve PAGA settlement. *Moniz v. Adecco US, Inc.* (Cal.
5 App. 2021) p. 26.

6 “In any action by an aggrieved employee seeking recovery of a civil penalty available under
7 subdivision (a) or (f), a court may award a lesser amount than the maximum civil penalty amount
8 specified by this part if, based on the facts and circumstances of the particular case, to do otherwise
9 would result in an award that is unjust, arbitrary and oppressive, or confiscatory.” Labor Code
10 2699(e)(2)

11 The “trial court should evaluate a PAGA settlement to determine whether it is fair,
12 reasonable, and adequate in view of PAGA's purposes to remediate present labor law violations,
13 deter future ones, and to maximize enforcement of state labor laws.” *Moniz*, supra at p. 25.

14 **D. Factors Useful in Evaluating the Fairness of a PAGA Settlement.**

15 “[T]he strength of the plaintiff's case, the risk, the stage of the proceeding, the complexity
16 and likely duration of further litigation, and the settlement amount-these factors can be useful in
17 evaluating the fairness of a PAGA settlement.” *Id.* at p. 24.

18 **i. Stage of Proceeding, Strength of Plaintiff's Case and the Risks.**

19 The Superior Court complaint was filed on February 26, 2021. The case was in its early
20 stages of litigation when the case settled on November 10, 2021.

21 “The statute of limitations for PAGA claims is one year.” Cal. Code Civ. Proc. §340(a).
22 *Brown v. Ralphs Grocery Company* (2018) 28 Cal.App.5th 824, 839. Thus, the statute of limitations
23 period started on September 28, 2019, one year before the PAGA notice was filed.

24 Plaintiffs were paid by defendants on a weekly basis. There were 25 pay periods from
25 September 28, 2019, to March 15, 2020 (Covid-19 lockdown began), and about 12 pay periods from
26 August 2021 (re-opening of restaurant) to November 10, 2021 (the claim period). However, the only
27 relevant period for assessing PAGA penalties is the 25 pay periods to March 15, 2020, since the
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1 restaurant has corrected the alleged violations when it re-opened sometime in August 2021.
2 Villanueva Decl. ¶¶26-27.

3 The discovery at this early stage of litigation has revealed that beginning in April 2019,
4 defendants started to require servers and bartenders to document, on adjustment sheets, each day
5 they were unable to clock-in or clock-out, and the times they actually started and stopped working.
6 The employees' time records would then be adjusted to reflect the hours worked on these adjustment
7 sheets. Therefore, it could be argued that during the PAGA claim period, the employees did not
8 work off-the-clock and are not owed regular or overtime wages. Villanueva Decl. ¶11.

9 Defendants also required servers and bartenders to clock-in/out for meal breaks beginning
10 approximately 2017. Some of the plaintiffs began to do this, some even over their objection.
11 However, over time, this practice stopped around the year 2018. It is Plaintiffs contention that in
12 reality they were not able to take a lawful meal break. They were assigned to specific stations in the
13 restaurant and there was not one to cover for them to be able to take a break. Thus, not only were
14 they not able to take meal breaks, they were also not able to take their rest breaks. Villanueva Decl.
15 ¶12.

16 As to the split shift premiums, not all servers or bartenders worked split shifts. There were
17 about 10 employees each pay period, who worked split shifts. Also, it appears that based on a review
18 of the paystubs of the affected plaintiffs, they were paid a portion of the one-hour minimum wage
19 premium. Thus, apparently, defendants intended to pay the premium, but paid the employees based
20 on a formula, instead of the one-hour minimum wage premium required by the wage order.
21 Villanueva Decl. ¶13.

22 Plaintiff Barton did not allege tip violations in the PAGA complaint and therefore is not an
23 issue for purposes of PAGA penalties. Villanueva Decl. ¶14.

24 In sum, the violations and corresponding Labor Code sections for which plaintiffs seek
25 PAGA penalties are: 1) failure to pay split shift premium to 10 employees (Labor Code §558); 2)
26 failure to provide meal breaks (Labor Code §558); 3) failure to provide rest breaks (Labor Code
27 §558), 4) inaccurate wage statements for the 10 employees who worked split shifts (Labor Code
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1 §226.3); and 5) waiting time penalties, for the workers who worked split shifts and who no longer
2 work at the restaurant (Labor Code §2699). Villanueva Decl. ¶15

3 “Any employer or other person acting on behalf of an employer who violates, or causes to be
4 violated, a section of this chapter or any provision regulating hours and days of work in any order of
5 the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial
6 violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the
7 employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For
8 each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay
9 period for which the employee was underpaid in addition to an amount sufficient to recover
10 underpaid wages.” Labor Code §558.

11 “If, at the time of the alleged violation, the person employs one or more employees, the civil
12 penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial
13 violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each
14 subsequent violation.” Labor Code §2699(f)(2).

15 “Any employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty
16 in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and
17 one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the
18 employer fails to provide the employee a wage deduction statement or fails to keep the records
19 required in subdivision (a) of Section 226.” Labor Code §226.3.

20 “[S]ection 226.7 actions do not entitle employees to pursue the derivative penalties in
21 sections 203 and 226.” *Naranjo v. Spectrum Security Services, Inc.* (2019) 40 Cal.App.5th 444, 474.

22 The plaintiffs estimate that the maximum liability for the above violations for 20 employees
23 for the 25 pay periods is \$176,700.00 as follows:

24 Split Shift **\$12,500.00** (10 employees x 25 pay periods x \$50.00 / initial violation)
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1 Meal period **\$50,000.00** (20 employees x 25 pay periods x \$100 / subsequent violation¹)
2 Rest period **\$50,000.00** (20 employees x 25 pay periods x \$100 / subsequent violation)
3 Inaccurate wage statements **\$62,500.00** (10 employees x 25 pay periods x \$250 / initial
4 violation)
5 Waiting time **\$1,700.00** (17 employees x \$100 / initial violation) Villanueva Decl. ¶21.

6 Plaintiffs believe that although there is the risk of *not* obtaining penalties for the split shift
7 violations and resulting inaccurate wage statements and waiting time, they believe the risk is low
8 since it is undisputed that those who worked a split shift were not paid the full one-hour premium
9 although defendants did pay a portion of the premium. Villanueva Decl. ¶22.

10 On the other hand, they believe that the risk of *not* obtaining penalties for the meal and rest
11 break violations is higher considering that it is a disputed fact whether the employees were provided
12 a lawful meal or rest break wherein defendants relieved them of all duty, relinquished control over
13 their activities, permits them a reasonable opportunity to take an uninterrupted, 30-minute or 10-
14 minute break, and did not impede or discourage them from doing so. Villanueva Decl. ¶23.

15 In sum, Plaintiffs have the best chance of obtaining PAGA penalties for the split shift
16 violations, inaccurate wage statements based on the split shift violations, and waiting time for
17 employees who worked split shifts and no longer work for defendants. The Plaintiffs also have a
18 chance, but not as strong as the foregoing, for obtaining penalties for meal and rest break violations.
19 Villanueva Decl. ¶24.

20 **ii. Complexity and Likely Duration of Further Litigation.**

21 The case has been designated by the court as complex. The initial discovery consisted
22 of:

- 23 • 329 requests for production of documents propounded on April 2, 2021 (nine
24 PLAINTIFFS propounded 30 requests each, and DANIEL BARTON propounded 59 requests);
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26 _____
27 ¹ The penalty for subsequent violation should apply since defendants were previously placed on notice of meal and rest
28 break violations in *Sotelo v. North Beach Restaurant, Inc.*, Case LWDA-CM-299397-17 filed on 3/30/2016, and Case
LWDA-CM-299548-17 filed on 7/21/2016.

- 150 requests for admission propounded on April 5, 2021 (15 requests for each of the PLAINTIFFS);
- 110 form interrogatories (employment) propounded on April 5, 2021 (11 form interrogatories for each of the PLAINTIFFS);
- 13 special interrogatories propounded by DANIEL BARTON on April 6, 2021;
- A notice of deposition of Warren Hart with 28 requests for production of documents, served on April 8, 2021;
- A notice of deposition of Raj Dutt with 28 requests for production of documents, served on April 8, 2021. Villanueva Decl. ¶25.

Further discovery will likely include voluminous documents in light of the fact that the employees were paid weekly, and numerous depositions to determine whether each employee was aggrieved, in what pay period(s), and whether a reduction of penalties is proper. Further, the parties will likely engage experts to assist in forensic analysis. Thus, it is likely that the litigation will last another 18 to 24 months. Villanueva Decl. ¶26.

iii. The Settlement Amount.

The parties settled the PAGA claims for \$20,000.00, 75% (\$15,000.00) of which will be paid to the State and 25% (\$5,000.00) to 20 aggrieved employees. The \$20,000.00 represents \$1,000.00 penalty per employee and 11.32% of the potential PAGA penalties. This is in line with *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, wherein the court approved 10% of the maximum potential PAGA liability.

iv. Factors that Support a Reduction of Penalties.

In *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 529, the California Court of Appeals affirmed a reduction of PAGA penalties to 10% of the maximum penalties due to the employer's good faith efforts to comply. Here, defendants have corrected the violations giving rise to potential PAGA penalties. The employees are now clocking in and out for meal breaks. During meal and rest breaks, they are relieved of all duty, relinquished of control over their activities, permitted a reasonable opportunity to take an uninterrupted, 30-minute or 10-minute rest break, and

1 are not impeded or discouraged from doing so. Villanueva Decl. ¶27; Ortolani Decl.

2 The wage statements also accurately show that they are paid the one-hour minimum wage
3 premium if they work a split shift. Villanueva Decl. ¶28; Ortolani Decl.

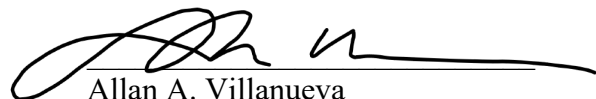
4 Finally, Plaintiffs respectfully request the court to award a lower amount in penalties as it
5 would be unjust, arbitrary, oppressive, or confiscatory in light of the tremendous impact the Covid
6 19 pandemic has had on the restaurant's operations and revenues. Labor Code 2699(e)(2).

7 **III. CONCLUSION**

8 Based on the foregoing, Plaintiffs respectfully request the court to approve the PAGA
9 settlement as fair, reasonable and adequate.

10 Date: December 27, 2021

LAW OFFICE OF ALLAN A. VILLANUEVA

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13 Allan A. Villanueva
14 Attorney for Plaintiffs
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DECLARATION OF ALLAN A. VILLANUEVA

1. I am an attorney licensed to practice law before all California courts and I am counsel of record for Plaintiffs.

2. I know the following to be true of my own personal knowledge and, if called as a witness, I could and would testify competently thereto.

3. On Wednesday, December 27, 2021, I transmitted a copy of this motion to the LWDA pursuant to Labor Code §2699(l)(4).

4. I am experienced in prosecuting wage and hour lawsuits. Ninety percent of my practice is devoted to employment law, about eighty percent of which is in wage and hour law.

5. I have represented hundreds of parties in single and multi-plaintiff, representative and class action wage and hour cases.

6. I have obtained numerous favorable Labor Commissioner awards for clients. For example, I obtained a Labor Commissioner award in excess of \$124,000.00 for nine employees in a meal and rest period claim covering a period of only one year; an award of over \$360,000.00 for two employees in overtime wage claim, awards totalling over \$2.5M for seven employees in overtime wages claims, which was upheld on appeal in *Cardinal Care Management, LLC v. Afable* (2020) 47 Cal.App.5th 1011, a seven figure settlement for 17 employees in a wage and hour lawsuit, and settlements in class action cases alleging failure to pay overtime and provide meal and rest breaks.

7. Plaintiffs are ten restaurant workers, eight of whom were servers, and two, Gregory Petri and Marilyn Kitagawa were bartenders, who worked for North Beach Restaurant. North Beach Restaurant is located at 1512 Stockton St, San Francisco, CA 94133, and is owned, managed and/or operated by Defendant North Beach Restaurant, Inc. (NBRI) Plaintiff is informed that Defendant Noris Orsi is a shareholder and Defendant Stephen David Mayer is a Director of NBRI.

8. On September 28, 2020, Plaintiffs served Defendants and the Labor and Workforce Development Agency (LWDA) with a PAGA notice, a true and correct copy of which is attached as **Exhibit A.**

9. On February 26, 2021, Plaintiffs filed a wage and hour case for minimum wages,

1 including for split shifts; overtime wages; liquidated damages; meal and rest break premiums;
2 conversion of tips; statutory penalties for late payment of wages, wage statement violations, and
3 waiting time; restitution under the Unfair Competition Law; and civil penalties under the Private
4 Attorney's General Act (PAGA).

5 10. I have reviewed voluminous wage statements, time records, adjustment sheets and
6 numerous other documents in this matter.

7 11. Based on my review, it appears that beginning in April 2019, defendants started to
8 require servers and bartenders to document, on adjustment sheets, each day they were unable to
9 clock-in or clock-out and their reasons, and the times they actually started and stopped working. The
10 employees' time records would then be adjusted to reflect the hours worked on these adjustment
11 sheets. Therefore, it could be argued that during the PAGA claim period, the employees did not
12 work off-the-clock and are not owed regular or overtime wages.

13 12. Defendants also required servers and bartenders to clock-in/out for meal breaks
14 beginning approximately 2017. Some of the plaintiffs began to do this, some even over their
15 objection. However, over time, this practice stopped around the year 2018. It is Plaintiffs contention
16 that in actuality they were not able to take a lawful meal break. They were assigned to specific
17 stations in the restaurant and there was no one to cover for them to be able to take a break. Thus, not
18 only were they not able to take meal breaks, they were also not able to take their rest breaks.

19 13. As to the split shift premiums, not all servers or bartenders worked split shifts. There
20 were about 10 employees each pay period, who worked split shifts. Also, it appears that based on a
21 review of the paystubs of the affected plaintiffs, they were paid a portion of the one-hour minimum
22 wage premium. Thus, apparently, defendants intended to pay the premium, but paid the employees
23 based on a formula, instead of the one-hour minimum wage premium required by the wage order.

24 14. Plaintiff Barton did not allege tip violations in the PAGA complaint and therefore is
25 not an issue for purposes of PAGA penalties.

26 15. In sum, the violations and corresponding Labor Code sections for which plaintiffs
27 seek PAGA penalties are: 1) failure to pay split shift premium to 10 employees (Labor Code §558);
28

2) failure to provide meal breaks (Labor Code §558); 3) failure to provide rest breaks (Labor Code §558), 4) inaccurate wage statements for the 10 employees who worked split shifts (Labor Code §226.3); and 5) waiting time penalties, for the workers who worked split shifts and who no longer work at the restaurant (Labor Code §2699).

16. After having conducted discovery, the Parties engaged Patrick Kelly, Esq. to mediate the matter on November 10, 2021, in an effort to resolve the matter.

17. On November 10, 2021, the Parties reached an agreement to settle both the Plaintiffs' individual claims and the PAGA claims. The Parties memorialized the terms of the PAGA settlement in a PRIVATE ATTORNEYS GENERAL ACT ("PAGA") SETTLEMENT AGREEMENT ("Settlement Agreement"), a true and correct copy of which is attached as **Exhibit B**.

18. The Settlement Agreement provides, in relevant part:

- The settlement is "subject to the approval of the Court in accordance with California Labor Code section 2699(1)(2)."
- "If the Court does not grant approval of the Settlement, then the Settlement will become null and void."
- "NBR shall pay no more than \$20,000.00. Seventy-five percent (75%) of the Net Settlement Amount will be distributed to the LWDA and the remaining (25%) will be distributed to the PAGA Settlement Group Members pursuant to the below provisions regarding calculation of each Member's share."
- "Net Settlement Amount" means the amount that is available for distribution of the LWDA Payment and as Settlement Shares to the PAGA Settlement Group Members after deduction of fees ("PAGA Settlement Administration Fees") from the Total Settlement Amount. The PAGA Settlement Administration Fees will be paid to the Settlement Administrator, ILYM Group, Inc. ("ILYM Group)."
- "DEFENDANT represents that there are approximately 20 individuals that compose the PAGA Settlement Group Members."

1 • “The Settlement Shares and the LWDA Payment will be paid out of the Settlement
2 Amount within fourteen (14) calendar days after the Settlement becomes Final.”

3 19. It is my professional opinion that the settlement is fair, reasonable and adequate.

4 20. Defendants represent that there are approximately 20 individuals that compose the
5 PAGA Settlement Group Members. Para. III.B. of Exhibit B to Villanueva Decl.

6 21. The Plaintiffs and I estimate that the maximum liability for the above violations for
7 20 employees for the 25 pay periods is \$176,700.00 as follows:

- 8 • Split Shift **\$12,500.00** (10 employees x 25 pay periods x \$50.00 / initial violation)
- 9 • Meal period **\$50,000.00** (20 employees x 25 pay periods x \$100 / subsequent violation)
- 10 • Rest period **\$50,000.00** (20 employees x 25 pay periods x \$100 / subsequent violation)
- 11 • Inaccurate wage statements **\$62,500.00** (10 employees x 25 pay periods x \$250 / initial
12 violation)
- 13 • Waiting time **\$1,700.00** (17 employees x \$100 / initial violation)

14 22. The Plaintiffs and I believe that although there is the risk of *not* obtaining penalties
15 for the split shift violations and resulting inaccurate wage statements and waiting time, we believe
16 the risk is low since it is not disputed that those who worked a split shift were not paid the full one-
17 hour premium although defendants did pay a portion of the premium.

18 23. On the other hand, we believe that the risk of *not* obtaining penalties for the meal and
19 rest break violations is higher considering that it is a disputed fact whether the employees were
20 provided a lawful meal or rest break wherein defendants relieved them of all duty, relinquished
21 control over their activities, permits them a reasonable opportunity to take an uninterrupted, 30-
22 minute or 10-minute break, and did not impede or discourage them from doing so. In other words,
23 there is a risk that Plaintiffs would not be able to convince the trier of fact they were denied lawful
24 meal and rest breaks.

25 24. I believe Plaintiffs have the best chance of obtaining PAGA penalties for the split
26 shift violations, inaccurate wage statements based on the split shift violations, and waiting time
27 violations for employees who worked split shifts and no longer work for defendants. The Plaintiffs
28 also have a chance, but not as strong as the foregoing, for obtaining penalties for meal and rest break
violations.

1 25. This court has designated this case complex. The initial discovery consisted of:
2 • 329 requests for production of documents propounded on April 2, 2021 (nine
3 PLAINTIFFS propounded 30 requests each, and DANIEL BARTON propounded 59 requests);
4 • 150 requests for admission propounded on April 5, 2021 (15 requests for each of the
5 PLAINTIFFS);
6 • 110 form interrogatories (employment) propounded on April 5, 2021 (11 form
7 interrogatories for each of the PLAINTIFFS);
8 • 13 special interrogatories propounded by DANIEL BARTON on April 6, 2021;
9 • A notice of deposition of Warren Hart with 28 requests for production of documents,
10 served on April 8, 2021;
11 • A notice of deposition of Raj Dutt with 28 requests for production of documents,
12 served on April 8, 2021.

13 26. Further discovery will likely include voluminous documents in light of the fact that
14 the employees were paid weekly, and numerous depositions to determine whether each employee
15 was aggrieved, in what pay period(s), and whether a reduction of penalties is proper. Further, the
16 parties will likely engage experts to assist in forensic analysis. Thus, it is likely that the litigation
will last another 18 to 24 months.

17 27. I am informed and believe that since the re-opening of the restaurant after the Covid
18 19 lockdown, Defendants have corrected the violations giving rise to potential PAGA penalties. The
19 employees are now clocking in and out for meal breaks. During meal and rest breaks, they are
20 relieved of all duty, relinquished of control over their activities, permitted a reasonable opportunity
21 to take an uninterrupted, 30-minute or 10-minute rest break, and are not impeded or discouraged
22 from doing so.

23 28. I am also informed and believe that the wage statements now accurately show that the
24 employees are paid the one-hour minimum wage premium if they work a split shift.

25 I declare under penalty of perjury under the laws of the State of California that the foregoing
26 is true and correct.

27 Date: December 27, 2021

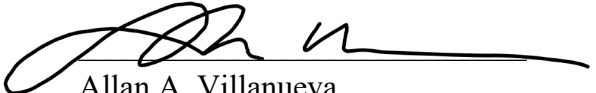

Allan A. Villanueva

EXHIBIT A

TEL (925) 968-4326

FAX (650) 479-3086

VILLANUEVALAWOFFICE@GMAIL.COM

LAW OFFICE OF
ALLAN A. VILLANUEVA
6701 KOLL CENTER PARKWAY
SUITE 250
PLEASANTON, CALIFORNIA 94566

MEMBER OF THE BARS
CALIFORNIA AND HAWAII

VIA CERTIFIED MAIL

September 28, 2020

California Labor & Workforce Development Agency
Attn. PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102
(VIA ONLINE FILING)

Noris Orsi
NORTH BEACH RESTAURANT, INC.
1512 Stockton Street
San Francisco, CA 94133

Marie Trimble Holvick, Esq.
Gordon Rees Scully Mansukhani
275 Battery Street, Suite 2000
San Francisco, CA 94111

RE: *DANIEL BARTON v. NORTH BEACH RESTAURANT, INC.*

**Complaint under California Labor Code §2698 et seq. (Private Attorneys
General Act of 2004)**

To Whom It May Concern:

This office represents ***DANIEL BARTON***. Please direct all communications to this office.

He is an aggrieved employee and is making claims under Cal. Labor Code §2698 et seq. on his behalf and other current or former employees of Defendant NORTH BEACH RESTAURANT, INC. (collectively "aggrieved employees").

Defendant operates a North Beach Restaurant located at 1512 Stockton St, San Francisco, CA 94133. The aggrieved employees are restaurant workers including but not limited, to servers and bartenders.

Defendants are employers under IWC Wage Order 5, *Martinez v. Combs*, 49 Cal.4th 35 (2010) and Cal. Labor Code §558.1. Cal. Labor Code §558.1 which provides:

(a) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare

Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.

(b) For purposes of this section, the term other person acting on behalf of an employer is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term managing agent has the same meaning as in subdivision (b) of Section 3294 of the Civil Code.

Labor Code §226.7, §512, Title 8, §11050, §§11, 12 of the California Code of Regulations, Industrial Welfare Commission Wage Order No. 5-2001, §§11, 12

Labor Code §226.7 provides:

(b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

(c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

Labor Code §512 states,

(a) An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

Title 8, §11050 of the California Code of Regulations provides:

Section 11. (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30

minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and employee. Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.

(B) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the meal period is not provided.

(C) In all places of employment where employees are required to eat on the premises, a suitable place for that purpose shall be designated.

Section 12. (A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted, as hours worked, for which there shall be no deduction from wages.

(B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the rest period is not provided.

The aggrieved employees were not provided meal and rest breaks in accordance with the law. They were not provided with meal breaks when they worked in excess of five hours, wherein defendant relieved its employees of all duty, relinquished control over their activities and permitted them a reasonable opportunity to take an uninterrupted 30 minute break and do not impede or discourage them from doing so. *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1038–1039.

Further, due to the nature of the work, defendant did not relieve its employees of all duties and relinquish any control over how employees spend their break time. *Augustus v. ABM Sec. Servs., Inc.* (2016) 2 Cal.5th 257, 260 (citing *Brinker*).

Labor Code §510, §1194, Title 8, §11050, §§3, 4 of the California Code of Regulations, Industrial Welfare Commission Wage Order No. 5-2001, §§3, 4

Labor Code §510 provides, “(a) Eight hours of labor constitutes a day’s work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.”

Labor Code Section §1194(a) states, “Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.”

Defendant regularly required the aggrieved employees to work off-the-clock, during which time the aggrieved employees were not paid the minimum wage or their regular rate of pay, or overtime wage when the aggrieved employees worked in excess of eight hours per day or forty hours per week.

Labor Code §206.5

Labor Code §206.5 provides, “(a) An employer shall not require the execution of a release of a claim or right on account of wages due, or to become due, or made as an advance on wages to be earned, unless payment of those wages has been made. A release required or executed in violation of the provisions of this section shall be null and void as between the employer and the employee. Violation of this section by the employer is a misdemeanor. (b) For purposes of this section, “execution of a release” includes requiring an employee, as a condition of being paid, to execute a statement of the hours he or she worked during a pay period which the employer knows to be false.”

In order to be paid, the aggrieved employees were required to execute a statement of the hours he or she worked, which defendant knew to be false.

IWC Wage Order 5, ¶4; 8 CCR 11050, ¶4

Title 8, §11050 of the California Code of Regulations provides: “Section 4(C). When an employee works a split shift, one hour's pay at the minimum wage shall be paid in addition to the minimum wage for that workday, except when the employee resides at the place of employment.”

The aggrieved employees typically worked split shifts, but were not paid the extra hour’s pay at the minimum wage.

Labor Code §226 and Labor Code §1174

Because of the above violations, the aggrieved employees' paystubs do not accurately state the gross and net wages earned, the total hours worked by the employee, and the applicable rates of pay.

Defendant DID NOT provide accurate itemized statements required by Labor Code §226. Section 226 requires, among other information:

- (1) gross wages earned,
- (2) total hours worked by the employee, except as provided in subdivision (j),
- (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,
- (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item,
- (5) net wages earned,
- (6) the inclusive dates of the period for which the employee is paid,
- (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number,
- (8) the name and address of the legal entity that is the employer and,
- (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate.

Defendants further violated Labor Code §1174, which requires that payroll records show the accurate hours worked daily and the wages paid to the employees.

Labor Code §§201, 202, 203

The employment of some of the aggrieved employees were terminated, but all of their wages have not been paid in violation on Cal. Labor Code §201, 202, 203.

In sum, the aggrieved employees seek to bring a civil suit under Cal. Labor Code §2698 et seq. and seek all penalties allowed by law including but not limited to those set forth in Cal. Labor Code §§226.3.

Should you have any questions, please do not hesitate to contact the undersigned.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Allan A. Villanueva', with a stylized flourish at the end.

Allan A. Villanueva

EXHIBIT B

**PRIVATE ATTORNEYS GENERAL ACT ("PAGA")
SETTLEMENT AGREEMENT**

This Settlement Agreement under the California Labor Code Private Attorneys General Act ("PAGA") is made by and between Plaintiffs Daniel Barton, Luis De La Torre, Nenad Nino Jovicic, Melvin Picolo, Mark Marco Candela, Spiro Georgopolous, Marilyn Kitawaga, Luca Ortolani, and Ruy Camposeco ("PLAINTIFFS") on behalf of themselves, other aggrieved employees, and the State of California, on the one hand, and Defendants North Beach Restaurant, Inc. ("NBR"), Stephen David Mayer, and Noris Orsi ("DEFENDANTS") on the other hand (collectively, the "Parties"), subject to the approval of the Court in accordance with California Labor Code section 2699(1)(2), and subject to the following terms and conditions.

I. DEFINITIONS

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

- A.** "Action" means the civil action titled *Daniel Barton et al. v. North Beach Restaurant, Inc. et al.*, Case No. CGC-21-590019.
- B.** "Agreement," "Settlement," or "Settlement Agreement" means this Settlement Agreement.
- C.** "Complaint" means the Complaint filed by PLAINTIFFS on February 26, 2021 in the Action.
- D.** "Court" means the San Francisco County Superior Court of California.
- E.** "Covered Period" means the period of time from September 28, 2019 to the date the Court approves this Settlement.
- F.** "DEFENDANTS" means North Beach Restaurant, Inc., Stephen David Mayer and Noris Orsi.
- G.** "Final" means that the Settlement has been fully and finally approved and the Order signed by the Court.
- H.** "DEFENDANTS' Counsel" means O'Hagan Meyer.
- I.** "Order" means the Order Granting Approval of Settlement. The Parties will submit a proposed Order in the form evidenced by Exhibit A to this Agreement for consideration by the Court.
- J.** "LWDA" means the California Labor & Workforce Development Agency.

- K.** “LWDA Payment” means the portion of the payment from the Settlement Amount to be paid to the LWDA under the Settlement Agreement.
- L.** “Net Settlement Amount” means the amount that is available for distribution of the LWDA Payment and as Settlement Shares to the PAGA Settlement Group Members after deduction of fees (“PAGA Settlement Administration Fees”) from the Total Settlement Amount. The PAGA Settlement Administration Fees will be paid to the Settlement Administrator, ILYM Group, Inc. (“ILYM Group”).
- M.** “PAGA Settlement Group Members” means all persons employed by NBR during the Covered Period in the positions of server and bartender.
- N.** “PLAINTIFFS” means Daniel Barton, Luis De La Torre, Nenad Nino Jovicic, Melvin Picolo, Mark Marco Candela, Spiro Georgopolous, Marilyn Kitawaga, Luca Ortolani, and Ruy Camposeco
- O.** “PLAINTIFFS’ Counsel” means the Law Firm of Allan A. Villanueva.
- P.** “Released Parties” means North Beach Restaurant, Inc., Stephen David Mayer, Noris Orsi, and any present and former parents, subsidiaries and affiliated companies or entities, and their respective officers, directors, employees, partners, shareholders and agents, and any other successors, assigns and legal representatives and their related persons and entities.
- Q.** “Settlement Share” means the portion of the Settlement Amount allocable to each PAGA Settlement Group Member as provided by this Agreement.
- R.** “Total Settlement Amount” means the total amount to be paid by NBR as provided by this Agreement.

II. FACTUAL BACKGROUND

A. On February 26, 2021, PLAINTIFFS filed this Action against DEFENDANTS, alleging various violations of California Labor Code and seeking civil penalties pursuant to the Labor Code Private Attorneys General Act of 2004 (“PAGA”).

B. This Agreement represents a compromise and settlement of highly disputed claims relating to the wage and hour claims at issue in the Action. Nothing in this Agreement is intended or will be construed as an admission by DEFENDANTS that PLAINTIFFS’ claims in the Action have merit or that they have any liability to PLAINTIFFS or the PAGA Settlement Group on those claims.

III. SETTLEMENT TERMS AND CONDITIONS

A. Stipulation for Settlement Only. Consistent with this Agreement, PLAINTIFFS will stipulate to the dismissal with prejudice of all PAGA claims against DEFENDANTS that arise from or relate to the claims alleged in the Complaint.

B. Representation Regarding PAGA Settlement Group Members. DEFENDANT represents that there are approximately 20 individuals that compose the PAGA Settlement Group Members.

C. Total Settlement Amount. Subject to the terms and conditions of this Agreement, the Total Settlement Amount is \$20,000.00 (Twenty Thousand Dollars and No Cents). PLAINTIFFS’ Counsel's attorney's fees and costs are addressed in a separate agreement concerning PLAINTIFFS’ individual claims. The Total Settlement Amount will cover (a) PAGA Settlement Administration Fees, (b) all Settlement Shares to PAGA Settlement Group Members, and (c) the LWDA Payment. NBR shall pay no more than \$20,000.00. Seventy-five percent (75%) of the Net Settlement Amount will be distributed to the LWDA and the remaining (25%) will be distributed to the PAGA Settlement Group Members pursuant to the below provisions regarding calculation of each Member’s share.

D. Settlement Shares. Subject to the terms and conditions of this Agreement, each PAGA Settlement Group Member will be allocated a Settlement Share from 25% of the Net Settlement Amount and 75% of the Net Settlement Amount shall be paid to the LWDA. The Settlement Share is intended to settle claims for civil penalties. Accordingly, the payments to PAGA Settlement Group Members will not be reduced by payroll tax withholding and deductions; instead, NBR will issue to the PAGA Settlement Group Member an IRS Form 1099 and its state and local equivalents with respect to the payment.

E. Distribution of Settlement Shares to PAGA Settlement Group Members. After deducting for the amounts for the LWDA Payment and costs of the PAGA Settlement Administration Fee, the remainder of the Net Settlement Amount will be paid as Settlement Shares to each PAGA Settlement Group Member. The portion of the Settlement Amount

available for distribution to PAGA Settlement Group Members (25% of the Net Settlement Amount) will be divided among all PAGA Settlement Group Members based on the number of pay periods worked during the Covered Period. ILYM Group will calculate the total number of pay periods worked by all PAGA Settlement Group Members during the Covered Period to get the “Total Pay Periods.” ILYM Group will then divide the 25% of the Settlement Amount to be paid to the PAGA Settlement Group Members by the Total Pay Periods during the Covered Period. This will yield the amount to be paid to each PAGA Settlement Group Member for each pay period, or the “Settlement Amount Per Pay Period.” Each PAGA Settlement Group Member's share of the settlement will then be calculated by multiplying the Settlement Amount Per Pay Period by the number of pay periods worked by that PAGA Settlement Group Member during the PAGA Period, based on NBR's records. The PAGA Settlement Group Members will be paid Settlement Payments based on the number of pay periods they worked as calculated by ILYM Group.

F. Payment to LWDA. NBR will pay 75% of the Net Settlement Amount to the LWDA as its share of the Settlement attributable to civil penalties under PAGA (the “LWDA Payment”). If the Court approves an LWDA Payment of less than 75%, the remainder will be retained in the Settlement Amount.

G. Distribution of Settlement Shares. In connection with the Parties' Ex Parte Application for Order Approving Settlement (“Ex Parte Application”), ILYM Group will distribute Settlement Shares due under the Settlement and otherwise administer the Settlement. ILYM Group's duties will include preparing, printing, and mailing the Notice Packet to the PAGA Settlement Group Members; conducting a National Change of Address search and using Accurint and other reasonable and cost-effective skip trace methods to locate any PAGA Settlement Group Member whose Notice Packet was returned by the U.S. Postal Service as non-deliverable, and re-mailing the Notice Packet to the PAGA Settlement Group Member's new address; issuing the checks to effectuate the payments due under the Settlement; and otherwise administering the Settlement pursuant to this Agreement.

H. Procedure for Approving Settlement.

1. Stipulation and Proposed Order Approving the Settlement.

a. The Parties will cooperate in seeking approval of the Settlement, including by drafting and filing an Ex Parte Application for Order Approving Settlement. The Parties further agree to fully cooperate in the drafting and/or filing of any further documents reasonably necessary to be prepared or filed and shall take all steps that may be requested by the Court relating to the approval and implementation of the Settlement. PLAINTIFFS' Counsel shall submit the Settlement Agreement and Ex Parte Application papers to the LWDA at the same time they are filed with the Court.

b. At the hearing on the Parties' Ex Parte Application, the Parties will jointly appear (if so ordered by the Court), support the granting of the Ex Parte Application and submit an order granting the Ex Parte Application in the form evidenced by Exhibit A to this Agreement.

c. PLAINTIFFS' Counsel will file the Ex Parte Application. If the Court does not grant the Ex Parte Application approving the Settlement, under the specific terms requested, the Parties agree to meet and confer to address the Court's concerns and determine whether resolution of the claims encompassed by the Settlement can be obtained in a manner consistent with the Court's concerns.

d. If the Court does not grant approval of the Settlement, then the Settlement will become null and void.

I. No Right to Opt Out. The Parties agree there is no statutory right to provide aggrieved employees the option to opt out as PAGA Settlement Group Member.

J. Notice and Payment of Settlement Shares to PAGA Settlement Group Members. After the Court enters its order granting the Stipulation and Proposed Order approving Settlement, every PAGA Settlement Group Member will be provided with a notice explaining the Settlement (see Exhibit B; "Notice Packet") and payment of the PAGA Settlement Group Member's Settlement Share.

1. ILYM Group will send each PAGA Settlement Group Member the Notice Packet and payment of the PAGA Settlement Group Member's Settlement Share pursuant to the terms of this Agreement. ILYM Group will mail the Notice Packets and Settlement Share payments to all identified PAGA Settlement Group Members, using the mailing address information in its possession, unless modified by any updated address information that NBR obtains in the course of administration of the Settlement.

2. In the event of returned or non-deliverable Notice Packets and Settlement Share payments, ILYM Group will make reasonable efforts to locate PAGA Settlement Group Members and re-send the Notice Packets and Settlement Share payments. ILYM Group will promptly, and not later than 15 calendar days from receipt of the returned packet and payment, search for a more current address for the PAGA Settlement Group Member using Accurint or other reasonable and cost-effective skip trace method, and re-mail the Notice Packet and Settlement Share payment to the PAGA Settlement Group Member. ILYM Group will use the PAGA Settlement Group Members' data to find a more current address. ILYM Group will be responsible for taking reasonable steps consistent with this Agreement and court order, as agreed to with PLAINTIFFS' Counsel and according to the following deadlines, to trace the mailing address of any PAGA Settlement Group Member for whom a Notice Packet or Settlement Share payment is returned by the U.S. Postal Service as undeliverable. These reasonable steps will include, at a minimum, the tracking of all undelivered mail; performing address searches for all mail returned without a forwarding address and promptly re-mailing to PAGA Settlement Group Members for whom new addresses are found.

K. Submission of Order. A copy of the superior court's judgment in any civil action filed pursuant to this part and any other order in that action that either provides for or denies an award of civil penalties under this code shall be submitted to the agency by PLAINTIFFS' Counsel within 10 days after entry of the judgment or order.

L. Waiver of Right to Appeal. Provided that the Court's approval of this Settlement is consistent with the material terms of this Agreement, PLAINTIFFS, DEFENDANTS, and their respective counsel, hereby waive any and all rights to appeal the approval of the Settlement and the Order therefore will become non-appealable at the time it is entered.

M. Timing of Settlement Payments. The Settlement Shares and the LWDA Payment will be paid out of the Settlement Amount within fourteen (14) calendar days after the Settlement becomes Final.

N. Uncashed Settlement Share Checks. A PAGA Settlement Group Member must receive or cash his or her Settlement Share payment or check within 180 calendar days after it is mailed to him or her. If a check is returned to ILYM Group, ILYM Group will make all reasonable efforts to re-mail it to the PAGA Settlement Group Member at his or her correct address in accordance with the procedures set forth above. If a PAGA Settlement Group Member cannot be located using the procedures set forth above, or if a PAGA Settlement Group Member fails to cash the check for his or her Settlement Share within 180 days after it is mailed to him or her, ILYM Group will distribute the funds represented by the uncashed check to the California State Controllers' Office as unclaimed property.

O. Release and Waiver of Claims.

1. PAGA Settlement Group Members. In consideration for the LWDA Payment and the PAGA Settlement Group Members awarded Settlement Shares, as of the date the Settlement becomes Final, the LWDA and PAGA Settlement Group Members release any and all known and unknown claims under PAGA against the Released Parties that were alleged in the Complaint, including all Labor Code sections and PAGA penalties referenced in the Complaint (the "PAGA Settlement Group Members' Released Claims").

2. PLAINTIFFS Waiver of Rights under California Civil Code Section 1542. PLAINTIFFS' released claims shall include all PAGA respective claims, whether known or unknown by the releasing party relating to the allegations in the Complaint. Thus, even if PLAINTIFFS discover facts in addition to or different from those that he or she now knows or believes to be true with respect to the subject matter of the Complaint, those claims will remain released and forever barred. Therefore, PLAINTIFFS expressly waive and relinquish the provisions, rights and benefits of section 1542 of the California Civil Code, which reads:

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.

P. No Effect on Other Benefits. The Settlement Shares will not result in any additional benefit payments (such as 401(k) or bonus) beyond those provided by this Agreement to the PAGA Settlement Group Members.

IV. MISCELLANEOUS TERMS

1. No Admission of Liability.

a. DEFENDANTS deny that they have engaged in any unlawful activity, have failed to comply with the law in any respect, or have any liability to anyone under the claims asserted in the Action. This Agreement is entered into solely for the purpose of compromising highly disputed claims and a bona fide dispute of allegedly unpaid sums. Nothing in this Agreement is intended or will be construed as an admission of liability or wrongdoing by DEFENDANTS. This Settlement and the fact that PLAINTIFFS and DEFENDANTS were willing to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (other than solely in connection with the Settlement).

b. Whether or not the Order becomes Final, nothing in this Agreement, any document, statement, proceeding or conduct related to the Settlement, or any reports or accounting of those matters, will be construed as, offered or admitted in evidence as, received as, or deemed to be evidence of a presumption, concession, indication or admission by any of the Released Parties of any liability, fault, wrongdoing, omission, concession or damage.

c. Nothing herein shall prohibit or otherwise prevent DEFENDANTS from challenging and/or asserting defenses against any claim that the PAGA Settlement Group Members are entitled to multiple penalties under PAGA for alleged multiple violations of the California Labor Code (i.e. stacking) relating to the remainder of the claims in PLAINTIFFS' Complaint or for making any other argument in defense of this action.

d. This Section and all other provisions of this Agreement notwithstanding, any and all provisions of this Agreement may be admitted in evidence and otherwise used in any and all proceedings to enforce any or all terms of this Agreement, or in defense of any claims released or barred by this Agreement.

2. Integrated Agreement. After this Agreement is signed and delivered by all Parties and their counsel, this Agreement and its exhibits will constitute the entire agreement between the Parties relating to the Settlement, and it will then be deemed that no oral representations, warranties, covenants, or inducements have been made to any Party concerning this Agreement or its exhibits other than the representations, warranties, covenants, and inducements expressly stated in this Agreement and its exhibits.

3. Attorney Authorization. PLAINTIFFS' Counsel and DEFENDANTS' Counsel warrant and represent that they are authorized by PLAINTIFFS

and DEFENDANTS, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement. In the event the Parties are unable to reach agreement on the form or content of any document needed to implement the Agreement, or on any supplemental provisions that may become necessary to effectuate the terms of this Agreement, the Parties will seek the assistance of the Court or mediator, and in all cases all such documents, supplemental provisions and assistance of the Court will be consistent with this Agreement.

4. Modification of Agreement. This Agreement, and any and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their successors-in-interest.

5. Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.

6. Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the laws of the State of California, without giving effect to any conflict of law principles or choice of law principles.

7. Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.

8. Fair Settlement. The Parties and their respective counsel affirm that they reached this Agreement through arms-length negotiations, taking into account all relevant factors, and after having conducted adequate discovery and investigation.

9. Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.

10. Notice. All notices, demands or other communications given under this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail and addressed as follows:

To PLAINTIFFS and the PAGA Settlement Group:

Allan V. Villanueva
Law Office of Allan A. Villanueva
6101 Bollinger Canyon Road, Ste. 379C
San Ramon, CA 94583
Telephone: (925) 365-1680
Facsimile: (650) 479-3086

To Defendant:

Christine C. Lee
Carla Vasques dos Santos-Moore
O'Hagan Meyer
221 Caledonia Street
Sausalito, California 94965
Telephone: (415) 578-6900
Facsimile: (415) 578-6910

11. Execution in Counterpart. This Agreement may be executed in one or more counterparts. All executed counterparts and each of them will be deemed to be one and the same instrument. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

12. Jurisdiction. Pursuant to Code of Civil Procedure section 664.6, the court shall retain jurisdiction to enforce the terms of this Agreement and shall award reasonable attorney's fees and costs to the prevailing party in a suit or proceeding thereunder.

V. EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel hereby execute this Agreement.

Dated: **12/07/2021**

DANIEL BARTON

By: 
Daniel Barton (Dec 7, 2021 19:43 PST)
Daniel Barton

Dated:

Plaintiff MARILYN KITAGAWA

By: _____
Marilyn Kitagawa

Plaintiff RUY CAMPOSECO

Dated:

By: _____
Ruy Camposeco

Dated:

Plaintiff LUCA ORTOLANI

By: _____
Luca Ortolani

Dated:

Plaintiff SPIRO GEORGOPOLOUS

By: _____
Spiro Georgopolous

Dated:

Plaintiff MARK MARCO CANDELA

By: _____
Mark Marco Candela

Plaintiff MELVIN PICOLO

Dated:

By: _____
Melvin Picolo

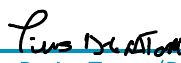
Plaintiff NENAD NINO JOVICIC

Dated:

By: _____
Nenad Nino Jovicic

Plaintiff LUIS DE LA TORRE

Dated: 12 08 2021

By:  _____
[Luis De La Torre \(Dec 8, 2021 08:24 PST\)](#)
Luis De La Torre

Dated:

Plaintiff LUCA ORTOLANI

By: _____
Luca Ortolani

Dated:

Plaintiff SPIRO GEORGOPOLOUS

By: _____
Spiro Georgopolous

Dated:

Plaintiff MARK MARCO CANDELA

By: _____
Mark Marco Candela

Dated: 12/07/2021

Plaintiff MELVIN PICOLO

By: 
Melvin Picolo (Dec 7, 2021 19:09 PST)
Melvin Picolo

Dated:

Plaintiff NENAD NINO JOVICIC

By: _____
Nenad Nino Jovicic

Plaintiff LUIS DE LA TORRE

Dated:

By: _____
Luis De La Torre

Dated:

Plaintiff LUCA ORTOLANI

By: _____
Luca Ortolani

Dated:

Plaintiff SPIRO GEORGOPOLOUS

By: _____
Spiro Georgopolous

Dated:

Plaintiff MARK MARCO CANDELA

By: _____
Mark Marco Candela

Plaintiff MELVIN PICOLO

Dated:

By: _____
Melvin Picolo

Dated: 12/07/2021

Plaintiff NENAD NINO JOVICIC

By:  _____
Nenad Nino Jovicic

Plaintiff LUIS DE LA TORRE

Dated:

By: _____
Luis De La Torre

To Defendant:

Christine C. Lee
Carla Vasques dos Santos-Moore
O'Hagan Meyer
221 Caledonia Street
Sausalito, California 94965
Telephone: (415) 578-6900
Facsimile: (415) 578-6910

11. Execution in Counterpart. This Agreement may be executed in one or more counterparts. All executed counterparts and each of them will be deemed to be one and the same instrument. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

12. Jurisdiction. Pursuant to Code of Civil Procedure section 664.6, the court shall retain jurisdiction to enforce the terms of this Agreement and shall award reasonable attorney's fees and costs to the prevailing party in a suit or proceeding thereunder.

V. EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel hereby execute this Agreement.

Dated:

DANIEL BARTON

By: _____
Daniel Barton

Dated:

Plaintiff MARILYN KITAGAWA

By: _____
Marilyn Kitagawa

Plaintiff RUY CAMPOSECO

Dated: 12/08/2021

By:  _____
Ruy Camposeco (Dec 8, 2021 08:52 PST)
Ruy Camposeco

Dated:

Plaintiff LUCA ORTOLANI

By: _____
Luca Ortolani

Dated: 12/7/2021

Plaintiff SPIRO GEORGPOLOUS

By:  _____
[Spiro Georgopoulos \(Dec 8, 2021 08:20 PST\)](#)
Spiro Georgopolous

Dated:

Plaintiff MARK MARCO CANDELA

By: _____
Mark Marco Candela

Plaintiff MELVIN PICOLO

Dated:

By: _____
Melvin Picolo

Plaintiff NENAD NINO JOVICIC

Dated:

By: _____
Nenad Nino Jovicic

Plaintiff LUIS DE LA TORRE

Dated:

By: _____
Luis De La Torre

Dated: 12/07/2021

Plaintiff LUCA ORTOLANI

By:  (Dec 7, 2021 18:22 PST)
Luca Ortolani

Dated:

Plaintiff SPIRO GEORGOPOLOUS

By: _____
Spiro Georgopolous

Dated:

Plaintiff MARK MARCO CANDELA

By: _____
Mark Marco Candela

Dated:

Plaintiff MELVIN PICOLO

By: _____
Melvin Picolo

Dated:

Plaintiff NENAD NINO JOVICIC

By: _____
Nenad Nino Jovicic

Dated:

Plaintiff LUIS DE LA TORRE

By: _____
Luis De La Torre

Dated:

Plaintiff LUCA ORTOLANI

By: _____
Luca Ortolani

Dated:

Plaintiff SPIRO GEORGOPOLOUS

By: _____
Spiro Georgopolous

Dated: 12-8-2021

Plaintiff MARK MARCO CANDELA

By: *mark marco candela*
mark marco candela (Dec 8, 2021 09:35 PST)
Mark Marco Candela

Plaintiff MELVIN PICOLO

Dated:

By: _____
Melvin Picolo

Plaintiff NENAD NINO JOVICIC

Dated:

By: _____
Nenad Nino Jovicic

Plaintiff LUIS DE LA TORRE

Dated:

By: _____
Luis De La Torre

To Defendant:

Christine C. Lee
Carla Vasques dos Santos-Moore
O'Hagan Meyer
221 Caledonia Street
Sausalito, California 94965
Telephone: (415) 578-6900
Facsimile: (415) 578-6910

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V. EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel hereby execute this Agreement.

Dated:

DANIEL BARTON

By: _____
Daniel Barton

Dated: 12/08/2021000

Plaintiff MARILYN KITAGAWA

By: 
Marilyn Kitagawa (Dec 8, 2021 23:09 PST)
Marilyn Kitagawa

Plaintiff RUY CAMPOSECO

Dated:

By: _____
Ruy Camposeco

Dated:

NORTH BEACH RESTAURANT, INC.

By: _____
_____ for North Beach Restaurant, Inc.

Dated:

Defendant STEPHEN MAYER

By: _____
Stephen Mayer

Dated:

Defendant NORIS ORSI

By: _____
Noris Orsi

APPROVED AS TO FORM:

Dated: 12/8/2021

By:  _____
Allan V. Villanueva
Attorney for PLAINTIFFS

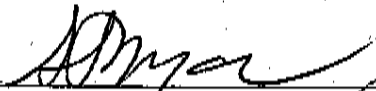
Dated:

O'HAGAN MEYER

By: _____
Christine C. Lee
Carla Vasques dos Santos-Moore
North Beach Restaurant, Inc., Noris Orsi
and Stephen David Mayer

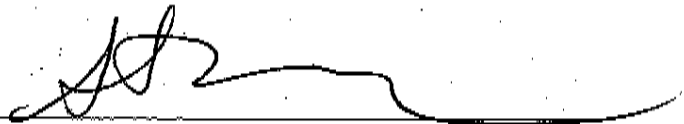
Dated: 12/8/21

NORTH BEACH RESTAURANT, INC.

By:  CEO
CEO for North Beach Restaurant, Inc.

Dated: 12/8/21

Defendant STEPHEN MAYER

By: 
Stephen Mayer

Dated:

Defendant NORIS ORSI

By: _____
Noris Orsi

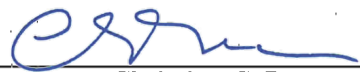
APPROVED AS TO FORM:

Dated:

By: _____
Allan V. Villanueva
Attorney for PLAINTIFFS

Dated: 12/8/2021

O'HAGAN MEYER

By: 
Christine C. Lee
Carla Vasques dos Santos-Moore
North Beach Restaurant, Inc., Noris Orsi
and Stephen David Mayer

Dated:

By:

Luis De La Torre

Dated:

NORTH BEACH RESTAURANT, INC.

By:

_____ for North Beach Restaurant, Inc.

Dated:

Defendant STEPHEN MAYER

By:

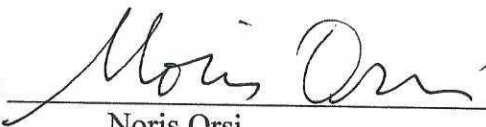
Stephen Mayer

Dated:

12/7/2021

Defendant NORIS ORSI

By:


Noris Orsi

APPROVED AS TO FORM:

Dated:

By:

Allan V. Villanueva
Attorney for PLAINTIFFS

Dated:

O'HAGAN MEYER

EXHIBIT A

1 ALLAN A. VILLANUEVA, SBN 163480
Law Office of Allan A. Villanueva
2 6101 Bollinger Canyon Road, Suite 379C
San Ramon, CA 94583
3 Telephone (925) 365-1680
Facsimile (650) 479-3086
4 allan@allanvillanuevalaw.com

5 Attorney for Plaintiffs

6 CHRISTINE C. LEE (SBN 236430)
CARLA VASQUES DOS SANTOS-MOORE
7 (SBN 241883)
O'HAGAN MEYER
8 221 Caledonia Street
Sausalito, California 94965
9 Telephone: 415.578.6900
Facsimile: 415.578.6910
10 Email: clee@ohaganmeyer.com
cmoore@ohaganmeyer.com

11 Attorneys for Defendants
12 NORTH BEACH RESTAURANT, INC.;
NORIS ORSI; and STEPHEN DAVID MAYER
13

14 SUPERIOR COURT OF CALIFORNIA

15 COUNTY OF SAN FRANCISCO

16 DANIEL BARTON; LUIS DE LA
TORRE; NENAD NINO JOVICIC;
17 MELVIN PICOLO; GREGORY PETRI;
MARK MARCO CANDELA; SPIRO
18 GEORGOPOLOUS; MARILYN
KITAGAWA; LUCA ORTOLANI; RUY
19 CAMPOSECO

20 Plaintiffs,

21 v.

22 NORTH BEACH RESTAURANT, INC.;
23 NORIS ORSI; STEPHEN DAVID
MAYER; AND DOES 1 TO 100,

24 Defendants.
25
26
27
28

Case No. CGC-21-590019

ASSIGNED FOR ALL PURPOSES TO HON.
JUDGE ANNE-CHRISTINE MASSULLO
DEPARTMENT 304

**[PROPOSED] ORDER GRANTING
APPROVAL OF PAGA SETTLEMENT
FILED CONCURRENTLY**

Action Filed: February 26, 2021

Trial Date: None Set

Hearing Date: December 13, 2021

Time: 10:00 a.m.

Dept. 304

1 Plaintiffs’ and Defendants’ joint ex parte Application for Approval of PAGA
2 Settlement was heard by the Court on December 13, 2021. The Court having reviewed the ex
3 parte Application for Approval of PAGA Settlement, the terms of which are set forth in the
4 Exhibit A of the Declaration of Allan A. Villanueva filed with the Parties’ ex parte
5 Application, the papers, the arguments of counsel, and all other evidence and matters
6 presented, and good cause appearing:

7 IT IS HEREBY ORDERED, ADJUDGED and DECREED that the Plaintiffs’ and
8 Defendants’ joint ex parte Application for Approval of PAGA Settlement is GRANTED.
9 The terms of settlement in the PRIVATE ATTORNEYS GENERAL ACT ("PAGA")
10 SETTLEMENT AGREEMENT (“Agreement”), attached as Exhibit A, are hereby
11 APPROVED in accordance with Labor Code section 2699(1)(2), and finds that the
12 Agreement is, in all respects, fair, adequate, and reasonable and directs the Parties to
13 effectuate the PAGA settlement according to the terms set forth in the Agreement.

14 The Court retains jurisdiction of this case pursuant CCP §664.6 to adjudicate any
15 matters related to this Order and the Agreement.

16 IT IS SO ORDERED ADJUDGED AND DECREED.

17
18 DATED: December __, 2021

19 _____
20 Hon. Judge Anne-Christine Massullo
21 Superior Court of California
22 County of San Francisco
23
24
25
26
27
28

EXHIBIT B

NOTICE OF APPROVAL OF SETTLEMENT

NOTICE OF SETTLEMENT

On [Date], the San Francisco County Superior Court approved a settlement of claims under the Private Attorneys General Act (“PAGA”) brought by Plaintiffs Daniel Barton et al. (“PLAINTIFFS”) against Defendants North Beach Restaurant, Inc., Stephen David Mayer, and Noris Orsi (“DEFENDANTS”) concerning NBR’s alleged violations of Labor Code statutes. The case is entitled Daniel Barton, et al. v. North Beach Restaurant, Inc., et al., Case No. CGC-21-590019.

DEFENDANTS deny any liability and deny PLAINTIFFS’ allegations. Specifically, NBR contends that it complied with the requirements of the Labor Code and that civil penalties are not recoverable.

After good-faith negotiations in which both sides recognized the substantial risk of an uncertain outcome, PLAINTIFFS and DEFENDANTS agreed to settle the Action pursuant to the terms and conditions of the Settlement.

The Settlement covers claims under the Private Attorneys General Act (“PAGA”) arising from the alleged violations of the Labor Code. You are member of the Settlement Group, which is defined as:

All current and former aggrieved employees that held
the position of server or bartender while employed by NBR
working for the period of September 28, 2019 to [the date the Court grants approval of the
Settlement].

As a result of the Settlement, Defendant has agreed to pay \$20,000.00 (Twenty Thousand Dollars and No Cents) in civil penalties.

The Settlement approved by the Court includes a release by Settlement Group members, for the period of September 28, 2019 to [the date the Court grants approval of the Settlement], of any and all known and unknown claims under PAGA against the “Released Parties” that arise out of or relate to the “Liability Release PAGA Claims,” including but not limited to claims for violation of California Labor Code sections and Wage Orders referenced in PLAINTIFFS’ Complaint. (the “PAGA Settlement Group Members’ Released Claims”). Such claims include claims for attorney’s fees and costs.

The “Released Parties” are NBR, Stephen David Mayer, Noris Orsi, and any present and former parents, subsidiaries and affiliated companies or entities, and their respective officers, directors, employees, partners, shareholders and agents, and any other successors, assigns and legal representatives and its related persons and entities.

The “Liability Release PAGA Claims” are claims under PAGA that arise from or relate to the allegations contained in the Complaint.

A complete copy of the Settlement, as well as the Court’s order approving the Settlement, along with other papers relevant to the claims, can be requested from counsel for the Parties. You may also review pleadings and other records relevant to the case at the Office of the Clerk of the Court, Superior Court of California for San Francisco County, Complex

Division located at 400 McAllister St., San Francisco, California 94102 during the Clerk's normal business hours, or searching for Case No. CGC-21-590019 on www.sfsuperiorcourt.org.

The Court has approved this settlement. You are receiving the enclosed check because, under PAGA, "aggrieved employees" are entitled to 25% of the civil penalties awarded to the State. Because you held the position of server or bartender in the applicable time period, you are a member of the Settlement Group and you are entitled to a pro-rated share of the civil penalties.

If you have any questions about the settlement, you may contact: PLAINTIFFS'

Counsel at:

Allan V. Villanueva
Law Office of Allan A. Villanueva
6101 Bollinger Canyon Road, Ste. 379C
San Ramon, CA 94583
Telephone: (925) 365-1680
Facsimile: (650) 479-3086

Please do not telephone the Court for information regarding the settlement or the claims process.