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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

ALICIA NOEMI BAUTISTA DIAZ,
individually, and on behalf of all others
similarly situated,

Plaintiffs,

v.

GATE GOURMET, INC., a Delaware
corporation; and DOES 1 through 10,
inclusive,

Defendants.

Case No.: 20STCV34299

CLASS ACTION

**JOINT STIPULATION OF CLASS ACTION
AND PAGA ACTION SETTLEMENT AND
RELEASE**

Action Filed: September 4, 2020
Trial date: Not yet set

**JOINT STIPULATION OF CLASS ACTION AND PAGA ACTION SETTLEMENT AND
RELEASE**

This Joint Stipulation of Class Action and PAGA Action Settlement and Release (“Settlement” or “Settlement Agreement”) is made and entered into by and between Plaintiff Alicia Noemi Bautista Diaz (“Plaintiff” or “Class Representative”), as an individual and on behalf of all others similarly situated, and Defendant Gate Gourmet, Inc. (“Gate Gourmet”) (“Defendant”) (Defendant and Plaintiff are collectively referred to as the “Parties”).

DEFINITIONS

The following definitions are applicable to this Settlement Agreement. Definitions contained elsewhere in this Settlement Agreement will also be effective:

1. “Action” means the action entitled *Alicia Noemi Bautista Diaz vs. Gate Gourmet, Inc.*, Case No.: 20STCV34299, Los Angeles Superior Court.

2. “Attorneys’ Fees and Costs” means attorneys’ fees agreed upon by the Parties and approved by the Court for Plaintiff’s Counsel’s litigation and resolution of the Action, and all costs incurred and to be incurred by Plaintiff’s Counsel in the Action, including, but not limited to, costs associated with documenting the Settlement, providing any notices required as part of the Settlement or Court order, securing the Court’s approval of the Settlement, administering the Settlement, and expenses for any experts. Plaintiff Counsel will request attorneys’ fees not in excess of one-third (1/3) of the Class Settlement of the Class Settlement Amount, or \$800,000. The Attorneys’ Fees and Costs will also mean and include the additional reimbursement of any costs and expenses associated with Plaintiff’s Counsel’s litigation and settlement of the Action, not to exceed \$20,000, subject to the Court’s approval. Defendant has agreed not to oppose Plaintiff’s Counsel’s request for fees and reimbursement of costs and expenses as set forth above.

3. “Settlement Administrator” means any third-party class action settlement administrator agreed to by the Parties and approved by the Court for the purposes of administering this settlement. The Parties each represent that they do not have any financial interest in the Settlement Administrator that could create a conflict of interest.

4. “Settlement Administration Costs” means the costs payable from the Class Settlement Amount to the Settlement Administrator for administering this Settlement, including, but not limited to, printing,

1 distributing, and tracking documents for this Settlement, calculating estimated amounts per Class Member, tax
2 reporting, distributing the Class Settlement Amount, and providing necessary reports and declarations, and
3 other duties and responsibilities set forth herein to process this Settlement, and as requested by the Parties. The
4 Settlement Administration Costs will be paid from the Class Settlement Amount, including, if necessary, any
5 such costs in excess of the amount represented by the Settlement Administrator as being the maximum costs
6 necessary to administer the settlement. The Settlement Administration Costs are currently estimated to be no
7 more than Fifty Thousand Dollars and Zero Cents (\$50,000). To the extent actual Settlement Administrations
8 Costs are greater than Fifty Thousand Dollars and Zero Cents (\$50,000), such excess amount will be deducted
9 from the Class Settlement Amount.

10 5. "Class Counsel" means Moon & Yang, APC.

11 6. "Class List" means a complete list of all Class Members that Defendant will diligently and in
12 good faith compile from their records and provide to the Settlement Administrator within fourteen (14) calendar
13 days after Preliminary Approval of this Settlement. The Class List will be formatted in a readable Microsoft
14 Office Excel spreadsheet and will include each Class Member's full name; most recent mailing address and
15 telephone number; Social Security number; and the Workweeks worked by each Class Member during the
16 Class Period ("Individual Workweeks"), the number of PAGA Pay Periods for each Class Member, and any
17 other information the Parties agree is needed to calculate settlement payments.

18 7. "Class Member(s)" or "Settlement Class" means: all persons who worked for Defendant in
19 California as an hourly paid, non-exempt employee at any time from May 4, 2016 through the date of
20 Preliminary Approval.

21 8. "Little/Gates Matter" means the class action case entitled *Alfonso Little and Shantel Gates v.*
22 *Gate Gourmet, Inc.*, Case No. 3:16-cv-02928-BEN-WVG.

23 9. "Class Representative Enhancement Payments" means the amount to be paid to Plaintiff in
24 recognition of her effort and work in prosecuting the Action on behalf of Class Members, and for her general
25 release of claims. Subject to the Court granting final approval of this Settlement Agreement and subject to the
26 exhaustion of any and all appeals, Plaintiff will request Court approval of Class Representative Enhancement
27 Payments of Two Thousand Dollars and Zero Cents (\$2,000).

28 10. "Class Settlement Amount" means the maximum settlement amount of Two Million Four

1 Hundred Thousand Dollars and Zero Cents (\$2,400,000) to be paid by Defendant in full satisfaction of all
2 claims arising from the Action, which includes all Individual Settlement Payments to Participating Class
3 Members, the Class Representative Enhancement Payments to Plaintiff, Settlement Administration Costs to
4 the Settlement Administrator, the Labor and Workforce Development Agency Payment, and the Attorneys'
5 Fees and Costs. Defendant will be separately responsible for any employer payroll taxes required by law,
6 including the employer FICA, FUTA, and SDI contributions.

7 11. "Court" means the Los Angeles Superior Court.

8 12. "Defendant" means Gate Gourmet, Inc.

9 13. "Effective Date" means: the sixty-one (61) days after the Court enters an order granting final
10 approval of the Joint Stipulation of Class Action and PAGA Action Settlement and Release, if no motion for
11 reconsideration, an appeal or other effort to obtain review of the Final Approval Order is filed. In the event
12 a motion for reconsideration, an appeal or other effort to obtain review of the Final Approval Order, fourteen
13 (14) calendar days after such reconsideration, appeal or review has been finally concluded and is no longer
14 subject to review, whether by appeal, petition for rehearing, petition for review or otherwise.

15 14. "Final Approval" means the Court entering an order granting final approval of the Settlement
16 Agreement.

17 15. "Final Approval Order" means the order granting Final Approval of Class Action and PAGA
18 Action Settlement and Judgement entered by the Court.

19 16. "Operative Complaint" means the First Amended Complaint filed on September 16, 2021 in
20 this Action.

21 17. "Individual Settlement Payment" means each Class Member's share of the Net Settlement
22 Amount, to be distributed to the Class Members who do not opt out.

23 18. "Labor and Workforce Development Agency Payment" means the amount that the Parties
24 have agreed to pay to the Labor and Workforce Development Agency ("LWDA") in connection with the Labor
25 Code Private Attorneys General Act of 2004 (Cal. Lab. Code §§ 2698, *et seq.*, "PAGA"). The Parties have
26 agreed that Two Hundred Forty Thousand Dollars and Zero Cents (\$240,000) of the Class Settlement Amount
27 will be allocated to the resolution of any Class Members' claims arising under PAGA. Pursuant to PAGA,
28 Seventy Five Percent (75%), or One Hundred Eighty Thousand Dollars and Zero Cents (\$180,000), of the

Labor and Workforce Development Agency Payment will be paid to the LWDA, and Twenty Five Percent (25%), or Sixty Thousand Dollars and Zero Cents (\$60,000) of the LWDA Payment will be included in the Net Settlement Amount for Settlement Class Members working within the PAGA Class Period.

19. "Net Settlement Amount" means the portion of the Class Settlement Amount remaining after deduction of the approved Class Representative Enhancement Payments, Settlement Administration Costs, Labor and Workforce Development Agency Payment, and the Attorneys' Fees and Costs. The Net Settlement Amount will be distributed to Participating Class Members.

20. "Notice of Class Action Settlement" means the document, substantially in the form attached as Exhibit A, that will be mailed to Class Members' last known addresses and which will provide Class Members with information regarding the Action and information regarding the settlement of the Action.

21. "Notice of Objection" means a Class Member's valid and timely written objection to the Settlement Agreement. For the Notice of Objection to be valid, it must include: (a) the objector's full name, signature, address, and telephone number, (b) a written statement of all grounds for the objection accompanied by legal support, if any, for such objection; and (c) copies of any papers, briefs, or other documents upon which the objection is based.

22. "PAGA Employee" means all Class Members that worked during the PAGA Period.

23. "PAGA Period" means the period between May 4, 2019 and Preliminary Approval.

24. "PAGA Representative" means Plaintiff Alicia Noemi Bautista Diaz.

25. "PAGA Pay Periods" means the number of weeks each PAGA Employee worked during the PAGA Period.

26. "PAGA Pay Period Value" means the value of each compensable PAGA Pay Period, as determined by the formula set forth in herein.

27. "Parties" means Plaintiff and Defendant collectively.

28. "Participating Class Members" means all Class Members who do not submit valid and timely Requests for Exclusion.

29. "Plaintiff" means Plaintiff Alicia Noemi Bautista Diaz.

30. "Plaintiff's Counsel" means Moon & Yang, APC.

31. "Preliminary Approval" means the Court order granting preliminary approval of the Settlement

1 Agreement.

2 32. "Released Claims" means all claims, rights, demands, liabilities, and causes of action, that were
3 or could have been pleaded based on, arising from, or related to, the factual allegations set forth in the Operative
4 Complaint and in the September 1, 2020, and June 28, 2021 Notice of Labor Code Violations and PAGA
5 Penalties sent to the LWDA and Defendant, including: (i) all claims for unpaid minimum and straight time
6 wages; (ii) all claims for unpaid overtime; (iii) all claims for meal and rest break violations; (iv) all claims for
7 the failure to timely pay wages upon termination; (v) all claims for failure to timely pay wages during
8 employment; (vi) all claims for wage statement violations; (vii) all claims that could arise under Business &
9 Professions Code §§ 17200, *et seq.*

10 33. "Released Claims Period" means the period covered by the Settlement from May 4, 2016,
11 through the date of preliminary approval.

12 34. "Released PAGA Claims" means all claims asserted through California Labor Code §§ 2698,
13 *et seq.*, that arise out of or are related to the Released Claims.

14 35. "Released PAGA Claims Period" means the period from May 4, 2019 through Final Approval.

15 36. "Released Parties" means Defendant, their officers and directors, and any of their former and
16 present parents, subsidiaries, affiliates, divisions, corporations in common control, predecessors, successors,
17 and assigns, as well as all past and present officers, directors, employees, partners, shareholders and agents,
18 attorneys, insurers, and any other successors, assigns, or legal representatives, if any.

19 37. "Request for Exclusion" means a timely letter submitted by a Class Member indicating a
20 request to be excluded from the settlement. The Request for Exclusion must: (a) be signed by the Class
21 Member; (b) contain the name, address, telephone number and the last four digits of the Social Security Number
22 of the Class Member requesting exclusion; (c) clearly state that the Class Member does not wish to be included
23 in the settlement; (d) be returned by fax or mail to the Settlement Administrator at the specified address and/or
24 facsimile number; and (e) be faxed or postmarked on or before the Response Deadline. The date of the fax or
25 postmark on the return mailing envelope will be the exclusive means to determine whether a Request for
26 Exclusion has been timely submitted. A Class Member who does not request exclusion from the settlement
27 will be deemed a Class Member and will be bound by all terms of the Settlement Agreement if the settlement
28 is granted final approval by the Court.

38. “Response Deadline” means the deadline by which Class Members must postmark or fax to the Settlement Administrator valid Requests for Exclusion or postmark Notices of Objection to the Settlement. The Response Deadline will be Sixty (60) calendar days from the initial mailing of the Notice Packet by the Settlement Administrator, unless the 60th day falls on a Sunday or Federal holiday, in which case the Response Deadline will be extended to the next day on which the U.S. Postal Service is open. The Response Deadline for Requests for Exclusion or objections will be extended fifteen (15) calendar days for any Class Member who is re-mailed a Notice Packet by the Settlement Administrator, unless the 15th day falls on a Sunday or court holiday, in which case the Response Deadline will be extended to the next day on which the U.S. Postal Service is open. The Response Deadline may also be extended by express agreement between Class Counsel and Defendant. Under no circumstances, however, will the Settlement Administrator have the authority to unilaterally extend the deadline for Class Members to submit a Request for Exclusion or objection to the settlement.

39. “Settlement Class Period” means May 4, 2016 through Preliminary Approval.

40. “Settlement Payment Check” means the payment to Participating Class Members (who do not submit a valid Request for Exclusion from the Settlement) and to PAGA Employees pursuant to this Settlement Agreement. The back of the Settlement Payment Check shall state, immediately below the space where the check is to be endorsed by the payee: “By endorsing this check, I acknowledge that I read, understood, and agree to the terms set forth in the Notice of Class Action Settlement.”

41. “Workweeks” means the number of weeks each Class Member worked during the Settlement Class Period. There are currently approximately 255,000 workweeks during the settlement class period, excluding the workweeks covered by the release in *Gates/Little Matter*.¹ If the total number of workweeks during the Released Claims Period, excluding the workweeks covered by the release in *Gates/Little Matter* and any week in which an employee receives pay for hours not worked related to the Payroll Support Program (“CARES Pay”), exceeds 294,000 workweeks, Defendant has the unilateral right to either (i) modify the Release Period to run through the week in which the total workweeks exceeded 294,000 without increase to

¹ The workweeks covered by *Gates/Little* are all weeks worked between May 4, 2016, and February 13, 2018, by non-exempt employees hired before September 25, 2017.

1 the Class Settlement Amount, or (ii) increase the Class Settlement Amount at a rate of \$9.12 per workweek for
2 each workweek between 294,000 and the total number of workweeks on the date of preliminary approval,
3 excluding any week in which an employee receives CARES Pay.

4 42. "Workweek Value" means the value of each compensable Workweek, as determined by the
5 formula set forth in herein.

6 **TERMS OF AGREEMENT**

7 The Plaintiff, on behalf of herself and the Settlement Class, and Defendant, agree as follows:

8 43. Funding of the Class Settlement Amount. Within fourteen (14) calendar days after the
9 Effective Date of the Settlement, Defendant will make a one-time deposit of all Court approved and claimed
10 amounts from the Class Settlement Amount into a Qualified Settlement Account ("QSF") to be established by
11 the Settlement Administrator. Within seven (7) calendar days of the funding of the Settlement, the Settlement
12 Administrator will issue payments to: (a) Participating Class Members and PAGA Employees; (b) the Labor
13 and Workforce Development Agency; (c) Plaintiff; and (d) Plaintiff's Counsel. The Settlement Administrator
14 will also issue a payment to itself for Court-approved services performed in connection with the settlement.

15 44. Attorneys' Fees and Costs. Defendant agrees not to oppose or impede any application or
16 motion by Plaintiff's Counsel for attorneys' fees of not more than 1/3 of the Class Settlement of the Class
17 Settlement Amount, or \$800,000. The Attorneys' Fees and Costs will also mean and include the additional
18 reimbursement of any costs and expenses associated with Plaintiff's Counsel's litigation and settlement of the
19 Action, not to exceed \$20,000, subject to the Court's approval. Defendant has agreed not to oppose Plaintiff's
20 Counsel's request for fees and reimbursement of costs and expenses as set forth above.

21 45. Class Representative Enhancement Payment. In exchange for a general release, and in
22 recognition of her effort and work in prosecuting the Action on behalf of Class Members, Defendant agrees not
23 to oppose or impede any application or motion for Class Representative Enhancement Payment of Two
24 Thousand Dollars and Zero Cents (\$2,000), to Plaintiff for her service on behalf of the Settlement Class. The
25 Class Representative Enhancement Payment will be paid from the Class Settlement Amount and will be in
26 addition to Plaintiff's individual settlement payments paid pursuant to the Settlement. Plaintiff will be solely
27 and legally responsible to pay any and all applicable taxes on the payments made pursuant to this paragraph
28 and will indemnify and hold Defendant harmless from any claim or liability for taxes, penalties, or interest

1 arising as a result of the payments.

2 46. Settlement Administration Costs. The Settlement Administrator will be paid for the reasonable
3 costs of administration of the Settlement and distribution of payments from the Class Settlement Amount,
4 which are currently estimated to be no more than Fifty Thousand Dollars and Zero Cents (\$50,000). These
5 costs, which will be paid from the Class Settlement Amount, will include, *inter alia*, the required tax reporting
6 on the Individual Settlement Payments, the issuing of 1099 and W-2 IRS Forms, distributing the Notice Packet
7 calculating and distributing the Class Settlement Amount, and providing necessary reports and declarations.

8 47. Labor and Workforce Development Agency Payment. Subject to Court approval, the Parties
9 agree that Two Hundred Forty Thousand Dollars and Zero Cents (\$240,000) of the Class Settlement Amount
10 will be allocated to the resolution of any Class Members' claims arising under PAGA. Pursuant to PAGA,
11 Seventy Five Percent (75%), or One Hundred Eighty Thousand Dollars and Zero Cents (\$180,000), of the
12 Labor and Workforce Development Agency Payment will be paid to the LWDA, and Twenty Five Percent
13 (25%), or Sixty Thousands Dollars and Zero Cents (\$60,000) of the LWDA Payment will be included in the
14 Net Settlement Amount for Settlement Class Members working within the PAGA Class Period.

15 48. Net Settlement Amount. The Net Settlement Amount will be used to satisfy Individual
16 Settlement Payments to Participating Class Members from the Settlement Class in accordance with the terms
17 of this Settlement. From the Net Settlement Amount, Seventy-Five Thousand Dollars and Zero Cents or
18 (\$75,000) will be set aside from the Class Settlement Amount and divided equally by each Class Member
19 who has claims covered by the release in the *Little/Gates* Matter. The Net Settlement Amount, minus the
20 Seventy-Five Thousand Dollars and Zero Cents or (\$75,000), will be allocated to the Class Members who
21 have claims that are not covered by the release in the *Little/Gates* Matter.

22 49. Individual Settlement Payment Calculations. Individual Settlement Payments will be
23 calculated and apportioned from the Net Settlement Amount based on the number of Workweeks a Class
24 Member worked during the Settlement Class Period and the number of PAGA Pay Periods worked during the
25 PAGA Period. Individual Settlement Payments for the Class Members whose claims are covered by the release
26 in the *Little/Gates* Matter will receive an equal divided share of the Seventy-Five Thousand Dollars and Zero
27 Cents or (\$75,000) from the Class Settlement Amount. Specific calculations of Individual Settlement Payments
28 will be made as follows:

49(a) The Defendant will calculate the total number of weeks worked by each Class Member ("Individual Workweeks") and the total number of Workweeks worked by all Class Members ("Class Workweeks") excluding the workweeks covered by the release in *Little/Gates* Matter during the Settlement Class Period.

49(b) To determine each Class Member's Individual Settlement Payment, excluding claims covered by the release in the *Little/Gates* Matter, the Settlement Administrator will use the following formula: Individual Settlement Payment = $(\text{Individual Workweeks} \div \text{Total Workweeks of Participating Class Members}) \times (\text{Net Settlement Amount} - \$75,000)$.

49(c) Each PAGA Employee who worked during the PAGA Period is eligible to receive from the Net Settlement Amount the proportionate amount of the Labor and Workforce Development Agency Payment based on the number of Pay Periods worked during the PAGA Period.

49(d) If any Class Member requests to be excluded from the settlement these funds shall remain part of the Net Settlement Amount and shall proportionally increase each participating Class Member's final Individual Settlement Payment. A Request for Exclusion does not exclude a PAGA Employee from the Released PAGA Claims and the PAGA Employee will receive their portion of the Labor and Workforce Development Agency Payment even if he or she submits a valid Request for Exclusion.

50. Settlement Administration Process. The Parties agree to cooperate in the administration of the settlement and to make all reasonable efforts to control and minimize the costs and expenses incurred in administration of the Settlement. The Settlement Administrator will provide the following services:

50(a) Establish and maintain a Qualified Settlement Account.

50(b) Calculate the Individual Settlement Payment each Class Member is eligible to receive.

50(c) Print and mail the Notice Packet.

50(d) Translate the Notice Packet from English to Spanish.

50(e) Establish and maintain a toll free information telephone support line to assist Class Members who have questions regarding the Notice Packet.

50(f) Conduct additional address searches for mailed Notice Packets that are returned as undeliverable.

50(g) Process Requests for Exclusion, calculate Participating Class Members' Individual Settlement Payment, field inquiries from Class Members, and administer any Requests for Exclusion. This service will include settlement proceed calculation, printing and issuance of Settlement Payment Checks, and preparation of IRS W2 and 1099 Tax Forms. Basic accounting for and payment of employee tax withholdings will also be included as part of this service.

50(h) Inform Defendant of its employer-side tax liability, if any.

50(i) Provide declarations and/or other information to this Court as requested by the Parties and/or the Court.

50(j) Provide weekly status reports to counsel for the Parties.

50(k) Posting a notice of final judgment online at Settlement Administrator's website.

51. Delivery of the Class List. Within fourteen (14) calendar days of Preliminary Approval, Defendant will provide the Class List to the Settlement Administrator.

52. Notice by First-Class U.S. Mail. Within fourteen (14) calendar days after receiving the Class List from Defendant, the Settlement Administrator will mail a Notice Packet to all Class Members via regular First-Class U.S. Mail, using the most current, known mailing addresses identified in the Class List.

53. Confirmation of Contact Information in the Class List. Prior to mailing, the Settlement Administrator will perform a search based on the National Change of Address Database for information to update and correct for any known or identifiable address changes. Any Notice Packets returned to the Settlement Administrator as non-deliverable on or before the Response Deadline will be sent promptly via regular First-Class U.S. Mail to the forwarding address affixed thereto and the Settlement Administrator will indicate the date of such re-mailing on the Notice Packet. If no forwarding address is provided, the Settlement Administrator will promptly attempt to determine the correct address using a skip-trace, or other search using the name, address and/or Social Security number of the Class Member involved, and will then perform a single

1 re-mailing. Those Class Members who receive a re-mailed Notice Packet, whether by skip-trace or by request,
2 will have between the later of (a) an additional fifteen (15) calendar days or (b) the Response Deadline to
3 postmark a Request for Exclusion, or an objection to the Settlement.

4 54. Notice Packets. All Class Members will be mailed a Notice Packet. Each Notice Packet will
5 provide: (a) information regarding the nature of the Action; (b) a summary of the Settlement's principal terms;
6 (c) the Settlement Class definition; (d) the total number of Workweeks each respective Class Member worked
7 for Defendant during the Settlement Class Period; (e) each Class Member's estimated Individual Settlement
8 Payment and the formula for calculating Individual Settlement Payments; (f) the dates which comprise the
9 Settlement Class Period; (g) the deadlines by which the Class Member must postmark or fax Requests for
10 Exclusion or postmark Notices of Objection to the Settlement; (h) the claims to be released, as set forth herein;
11 and (j) the date for the final approval hearing.

12 55. Disputed Information on Notice Packets. Class Members will have an opportunity to dispute
13 the information provided in their Notice Packets. To the extent Class Members dispute the number of
14 Workweeks to which they have been credited or the amount of their Individual Settlement Payment, Class
15 Members may produce evidence to the Settlement Administrator showing that such information is inaccurate.
16 Absent evidence rebutting Defendant's records, Defendant's records will be presumed determinative.
17 However, if a Class Member produces evidence to the contrary, the Settlement Administrator will evaluate the
18 evidence submitted by the Class Member and will make the final decision as to the number of eligible
19 Workweeks that should be applied and/or the Individual Settlement Payment to which the Class Member may
20 be entitled. All such disputes are to be resolved not later than fourteen (14) calendar days after the Response
21 Deadline.

22 56. Defective Submissions. If a Class Member's Request for Exclusion is defective as to the
23 requirements listed herein, that Class Member will be given an opportunity to cure the defect(s). The Settlement
24 Administrator will mail the Class Member a cure letter within three (3) business days of receiving the defective
25 submission to advise the Class Member that his or her submission is defective and that the defect must be cured
26 to render the Request for Exclusion valid. The Class Member will have until the later of (a) the Response
27 Deadline or (b) fifteen (15) calendar days from the date of the cure letter, whichever date is later, to postmark
28 or fax a revised Request for Exclusion. If a Class Member responds to a cure letter by filing a defective claim,

1 then the Settlement Administrator will have no further obligation to give notice of a need to cure. If the revised
2 Request for Exclusion is not postmarked or received by fax within that period, it will be deemed untimely.

3 57. Request for Exclusion Procedures. Any Class Member wishing to opt-out from the Settlement
4 Agreement must sign and postmark or fax a written Request for Exclusion to the Settlement Administrator
5 within the Response Deadline. The date of the postmark on the return mailing envelope or fax receipt
6 confirmation will be the exclusive means to determine whether a Request for Exclusion has been timely
7 submitted. All Requests for Exclusion will be submitted to the Settlement Administrator, who will certify
8 jointly to Class Counsel and Defendant's Counsel the Requests for Exclusion that were timely submitted. The
9 Request for Exclusion does not apply to claims arising under the Private Attorney General Act (California
10 Labor Code Sections 2698 *et seq*). Class Members who submit valid requests for exclusion will still receive a
11 check for their share of the PAGA settlement amount.

12 58. Defendant's Right to Rescind. If 5% or more of the Class Members elect not to participate in
13 the Settlement, Defendant may, at its election, rescind the Settlement Agreement and all actions taken in
14 furtherance of it will be thereby null and void. Defendant must exercise this right of rescission, in writing, to
15 Class Counsel within 14 calendar days after the Settlement Administrator notifies the Parties of the total number
16 of opt-outs. If Defendant exercises its right to rescind, then Defendant will be responsible for all Settlement
17 Administration Costs incurred to the date of rescission.

18 59. Release by Participating Class Members, PAGA Employees and the State of California. Any
19 Class Member who does not affirmatively opt-out of the Settlement Agreement by submitting a timely and
20 valid Request for Exclusion will be bound by all of its terms, including those pertaining to the Released Claims,
21 as well as any Judgment that may be entered by the Court if it grants final approval to the Settlement. All PAGA
22 Employees, regardless whether they submit timely and valid Requests for Exclusion from the Settlement Class,
23 will release the PAGA Released Claims during the PAGA Period. The State of California will also release the
24 PAGA Released Claims.

25 60. Objection Procedures. To object to the Settlement Agreement, a Class Member must postmark
26 a valid Notice of Objection to the Settlement Administrator on or before the Response Deadline. The Notice
27 of Objection must be signed by the Class Member and contain all information required by this Settlement
28 Agreement. The postmark date will be deemed the exclusive means for determining that the Notice of

1 Objection is timely. Class Members who fail to object in the specific and technical manner specified above
2 will be deemed to have waived all objections to the Settlement and will be foreclosed from making any
3 objections and seeking any adjudication or review, whether by appeal or otherwise, to the Settlement
4 Agreement. Class Members who postmark timely Notices of Objection will have a right to appear at the Final
5 Approval Hearing in order to have their objections heard by the Court. At no time will any of the Parties or
6 their counsel seek to solicit or otherwise encourage Class Members to submit written objections to the
7 Settlement Agreement or appeal from the Order and Judgment. Class Counsel will not represent any Class
8 Members with respect to any such objections to this Settlement.

9 61. Certification Reports Regarding Individual Settlement Payment Calculations. The Settlement
10 Administrator will provide Defendant's counsel and Class Counsel a weekly report which certifies: (a) the
11 number of Participating Class Members from the Settlement Class who have submitted valid Requests for
12 Exclusion; (b) the Net Settlement Amount claimed by Participating Class Members; and (c) whether any Class
13 Member has submitted a challenge to any information contained in their Notice Packet. Additionally, the
14 Settlement Administrator will provide to counsel for both Parties any updated reports regarding the
15 administration of the Settlement Agreement as needed or requested.

16 62. Uncashed Settlement Checks. Any checks issued by the Settlement Administrator to
17 Participating Class Members will be negotiable for at least one hundred twenty (180) calendar days. Those
18 funds represented by settlement checks returned as undeliverable and those settlement checks remaining un-
19 cashed for more than one hundred twenty (180) calendar days after issuance, plus any interest that accrued
20 thereon, will be tendered in accordance with California Code of Civil Procedure §384(b) as follows: (a) to a
21 child advocacy program, or (b) to a non-profit organization providing civil legal services to the indigent. Subject
22 to Court approval, the Parties propose the State Bar's Justice Gap Fund, one of three significant sources of
23 funding for about 100 legal aid organizations across the state, as the *cypres* recipient.

24 63. Certification of Completion. Upon completion of administration of the Settlement, the
25 Settlement Administrator will provide a written declaration under oath to certify such completion to the Court
26 and counsel for all Parties.

27 64. Tax Treatment of Individual Settlement Payments. All Individual Settlement Payments will
28 be allocated as follows: thirty-three percent (33%) to settlement of wage claims and sixty-seven percent (67%)

1 to settlement of claims for interest and penalties. The portion allocated to wages will be reported on an IRS
2 Form W-2 and the portions allocated to non-wages will be reported on an IRS Form-1099 by the Settlement
3 Administrator.

4 65. Administration of Taxes by the Settlement Administrator. The Settlement Administrator will
5 be responsible for issuing to Plaintiff, Participating Class Members, and Plaintiff Counsel any W-2, 1099, or
6 other tax forms as may be required by law for all amounts paid pursuant to this Settlement. The Settlement
7 Administrator will also be responsible for forwarding all payroll taxes and penalties to the appropriate
8 government authorities.

9 66. Tax Liability. Defendant makes no representation as to the tax treatment or legal effect of the
10 payments called for hereunder, and Plaintiff and Participating Class Members are not relying on any statement,
11 representation, or calculation by Defendant or by the Settlement Administrator in this regard. Plaintiff and
12 Participating Class Members understand and agree that except for Defendant's payment of the employer's
13 portion of any payroll taxes, they will be solely responsible for the payment of any taxes and penalties assessed
14 on the payments described herein.

15 67. Circular 230 Disclaimer. EACH PARTY TO THIS AGREEMENT (FOR PURPOSES OF
16 THIS SECTION, THE "ACKNOWLEDGING PARTY" AND EACH PARTY TO THIS AGREEMENT
17 OTHER THAN THE ACKNOWLEDGING PARTY, AN "OTHER PARTY") ACKNOWLEDGES AND
18 AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND NO WRITTEN
19 COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR
20 ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR WILL ANY SUCH
21 COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON
22 AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY DEPARTMENT
23 CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS
24 RELIED EXCLUSIVELY UPON HIS, HER OR ITS OWN, INDEPENDENT LEGAL AND TAX
25 COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS
26 AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE
27 RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY
28 OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR

1 DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY OTHER PARTY TO AVOID ANY TAX
2 PENALTY THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO
3 ATTORNEY OR ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT
4 PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR ADVISER'S TAX
5 STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON
6 DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX
7 STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY
8 THIS AGREEMENT.

9 68. No Prior Assignments. The Parties and their counsel represent, covenant, and warrant that they
10 have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber
11 to any person or entity any portion of any liability, claim, demand, action, cause of action or right herein released
12 and discharged.

13 69. Release by Class Members. It is the desire of the Plaintiff, Class Members (except those who
14 exclude themselves from the Settlement), and Defendant to fully, finally, and forever settle, compromise, and
15 discharge the claims asserted in the Operative Complaint. Upon the Final Approval by the Court of this
16 Settlement Agreement, and except as to such rights or claims as may be created by this Settlement Agreement,
17 the Class Members shall fully release and discharge the Released Parties from any and all Released Claims for
18 the entire Released Claims Period. This release shall be binding on all Class Members who have not timely
19 submitted a valid and complete Request for Exclusion, including each of their respective attorneys, agents,
20 spouses, executors, representatives, guardians ad litem, heirs, successors, and assigns, and shall inure to the
21 benefit of the Released Parties, who shall have no further or other liability or obligation to any Settlement Class
22 Member with respect to the Released Claims, except as expressly provided herein.

23 70. Release by PAGA Employees. It is the desire of the Plaintiff, in her capacity as a
24 representative of PAGA Employees, and Defendant to fully, finally, and forever settle, compromise, and
25 discharge the claims asserted in the June 28, 2021 Notice of Labor Code Violations and PAGA Penalties sent
26 to the LWDA and the Operative Complaint. Upon the Final Approval by the Court of this Settlement
27 Agreement, and except as to such rights or claims as may be created by this Settlement Agreement, Plaintiff,
28 the PAGA Employees, the LWDA, and the State of California shall fully release and discharge the Released

1 Parties from any and all Released PAGA Claims for the entire Released PAGA Claims Period. This release
2 shall be binding on all PAGA Employees regardless if they submitted a valid and complete Request for
3 Exclusion.

4 71. Release of Additional Claims & Rights by Plaintiff. Upon the Effective Date, and as a
5 condition of receiving any portion of her Class Representative Enhancement Payments, Plaintiff will agree to
6 the additional following General Release: In consideration of Defendant's promises and agreements as set forth
7 herein, Plaintiff hereby fully releases the Released Parties from any and all Released Claims and also generally
8 release and discharge the Released Parties from any and all claims, demands, obligations, causes of action,
9 rights, or liabilities of any kind which have been or could have been asserted against the Released Parties arising
10 out of or relating to Plaintiff's employment by Defendant or termination thereof, including but not limited to
11 claims for wages, restitution, penalties, retaliation, defamation, discrimination, harassment or wrongful
12 termination of employment. This release specifically includes any and all claims, demands, obligations and/or
13 causes of action for damages, restitution, penalties, interest, and attorneys' fees and costs (except provided by
14 the Settlement Agreement) relating to or in any way connected with the matters referred to herein, whether or
15 not known or suspected to exist, and whether or not specifically or particularly described herein. Specifically,
16 Plaintiff waives all rights and benefits afforded by California Civil Code Section 1542, which provides:

17 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR
18 OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
19 FAVOR AT THE TIME OF EXECUTING THE RELEASE, AND THAT, IF KNOWN BY
20 HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER
21 SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

22 72. Nullification of Settlement Agreement. In the event that: (a) the Court does not finally approve
23 the Settlement as provided herein; (b) the Court strikes or does not approve any material term of this Settlement
24 Agreement; or (c) the Settlement does not become final as written and agreed to by the Parties for any other
25 reason, then this Settlement Agreement, and any documents generated to bring it into effect including the
26 Memorandum of Understanding, will be null and void, all amounts deposited into the QSF will be returned to
27 Defendant, and the Parties shall be returned to their original respective positions. Any order or judgment entered
28 by the Court in furtherance of this Settlement Agreement will likewise be treated as void from the beginning.

1 73. Preliminary Approval Hearing. Plaintiff will obtain a hearing before the Court to request
2 Preliminary Approval of the Settlement Agreement, and the entry of a Preliminary Approval Order for: (a)
3 conditional certification of the Settlement Class for settlement purposes only, (b) Preliminary Approval of the
4 proposed Settlement Agreement, and (c) setting a date for a Final Approval/Settlement Fairness Hearing. The
5 Preliminary Approval Order will provide for the Notice Packet to be sent to all Class Members as specified
6 herein. In conjunction with the Preliminary Approval hearing, Plaintiff will submit this Settlement Agreement,
7 which sets forth the terms of this Settlement, and will include the proposed Notice Packet; *i.e.*, the proposed
8 Notice of Class Action Settlement, attached as Exhibits A. Class Counsel will be responsible for drafting all
9 documents necessary to obtain preliminary approval. Any failure by the Court to fully and completely approve
10 the Settlement Agreement as to all of the Action, or the entry of any Order by another Court with regard to any
11 of the Action which has the effect of preventing the full and complete approval of the Settlement Agreement as
12 written and agreed to by the Parties, will result in this Settlement Agreement and any Memorandum of
13 Understanding entered into by the Parties, and all obligations under this Settlement Agreement and any
14 Memorandum of Understanding being nullified and voided.

15 74. Final Settlement Approval Hearing and Entry of Judgment. Upon expiration of the deadlines
16 to postmark Requests for Exclusion or objections to the Settlement Agreement, and with the Court's
17 permission, a Final Approval/Settlement Fairness Hearing will be conducted to determine the Final Approval
18 of the Settlement Agreement along with the amounts properly payable for: (a) Individual Settlement Payments;
19 (b) the Labor and Workforce Development Agency Payment; (c) the Attorneys' Fees and Costs; (d) the Class
20 Representative Enhancement Payments; and (e) all Settlement Administration Costs. Class Counsel will be
21 responsible for drafting all documents necessary to obtain Final Approval. Class Counsel will also be
22 responsible for drafting the attorneys' fees and costs application to be heard at the final approval hearing. With
23 the exception of a failure to approve the full amount of attorneys' fees and costs or Class Representative
24 Enhancement Payment requested by Plaintiff, any failure by the Court to fully and completely approve the
25 Settlement Agreement as to all of the Action, or the entry of any Order by another Court with regard to any of
26 the Action which has the effect of preventing the full and complete approval of the Settlement Agreement as
27 written and agreed to by the Parties, will result in this Settlement Agreement and the Memorandum of
28 Understanding entered into by the Parties, and all obligations under this Settlement Agreement and the

1 Memorandum of Understanding being nullified and voided.

2 75. Judgment and Continued Jurisdiction. Upon Final Approval of the Settlement by the Court or
3 after the Final Approval/Settlement Fairness Hearing, the Parties will present the Judgment to the Court for its
4 approval. After entry of the Judgment, the Court will have continuing jurisdiction solely for purposes of
5 addressing: (a) the interpretation and enforcement of the terms of the Settlement, (b) Settlement administration
6 matters, and (c) such post-Judgment matters as may be appropriate under court rules or as set forth in this
7 Settlement.

8 76. Exhibits Incorporated by Reference. The terms of this Settlement include the terms set forth
9 in any attached Exhibits, which are incorporated by this reference as though fully set forth herein. Any Exhibits
10 to this Settlement are an integral part of the Settlement.

11 77. Entire Agreement. This Settlement Agreement and any attached Exhibits constitute the
12 entirety of the Parties' settlement terms. No other prior or contemporaneous written or oral agreements may be
13 deemed binding on the Parties.

14 78. Amendment or Modification. This Settlement Agreement may be amended or modified only
15 by a written instrument signed by counsel for all Parties or their successors-in-interest. Any such instrument
16 must specifically reference this Agreement.

17 79. Authorization to Enter Into Settlement Agreement. Counsel for all Parties warrant and
18 represent they are expressly authorized by the Parties whom they represent to negotiate this Settlement
19 Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant to this
20 Settlement Agreement to effectuate its terms and to execute any other documents required to effectuate the
21 terms of this Settlement Agreement. The Parties and their counsel will cooperate with each other and use their
22 best efforts to affect the implementation of the Settlement. If the Parties are unable to reach agreement on the
23 form or content of any document needed to implement the Settlement, or on any supplemental provisions that
24 may become necessary to effectuate the terms of this Settlement, the Parties may seek the assistance of the
25 Court to resolve such disagreement.

26 80. Binding on Successors and Assigns. This Settlement Agreement will be binding upon, and
27 inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

28 81. California Law Governs. All terms of this Settlement Agreement and Exhibits hereto will be

1 governed by and interpreted according to the laws of the State of California.

2 82. Execution and Counterparts. This Settlement Agreement is subject only to the execution of all
3 Parties. However, the Settlement Agreement may be executed in one or more counterparts. All executed
4 counterparts and each of them, including facsimile and scanned copies of the signature page, will be deemed to
5 be one and the same instrument provided that counsel for the Parties will exchange among themselves original
6 signed counterparts.

7 83. Acknowledgement that the Settlement is Fair and Reasonable. The Parties believe this
8 Settlement Agreement is a fair, adequate, and reasonable settlement of the Action and have arrived at this
9 Settlement after arm's-length negotiations and in the context of adversarial litigation, taking into account all
10 relevant factors, present and potential. The Parties further acknowledge that they are each represented by
11 competent counsel and that they have had an opportunity to consult with their counsel regarding the fairness
12 and reasonableness of this Settlement.

13 84. Invalidity of Any Provision. Before declaring any provision of this Settlement Agreement
14 invalid, the Court will first attempt to construe the provision as valid to the fullest extent possible consistent
15 with applicable precedents so as to define all provisions of this Settlement Agreement valid and enforceable.

16 85. Waiver of Certain Appeals. The Parties agree to waive appeals and to stipulate to class
17 certification for purposes of this Settlement only; except, however, that either party may appeal any court order
18 that materially alters the Settlement Agreement's terms.

19 86. Class Action Certification for Settlement Purposes Only. The Parties agree to stipulate to class
20 action certification only for purposes of the Settlement. If, for any reason, the Settlement is not approved, the
21 stipulation to certification will be void. The Parties further agree that certification for purposes of the Settlement
22 is not an admission that class action certification is proper under the standards applied to contested certification
23 motions and that this Settlement Agreement will not be admissible in this or any other proceeding as evidence
24 that either: (a) a class action should be certified or (b) Defendant is liable to Plaintiff or any Class Member,
25 other than according to the Settlement's terms.

26 87. Non-Admission of Liability. The Parties enter into this Settlement Agreement to resolve the
27 dispute that has arisen between them and to avoid the burden, expense and risk of continued litigation. In
28 entering into this Settlement Agreement, Defendant does not admit, and specifically denies, it has violated any

1 federal, state, or local law; violated any regulations or guidelines promulgated pursuant to any statute or any
2 other applicable laws, regulations or legal requirements; breached any contract; violated or breached any duty;
3 engaged in any misrepresentation or deception; or engaged in any other unlawful conduct with respect to their
4 employees. Neither this Settlement Agreement, nor any of its terms or provisions, nor any of the negotiations
5 connected with it, shall be construed as an admission or concession by Defendant of any such violations or
6 failures to comply with any applicable law. Except as necessary in a proceeding to enforce the terms of this
7 Settlement Agreement, this Settlement Agreement and its terms and provisions shall not be offered or received
8 as evidence in any action or proceeding to establish any liability or admission on the part of Defendant or to
9 establish the existence of any condition constituting a violation of, or a non-compliance with, federal, state,
10 local or other applicable law.

11 88. Captions. The captions and section numbers in this Settlement Agreement are inserted for the
12 reader's convenience, and in no way define, limit, construe or describe the scope or intent of the provisions of
13 this Settlement Agreement.

14 89. Waiver. No waiver of any condition or covenant contained in this Settlement Agreement or
15 failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or constitute a
16 further waiver by such party of the same or any other condition, covenant, right or remedy.

17 90. Enforcement Action. In the event that one or more of the Parties institutes any legal action or
18 other proceeding against any other Party or Parties to enforce the provisions of this Settlement or to declare
19 rights and/or obligations under this Settlement, the successful Party or Parties will be entitled to recover from
20 the unsuccessful Party or Parties reasonable attorneys' fees and costs, including expert witness fees incurred in
21 connection with any enforcement actions.

22 91. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms and
23 conditions of this Settlement Agreement. Accordingly, this Settlement Agreement will not be construed more
24 strictly against one party than another merely by virtue of the fact that it may have been prepared by counsel
25 for one of the Parties, it being recognized that, because of the arms-length negotiations between the Parties, all
26 Parties have contributed to the preparation of this Settlement Agreement.

27 92. Representation By Counsel. The Parties acknowledge that they have been represented by
28 counsel throughout all negotiations that preceded the execution of this Settlement Agreement, and that this

1 Settlement Agreement has been executed with the consent and advice of counsel, and reviewed in full. Further,
2 Plaintiff and Class Counsel warrant and represent that there are no liens on the Settlement Agreement.

3 93. All Terms Subject to Final Court Approval. All amounts and procedures described in this
4 Settlement Agreement herein will be subject to final Court approval.

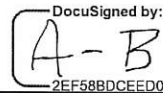
5 94. Cooperation and Execution of Necessary Documents. All Parties will cooperate in good faith
6 and execute all documents to the extent reasonably necessary to effectuate the terms of this Settlement
7 Agreement.

8 95. Confidentiality. Plaintiff, Plaintiff Counsel, Class Counsel, Defendant and their counsel agree
9 that they will not issue any press releases, initiate any contact with the press, respond to any press inquiry or
10 have any communication with the press about the fact, amount or terms of the Settlement Agreement prior to
11 Final Approval. Nothing in this Settlement Agreement shall limit Defendant's ability to fulfill disclosure
12 obligations reasonably required by law or in furtherance of business purposes, including the fulfillment of
13 obligations stated in this Settlement Agreement. Nothing in this clause shall limit Plaintiff's Counsel's ability
14 to discuss the terms of the settlement with Class Members.

15 96. Binding Agreement. The Parties warrant that they understand and have full authority to enter
16 into this Settlement, and further intend that this Settlement Agreement will be fully enforceable and binding
17 on all parties, and agree that it will be admissible and subject to disclosure in any proceeding to enforce its
18 terms, notwithstanding any mediation confidentiality provisions that otherwise might apply under federal or
19 state law.

SIGNATURES**READ CAREFULLY BEFORE SIGNING**Dated: 9/16/2021

PLAINTIFF

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Plaintiff ALICIA NOEMI BAUTISTA DIAZ

Dated: 16 September 2021

DEFENDANT

DocuSigned by:

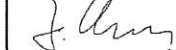


Defendant GATE GOURMET, INC.

Josh Janow

Please Print Name of Authorized Signatory
#1

DocuSigned by:



Defendant GATE GOURMET, INC.

Jens Kühlen

Please Print Name of Authorized Signatory
#2**APPROVED AS TO FORM**Dated: 09/16/2021**MOON & YANG, APC**

Kane Moon

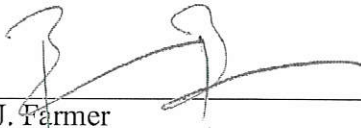
Allen Feghali

Lilit Ter-Astvatsatryan

Attorneys for Plaintiff and the Class

Dated: September 16, 2021

**OGLETREE, DEAKINS, NASH, SMOAK
& STEWART, P.C.**



Douglas J. Farmer
Brian D. Beny

Attorneys for Defendant
GATE GOURMET, INC.

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