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and Proposed Class Counsel
8

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF MERCED**
11

12 SHAVELLA CRAWFORD, on behalf of
herself and all "aggrieved employees"
13 pursuant to Labor Code § 2698 *et seq.*,

14 Plaintiff,

15 v.

16 KAINTH HOSPITALITY INC., a
California corporation, and DOES 1
17 through 10, inclusive,

18 Defendants.
19

CASE NO: 21CV-01252

Assigned to the Hon. Brian McCabe, Dept. 8

**DECLARATION OF DANIEL F. GAINES IN
SUPPORT OF UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT AND SEEKING
LEAVE TO FILE FIRST AMENDED
COMPLAINT**

DATE: June 8, 2022

TIME: 8:15 a.m.

DEPT.: 8

Action Filed: April 14, 2021

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28 I, DANIEL F. GAINES, hereby declare and state as follows:

DECLARATION OF DANIEL F. GAINES IN SUPPORT OF UNOPPOSED MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION SETTLEMENT AND SEEKING LEAVE TO FILE FIRST AMENDED
COMPLAINT

1 1. I am an attorney duly admitted to the practice of law in the State of California. I am
2 a shareholder of Gaines & Gaines, APLC, counsel for Plaintiff Shavella Crawford ("Crawford" or
3 "Plaintiff") and proposed Class Counsel in this action. I have personal knowledge of the facts set
4 forth herein and if called as a witness to testify to them, I could and would do so competently.

5 **Education and Experience:**

6 2. I obtained my BS degree from the University California at Berkeley in 2003. I
7 majored in Business Administration at the Haas School of Business.

8 3. Thereafter, I attended the University of Virginia School of Law. At Virginia, I was
9 a member of the editorial board of the Virginia Tax Review. I was also the recipient of the Lacy
10 Armour Scholarship, awarded to recognize academic excellence. At Virginia, I focused my
11 studies on tax and real estate. I earned my JD and became a member of the California Bar in 2007.

12 4. Since becoming a member of the Bar, and until his recent retirement, I practiced law
13 with my father, Kenneth, at Gaines & Gaines, APLC. Our practice specializes in litigation, with
14 an emphasis in employment disputes like this one. Over 95% of my practice is devoted to complex
15 employment litigation similar to the instant action.

16 5. My firm has represented employees in complex employment matters such as this
17 one, with an emphasis in wage and hour issues. I have participated in and have been certified as
18 class counsel in dozens of class action matters since my admission to the Bar. A list of the cases
19 in which I have been appointed as class counsel is attached hereto as **Exhibit A**.

20 **Factual and Procedural Background:**

21 6. On November 18, 2020 and January 28, 2021, Plaintiff exhausted the pre-filing
22 requirements of the Labor Code Private Attorneys General Act of 2004 ("PAGA").

23 7. On or about April 14, 2021, Plaintiff initiated the Action by filing a Representative
24 Action Complaint for Penalties, pursuant to PAGA, on behalf of herself and all other aggrieved
25 employees (the "Complaint"). The First Amended Complaint, attached to the Settlement
26 Agreement as **Exhibit 3** and which will be filed as part of the settlement approval process, asserts
27 class and PAGA representative action claims against Defendant for (1) failure to provide
28 compliant rest periods or compensation in lieu thereof (Labor Code § 226.7; IWC Wage Order 5-

2001); (2) failure to provide compliant meal periods or compensation in lieu thereof (Labor Code §§ 226.7, 510, 512, and 1194; IWC Wage Order 5-2001); (3) failure to comply with itemized employee wage statement provisions (Labor Code § 226); (4) failure to timely pay wages due at separation of employment (Labor Code §§ 201-203); (5) violation of Business and Professions Code §§ 17200, *et seq.*; and (6) civil penalties pursuant to Labor Code §§ 2698, *et seq.* for violations of Labor Code §§ 201, 202, 226, 226.3, 226.7, 510, 512, 558, 1194, and 1198 (the “First Amended Complaint”).

8. Defendant denies any liability or wrongdoing of any kind associated with the claims alleged in the Action, and further denies that the Action is appropriate for class treatment for any purpose other than this settlement. Defendant contends that it has complied at all times with the California Labor Code, Industrial Welfare Commission Wage Orders, and all other applicable federal, state, and local laws and regulations. It is Defendant’s position that, if this case were to be litigated, class certification would be inappropriate because Plaintiff is not an adequate class representative, Plaintiff’s claims are not typical of putative class members, and individual issues predominate over class issues. The Action, the negotiation and execution of this Settlement Agreement, and all acts performed or documents executed pursuant to or in furtherance of the Settlement Agreement (i) shall not be used as an admission or evidence of wrongdoing on behalf of Defendant; (ii) shall not be an admission or evidence of fault on behalf of Defendant in any action before a civil, criminal, or administrative agency; and (iii) shall not be deemed to be, and may not be used as, an admission or evidence of the appropriateness of these or similar claims for class certification in the Action or with respect to any other proceeding.

9. The Class Representative contends that Defendant violated the California Labor Code and Industrial Welfare Commission Wage Order(s), and that this case is appropriate for class certification.

Investigation and Settlement Discussions

10. My colleagues and I have conducted a thorough investigation into the facts and law during the prosecution of this class action case, including the exchange of extensive formal and informal discovery and the review and verification of statistical data and other facts and

1 information provided by Defendant. My colleagues and I have investigated the applicable law as
2 applied to the facts discovered regarding the alleged claims of Plaintiff and potential defenses
3 thereto, and the damages and other losses claimed by Plaintiff.

4 11. On February 17, 2022, following our exchange of information and documents
5 regarding the Settlement Class and the claims and defenses asserted by the Parties, the Parties
6 engaged in arm's-length negotiations with the assistance of mediator Marc Feder, Esq., through
7 which we were able to reach the resolution of the Action set forth herein.

8 **Class Counsel's Assessment of the Fairness of the Settlement and the Risks of Continued**
9 **Litigation:**

10 12. Based on our independent investigation and evaluation, my colleagues and I are of
11 the opinion that settlement for the consideration and on the terms set forth in this Settlement
12 Agreement is fair, reasonable, and adequate and is in the best interest of the Settlement Class in
13 light of all known facts and circumstances, including the risk of significant delay, the risk the
14 Settlement Class will not be certified by the Court, and the defenses asserted by Defendant.

15 13. The Parties agree that the Settlement Class described herein may be certified for
16 settlement purposes only and that any motion for approval seeking, *inter alia*, certification of the
17 Settlement Class is for purposes of the settlement only. If for any reason the settlement is not
18 approved, the certification will have no force or effect and will immediately be revoked. The
19 Parties further agree that certification for purposes of the settlement is in no way an admission that
20 class certification is proper under the more stringent standard applied for litigation and that
21 evidence of this limited stipulation for settlement purposes only will not be admissible for any
22 purpose in this or any other proceeding.

23 14. The parties jointly prepared the Settlement Agreement and Release of Claims
24 ("Settlement Agreement", "Settlement", or "Stip."). A true and correct copy of the Settlement is
25 attached hereto as **Exhibit B**.

26 15. My office created a comprehensive damage analysis using sampling information
27 obtained through informal discovery. This damage analysis reveals that the negotiated settlement
28 falls within a realistic range of recovery on Class Members' claims.

1 16. Plaintiff alleges that Defendant failed to permit or authorize Plaintiff and Class
2 Members to take timely 30-minute meal periods for shifts greater than 5 hours in length, in
3 violation of Labor Code §§ 226.7, 510, 512, 558, and 1194 and IWC Wage Order 5-2001. Labor
4 Code § 512 provides that employers (like Defendant) may not employ an employee for a work
5 period of more than 5 hours without providing a 30-minute meal period starting no later than the
6 end of the 5th hour. Plaintiff and Class Members contend that they were routinely unable to take
7 a proper meal break when they worked shifts in excess of 5 hours in duration and a second meal
8 break when they worked shifts in excess of 10 hours in duration. When they were able to take a
9 meal period, they were oftentimes late, cut short or they would be required to work through them.
10 Moreover, Defendant does not maintain a legally compliant meal period policy (or any meal
11 policy) and Defendant's handbook does not mention any meal period guidelines. Based on an
12 analysis of a wage and time data provided by Defendant through formal discovery, Plaintiff has
13 ascertained a meal period violation rate of 44% across 87.4% of all pay periods. Most violations
14 are a result of missed meal periods (48.3% of all shifts and which also represents 96.3% of all
15 meal period violations). Plaintiff calculates Defendant's meal period liability to exceed \$85,956.
16 Defendant, however, maintained numerous defenses to this claim. It argued that it implemented
17 policies and practices consistent with the requirements of California law and that any missed meal
18 breaks were waived, not denied. It also contended that this claim could not be certified based on
19 varying shifts and job types among the class members. In short, a discount was required to resolve
20 this claim at this stage of the litigation based on class certification and merits risks.

21 17. Plaintiff further alleges that Defendant failed to provide Plaintiff and Class Members
22 with legally compliant rest periods, or premium wages of one hour's pay in lieu thereof, as required
23 by Labor Code §§ 226.7 and 558 and Wage Order 5-2001. Plaintiff and Class Members contend
24 that they were simply too busy to take their rest periods or would be required to work through
25 them. Moreover, as with meal periods, Plaintiff argues that Defendant does not maintain a legally
26 compliant rest period policy (or any rest policy) and its handbook does not mention any rest period
27 guidelines. Defendant's rest period liability exceeds \$190,016. Like Plaintiff's meal break claim,
28 prevailing on this claim also involved substantial risk. Defendant argued its policy and practice

1 always authorized employees to take their rest periods and leave the company premises for them.
2 It contends that, because there are no records as to when rest breaks were taken, this claim will be
3 difficult, if not impossible, for Plaintiff to certify. It claimed that any missed rest breaks were
4 voluntarily waived by employees. The risks of prevailing on this claim required a discount for
5 settlement purposes at this juncture of the litigation.

6 18. Plaintiff alleges that Defendant failed to issue Plaintiff and Class Members
7 accurately itemized wage statements, failed to pay waiting time penalties, and owes PAGA civil
8 penalties, all derivative of the claims alleged above. These penalty claims would total up to
9 approximately \$149,000 but required a substantial discount for settlement purposes because they
10 are wholly derivative of the underlying unpaid wage claims (i.e. if Plaintiff did not prevail on her
11 underlying meal and rest period claims, she would not prevail on these penalty claims), they are
12 subject to independent defenses of their own (including proof of injury and/or willfulness), and
13 they are subject to reduction in the Court's discretion. Plaintiff believed it was unlikely that the
14 Court would entertain an award of penalties which was substantial compared to the amount of the
15 unpaid wages sought. As such, these claims required a compromise to resolve at this juncture of
16 the litigation.

17 19. The discount negotiated for settlement here is a reasonable compromise, particularly
18 considering that the risk of obtaining class certification on all or any of Plaintiff's claims involves
19 a 50% or higher hurdle, especially with respect to the meal and rest period claims, to which
20 Defendant maintains strong arguments to defeat class certification (in addition to multiple defenses
21 on the merits of the claims). Class certification is a substantial risk in any class action case. Here,
22 while Plaintiff maintains that the requirements of class certification are met, Defendant proffers
23 various arguments why class treatment is not appropriate, including but not limited to that
24 individualized inquires among class members predominate over common ones. If Defendant was
25 to defeat Plaintiff's class certification motion, there would be no class wide relief whatsoever, and
26 most class members would likely not file individual claims.

27 20. Plaintiff also faced the risk of a loss on the merits on her claims. It is very possible
28 that the Court would agree with Defendant's position that its meal and rest period policies and

1 practices complied with the requirements of California law or could not be certified. In such a
2 case, the value of the majority of Plaintiff's claims would be zero.

3 21. Finally, Plaintiff faced the risk that she would not obtain a maximum
4 damage/penalty award on all (or any of) his claims. For example, Plaintiff seeks discretionary
5 penalties pursuant to the PAGA. Even if Plaintiff did prevail on these claims, it is possible that
6 the Court would not impose all penalties pursuant to its discretionary power to reduce them.

7 22. Defendant strongly contends that its policies and practices do not violate any laws.
8 It contends that it properly provided for all meal and rest periods and fully compensated their
9 employees for all time worked. It further contends that the wage statements it provides to its
10 employees are fully compliant with California law.

11 23. When the costs and risks of non-certification and loss on the merits are considered,
12 my colleagues and I are of the opinion that the settlement reached is clearly a favorable one.

13 24. The settlement for each Class Member is fair, reasonable and adequate, given the
14 inherent risk of litigation, the risk relative to class certification and the costs of pursuing such
15 litigation. The settlement shall finally resolve all claims of the Class Members as alleged in the
16 Action.

17 **Class Certification Requirements:**

18 25. To date, no class has been certified. The Stipulation of Settlement contains a
19 provision pursuant to which we stipulate to the Court's provisional certification of the
20 approximately 40-member Settlement Class, but do so for purposes of this settlement only.

21 26. In this case, the Class Members are identifiable from Defendant's employment and
22 payroll records. Further, the Settlement Class is sufficiently numerous to warrant certification.
23 According to Defendant's records, the Class comprises approximately 40 employees.

24 27. The Class Members' claims all stem from a common source: members of the
25 Settlement Class allege that Defendant violated the same Labor Code provisions in connection
26 with their employment. All members of the Class seek the same relief under the same California
27 laws (related to unpaid meal and rest period premiums, inaccurate or incomplete wage statements,
28 failure to timely pay wages due upon separation, and derivative claims). Under these

1 circumstances, the commonality requirement is satisfied for purposes of certifying the Settlement
2 Class for settlement purposes.

3 28. In this case, named Plaintiff and proposed Class Representative Shavella Crawford
4 is a former non-exempt employee who worked for Defendant in the State of California during the
5 Class Period. She contends that Defendant failed to provide meal and rest periods, failed to
6 comply with itemized employee wage statement provisions, and failed to timely pay wages at the
7 separation of employment, in violation of Labor Code §§ 201-203, 226(a), 226.3, 226.7, 512, 558,
8 2698, and 2699, among other Labor Code provisions. She has the same claims as those that the
9 members of the Settlement Class would reasonably be expected to bring based on the course of
10 conduct alleged herein.

11 29. Plaintiff has also demonstrated that she will aggressively and competently assert the
12 interests of the proposed Settlement Class; she has taken an active role in this litigation and has no
13 apparent conflicts with other class members.

14 **Settlement of Claims Pursuant to Labor Code § 2699 et seq. (PAGA)**

15 30. Concurrently with the filing of this Motion, Plaintiff's counsel is transmitting the
16 Settlement Agreement (and these approval documents) to the LWDA, in compliance with Labor
17 Code § 2699(1)(2).

18 I declare, under penalty of perjury, under the laws of the State of California, that the
19 foregoing is true and correct. Executed this 5th day of May, 2022 at Calabasas, California.

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21 *Daniel F. Gaines*
22 DANIEL F. GAINES
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EXHIBIT A

Adams v. Newell Rubbermaid, USDC – Central District of California (Los Angeles), Case No. EDCV 08-1499 JTM (CTx)

Adams v. Sam's West, Inc., San Bernardino County Superior Court, Case No. CIVDS1403987

Agredano v. GS Brothers, Inc., Los Angeles County Superior Court, Case No. BC445561

Allen v. Toms Sierra Company, Nevada County Superior Court, Case No. CU18-082823

Allen v. Valley Inventory Service, Inc., Solano County Superior Court, Case No. FCS034682

Alvarez v. Pilot Travel Centers, LLC, San Joaquin County Superior Court, Case No. STK-CV-UOE-2018-4605

Alonzo v. Camblin Steel Service, Inc., Placer County Superior Court, Case No. SCV0034165

Amenhotep v. Google, Inc., Santa Clara County Superior Court, Case No. 17CV311528

Anaya v. Progressive Logistics Services, LLC, Riverside County Superior Court, Case No. RIC1308270

Andre v. Newell Rubbermaid, Inc., San Bernardino County Superior Court, Case No. CIVVS1200282

Anduha v. ABC Phones of North Carolina, Inc., Stanislaus County Superior Court, Case No. 2022729

Anslow v. Wellington Energy, Inc., USDC – Northern District of California (San Francisco), Case No. CV11-1596-JCS

Aranda, et al. v. Universal Lumpers of California, Inc., San Joaquin County Superior Court, Case No. STK-UOE-2017-7826

Armendariz v. Integrated Pain Management Medical Group, Inc., Kern County Superior Court, Case No. BCV-19-100267-SDS

Barrow, et al. v. Desmond Foods, L.P., Sacramento County Superior Court, Case No. 34-2015-00187227

Batmanghelich v. Sirius XM Radio Inc., USDC – Central District of California (Los Angeles), Case No. CV 09-9190 VBF (JCx)

Bosser v. Hooked on Solar, Yolo County Superior Court, Case No. CVCV-2016-876

Bourland v. Horizon Personnel Services, Inc., Sacramento County Superior Court, Case No. 34-2014-00161365-CU-OE-GDS

Bowen v. IMI Material Handling Logistics, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2016-0000192

Branson v. Mladen Buntich Construction, San Bernardino County Superior Court, Case No. CIVDS1609129

Brandt v. Sacramento Auto Insurance Center, Inc., San Joaquin County Superior Court, Case No. 39-2009-00202938-CU-OE-STK

Brown v. 22nd District Agricultural Association, United States District Court, Southern District of California, Case No. 15-cv-2578-DHB

Brown v. Sierra Central Credit Union, Sutter County Superior Court, Case No. CVCS18-0002161

Burgess v. Blue Cross and Blue Shield of South Carolina, San Joaquin County Superior Court, Case No. 39-2012-00277449-CU-BT-STK

Burgess v. Strategic Retail Solutions, LLC, Los Angeles County Superior Court, Case No. BC413791

Calhoun v. Celadon Trucking Services, Inc., USDC – Central District of California (Los Angeles), Case No. 5:16-cv-01351-PSG-FFM

Caporicci v. Owens & Minor Distribution, Inc., San Joaquin County Superior Court, Case No. 39-2013-00295662-CU-OE-STK

Carl v. Advanced Call Center Technologies, LLC, Sacramento County Superior Court, Case No. 34-2013-00148310

Carlisle, et al. v. Professional Technical Security Services, Inc., Case No. CGC18569791

Carrete v. Gamestop, Inc., Imperial County Superior Court, Case No. ECU08501

Carrillo v. Bimbo Bakeries, Inc., San Bernardino County Superior Court, Case No. CIVDS1606813

Caudillo v. Aegis Treatment Centers, LLC, Merced County Superior Court, Case No. 18CV-0744

Cerami v. Metlife, Inc., USDC – Central District of California (Orange County), Case No. 11-CV-00681-CJC (MLGx)

Charles v. Aaron's Inc., Los Angeles County Superior Court, Case No. BC431468

Charles v. Nursefinders, LLC, Imperial County Superior Court, Case No. ECU07422

Cheifer v. JetBlue Airways Corporation, Los Angeles County Superior Court, Case No. BC451887

Cheifer, et al. v. WHGM, Inc., Los Angeles County Superior Court, Case No. LC104900

Chong, et al. v. Crescent Northwoods Inn, Inc., Del Norte County Superior Court, Case No. CVUJ-2018-1133

Church v. GameStop, Inc., et. al., USDC – Central District of California (Los Angeles), Case No. 11-CV-00132-VAP-RZ

Clothier v. Spar Marketing Services, Inc., Alameda County Superior Court, Case No: RG12-639317

Coleman v. Wireless Lifestyle, Inc., USDC – Western District of Missouri, Case No. 4:12-cv-00855-ODS

Colombo-Beyeler, et al. v. Viking River Cruises, Inc., San Bernardino County Superior Court, Case No. CIVDS1611608

Conlee v. Clark Pacific Corporation, Yolo County Superior Court, Case No. CV14-1409

Contreras v. Osmose Utilities Services, Inc., San Bernardino County Superior Court, Case No. CIVDS1513998

Contreras v. West American Service Corporation, Kings County Superior Court, Case No. 14C0280

Corona v. Yosemite Meat & Locker Service, Inc., Stanislaus County Superior Court, Case No. 2006828

Cortellessa v. Dotnext, Inc., Alameda County Superior Court, Case No. RG09429971

County v. Ingram Mirco, Inc., San Bernardino Superior Court, Case No. CIVRS 1304445

Covarrubias, et al. v. Petersendean Builder Group, Inc., Kern County Superior Court, Case No. BCV-16-101122

Cowen, et al. v. Evergreen Alliance Golf Limited, L.P., d/b/a Arcis Golf, San Bernardino County Superior Court, Case No. CIVDS1719283

Cruz-Garcia v. Lemonade Restaurant Group, LLC, Los Angeles County Superior Court, Case No. BC478205

Cunningham v. Performance Contracting, Inc., Contra Costa County Superior Court, Case No. C16-02157

Dabney v. Coneybeare, LLC, et al., Orange County Superior Court, Case No. 30-2018-00999989-CU-OE-CXC

Dabney, et al. v. Panera, LLC., San Bernardino County Superior Court, Case No. CIVDS1516030

Diaz, et al. v. Seaworld Entertainment, Inc., Imperial County Superior Court, Case No. ECU10046

Diggs v. Western Waterproofing Company, Inc., San Francisco County Superior Court, Case No. CGC-14-539281

Dismuke v. Rhodes Retail Services, Inc., Sacramento County Superior Court, Case No. 34-2011-00105001

Dorsette v. TA Operating, LLC, USDC – Central District of California (Los Angeles), Case No. EDCV 09-1350 PA (RZx)

Duran v. The Image of California, Inc., Kern County Superior Court, Case No. S-1500-CV-284056 DRL

Edwards v. Trans World Entertainment Corp., San Diego County Superior Court, Case No. 37-2010-00095123-CU-OE CTL

Esakhani v. Central Valley Gaming, Stanislaus County Superior Court, Case No. 2020667

Escobar v. SMSSI of California, Inc., San Francisco Superior Court, JCCP No. 4776

Espinosa v. Taltech Construction, et al., Los Angeles County Superior Court, Case No. BC590176

Espinosa v. Bodycote Thermal Processing, Inc., Los Angeles County Superior Court, Case No. BC501617

Espinoza v. Pabco Building Products, LLC, Los Angeles County Superior Court, Case No. VC065660

Estrada v. Net Source Communications, Inc., Los Angeles County Superior Court, Case No. BC431169

Estrada v. OS Restaurant Services, LLC, Santa Clara County Superior Court, Case No. 16CV293249

Estupinan v. Global Development Strategies, Inc., Santa Clara County Superior Court, Case No. 110CV178898

Fadhl. v. Siemens Healthcare Diagnostics Inc., Sacramento County Superior Court, Case No. 34-2017-00209518

Fernandez v. The Regents of the University of California, Los Angeles County Superior Court, Case No. BC656256

Ferrer v. Dish Network Corporation, Los Angeles County Superior Court, Case No. BC441354

Findora v. Barry Callebaut USA LLC, Napa County Superior Court, Case No. 19CV000219

Flores v. Cintas Corporation, Los Angeles County Superior Court, Case No. BC400422

Friel v. Midwest Construction Services, Inc., San Joaquin County Superior Court, Case No. 39-2015-00329204-CU-OE-STK

Gagnon v. Banc of California, Contra Costa County Superior Court, Case No. C 15-00196

Galarza v. Bayou Well Services, LLC, Kern County Superior Court, Case No. S-1500-CV-279372 DRL

Galarza v. C & H Testing Service LLC, Kern County Superior Court, Case No. BCV-15-100008 SPC

Garcia v. Old Dominion Freight Line, Inc., San Bernardino County Superior Court, Case No. CIVDS1404636

Geer v. Applied Aerospace Structures Corp., San Joaquin County Superior Court, Case No. 39-2014-00313702-CU-OE-STK

Getz v. California Cinema Investments, Inc., Ventura County Superior Court, Case No. 56-2013-00437706-CU-MC-VTA

Gibbs v. M. Lehmann Enterprises, Orange County Superior Court, Case No. 30-2013-00678538-CU-OE-CXC

Gilles v. Schaefer Ambulance Service Inc., Imperial County Superior Court, Case No. ECU07970

Goldman, et al. v. Defender's, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2018-0009973

Gomez v. Low Desert Empire Pizza, Inc., San Bernardino County Superior Court, Case No. CIVVS900392

Gomez v. Pizza Hut of Southeast Kansas, Inc., San Bernardino County Superior Court, Case No. CIVVS900679

Gonzalez v. Harris Farms, Inc., USDC – Eastern District of California (Fresno), Case No. 1:14-cv-00038-LJO-SAB

Guerrero v. Main Electric Supply Company LLC, Ventura County Superior Court, Case No. 56-2019-00525427-CU-OE-VTA

Gutierrez v. Asset Management Specialists, Inc., Fresno County Superior Court, Case No. 12CECG03577

Gutierrez v. Linkus Enterprises, Inc., Madera County Superior Court, Case No. MCV065774

Gutierrez v. Shiekh, LLC, San Bernardino County Superior Court, Case Nos. CIVRS1206525, CIVRS1303408

Hairston v. Stanislaus Surgical Hospital, Stanislaus County Superior Court, Case No. CV-19-000651

Hindman v. Service Quick, Inc., San Bernardino County Superior Court, Case No. CIVDS1724229

Hogan v. iMobile of CA LLC, San Bernardino County Superior Court, Case No. CIVDS1409263

Hogan v. Wireless Evolution Inc., Riverside County Superior Court, Case No. MCC1300669

Hogan v. Wireless That's It! LLC, Riverside County Superior Court, Case No. RIC1201997

Holmes v. Bottling Group, LLC, Stanislaus County Superior Court, Case No. 2022584

Hooper, et al. v. URS Midwest, Inc., et al., San Bernardino Superior Court, Case No. CIVDS1607489

Humphrey v. Freedomroads, LLC, Shasta County Superior Court, Case No. 178228

Hurtado v. Rush Truck Centers of California, Inc., Los Angeles County Superior Court, Case No. BC427672

Hyde v. Dent Wizard International Corporation, Sacramento County Superior Court, Case No. 34-2015-00173882

Ibrihim v. Imperfect Foods, Inc., San Joaquin County Superior Court, Case No. STK-VI-UOE-2019-0000846

Id-deen v. Educational Services of America, Solano County Superior Court, Case No. FCS040803

Isherwood v. Mason Dixon Intermodal, Inc., San Joaquin County Superior Court, Case No. 39-2012-00279891-CU-OC-STK

Jahanbin v. Pacific Mercantile Bank, Orange County Superior Court, Case No. 30-2011-00480705CU-OE-CXC

Jenkins v. Sedgwick Claims Management Services, Inc., Los Angeles Superior Court, Case No. LC101648

Job v. California Security Services, Yuba County Superior Court, Case No. 14-0000820

Johnson v. The Goodyear Tire & Rubber Company, USDC – Northern District of California (San Francisco), Case No. 3:13-cv-01069-MMC

Jolin v. Bay Cities Recovery, Inc., El Dorado County Superior Court, Case No. PC20100458

Jordan v. Sutter Memorial Hospital, Stanislaus County Superior Court, Case No. 2023344

Keebaugh v. Mike Thompson Recreational Vehicles, San Bernardino County Superior Court, Case No. CIV-DS-1500718

Kelly v. Robin's Enviro Vac, Inc., Kern County Superior Court, Case No. S-1500-CV-282277
DRL

King v. Levy Premium Foodservice Limited Partnership, Alameda County Superior Court, Case No. HG15786353

Kunsman v. Punch Bowl Sacramento, LLC, et al., Sacramento County Superior Court, Case No. 34-2018-00243175

LaFear v. Encore Education Corporation, San Bernardino County Superior Court, Case No. CIVDS1802251

Lanzarin v. AWI Management Corporation, Solano County Superior Court, Case No. FCS041809

Lee, et al. v. Foster Dairy Farms, Stanislaus County Superior Court, Case Nos. 2006542, 2015679

Lemus, et al. v. Eastridge Workforce Technology, Inc., San Bernardino County Superior Court, Case No. CIV-DS-1611470

Lewis v. American Casino & Entertainment Properties LLC, San Bernardino County Superior Court, Case No. CIVDS1719094

Lemus v. On Assignment Staffing Services, San Bernardino County Superior Court, Case No. CIV-DS-1600497

Leon v. Piercey West Inc., Los Angeles County Superior Court, Case No. BC656874

Lopez v. Creative Communication Technologies, Inc., Imperial County Superior Court, Case No. ECU07851

Lopez v. Go Green Auto Spa Franchise, Inc., et al., Los Angeles County Superior Court, Case No. BC 562212

Lopez v. Truck Accessories Group, LLC, Yolo County Superior Court, Case No. CV13798

Ludlow v. Prince Telecom, LLC, Stanislaus County Superior Court, Case No. 684239

Luna v. Express Locations, LLC, Imperial County Superior Court, Case No. ECU09779

Macias v. American Tire Distributors, Inc., Kern County Superior Court, Case No. BCV-18-101586

Maldonado v. Hardwood Flooring Liquidators, Inc., Los Angeles County Superior Court, Case No. BC642170

Mansfield v. Cambridge Real Estate Services, Inc., Butte County Superior Court, Case No. 160175

Martinez v. DPI Specialty Foods West, San Joaquin County Superior Court, Case No. 39-2015-00327311-CU-OE-STK

Martinez v. Styles For Less, Inc., San Bernardino County Superior Court, Case No. CIVVS1203057

Mayne v. John Muir Behavioral Health, Contra Costa County Superior Court, Case No. C17-00998

Maze v. Bulldog Freightway, Inc., Imperial County Superior Court, Case No. ECU08716

McCormick v. G & O Body Shop, Inc., El Dorado Superior Court, Case No. PC20130291

McCrary v. Campbell Soup Supply Company, San Joaquin County Superior Court, Case No. 39-2013-00297698-CU-OE-STK

McDaniel v. Vancary, Inc., Tulare County Superior Court, Case No. 268036

Melgar-Farela v. Guardian Compliance, Inc., Los Angeles County Superior Court, Case No. BC481865

Mendiola v. Tyco Electronics Corporation, Riverside County Superior Court, Case No. RIC1400721

Mettler v. Les Schwab Tire Centers of California, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2018-476

Miller v. California Subshine, Inc., Los Angeles County Superior Court, Case No. BC637754

Miller v. Southwest Airlines Co., USDC – Northern District of California (San Francisco), Case No. 3:12-cv-05978-CRB

Mitchell v. Crossmark, Inc., USDC – Central District of California (Los Angeles), Case No. CV 11-2818-JAK (FMOx)

Moghrabi v. Vitaligent, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2018-1650

Molina v. Berkshire Hathaway Energy Company, et al., Imperial County Superior Court, Case No. ECU000522

Moore v. Horizon Solar Power, Inc., San Bernardino County Superior Court, Case No. CIVDS1410001

Murray v. Select Media Services, LLC, Los Angeles County Superior Court, Case No. BC424506

Myles v. Central Transport LLC, San Bernardino County Superior Court, Case No. CIVDS1401434

Navarro v. Mariana Packing Co., Inc., Solano County Superior Court, Case No. FCS045935

Nehrlich, et al. v. RPM Mortgage, Inc., Orange County Superior Court, Case No. 30-2013-00666783-CU-OE-CXC

Overton v. Hat World, Inc., USDC – Eastern District of California (Sacramento), Case No. 2:11-CV-01645-LKK-KJN

Perez v. Alcatel-Lucent USA Inc., Imperial County Superior Court, Case No. ECU07977

Perez v. Major Gloves and Safety, Inc., San Bernardino County Superior Court, Case No. CIVDS1710445

Perry v. Cardinal Health 200, LLC, Solano County Superior Court, Case No. FCS035303

Phraxayavong-Briones v. RSM, Inc., Sacramento County Superior Court, Case No. 34-2012-00117524

Pugh v. Wi Spa, LLC, Imperial County Superior Court, Case No. ECU07932

Quist v. Knight Transportation, Inc., San Bernardino Superior Court, Case No. CIVDS 1615414

Quitco v. Aviation Fuel Systems Repair, Inc., San Bernardino Superior Court, Case No. CIVRS1302311

Rambeau v. C.C.M. Corporation, et al., Sacramento County Court, Case No. 34-2018-00244842

Rankins v. Roman Empire Living Skills, Inc., Los Angeles County Superior Court, Case No. BC713399

Rees v. Advantel, Incorporated, Santa Clara County Superior Court, Case No. 16-CV-292219

Renfrow v. Janra Enterprises, Inc., Sacramento County Superior Court, Case No. 3402010-00080471

Reynolds v. Diamond Pet Food Processors of Ripon, San Joaquin County Superior Court, Case No. 39-2014-00310818

Richard v. A-Para Transit Corp., Alameda County Superior Court, Case No. HG17870373

Richardson v. TEC Equipment, Inc., et al., Los Angeles County Superior Court, Case No. VC065536

Robles v. North County Health Project Incorporated, San Diego Superior Court, Case No. 37-2014-00001751-CU-OE-NC

Rodas v. Monetary Management of California, Inc., USDC – Eastern District of California (Sacramento), Case No. 2:14 cv 01389 TLN AC

Rodriguez v. 20/20 Plumbing & Heating, Inc., San Bernardino County Superior Court, Case No. CIVDS1705362

Rodriguez v. Commerce Distribution Company, Los Angeles County Superior Court, Case No. BC656259

Rodriguez v. Valley Oak, San Joaquin County Superior Court, Case No. STK-CV-UOE-2016-7980

Roden v. Service Champions, San Bernardino County Superior Court, Case No. CIVDS1613183

Russell v. Bradshaw International, Imperial County Superior Court, Case No. ECU00853

Rutledge, et al. v. Healthport Technologies, LLC, Alameda County Superior Court, Case No. RG16835813

Sabala v. Econtactlive, Inc., Stanislaus County Superior Court, Case No. 684981

Sabatier v. Picture Perfect Installation, Inc., Riverside County Superior Court, Case No. RIC10004953

Salameh v. Sonomaience OPCO, LLC, Sonoma County Superior Court, Case No. SVC264228

Salazar v. Tag-3 Medical Investment Group, LLC, Los Angeles County Superior Court, Case No. BC527698

Salbeck v. Ingredion Incorporated, San Joaquin County Superior Court, Case No. STK-UOE-2017-0012622

Sampson v. Healthnet of California Inc., Sacramento County Superior Court, Case No. 34-2015-00183785-CU-OE-GDS

Sanchez v. Don Roberto Jewelers, Inc., Imperial County Superior Court, Case No. ECU06819

Sanders v. Lionakis, Sacramento County Superior Court, Case No. 34-2017-00223601

Santana v. United Staffing Associates, LLC, Tulare County Superior Court, Case No. 249338

Schrader v. Adidas Promotional Retail Operations, Inc., Los Angeles County Superior Court, Case No. BC414168

Sebrell v. Pomeroy IT Solutions, San Bernardino County Superior Court, Case No. CIVDS1721560

Seymour v. Quest Service Group, LLC, Sacramento County Superior Court, Case No. 34-2017-00206917

Silva v. Trical, San Benito County Superior Court, Case No. CU-16-00218

Simler v. Polly's Inc., Riverside County Superior Court, Case No. RIC 1117862

Sipin, Scott v. Salesforce.com, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2019-0004629

Skuro v. BMW of North America, LLC, USDC – Central District of California (Los Angeles), Case No.: CV 10-8672-GW (FFMx)

Smith v. Steelcase, Inc., San Bernardino County Superior Court, Case No. CIVDS1725850

Sohal v. Foster Poultry Farms, Stanislaus County Superior Court, Case No. 2026605

Solomon v. City of Los Angeles, Los Angeles County Superior Court, Case No. BC570345

Solano v. Vozzcom, Inc., Imperial County Superior Court, Case No. ECU09519

Smith, et al. v. Sente Development, Inc., Sacramento County Superior Court, Case No. 34-2016-00196614

Solorzano v. FDS Manufacturing Corporation, Los Angeles County Superior Court, Case No. BC542532

Solowitz v. BakeMark USA LLC, Los Angeles County Superior Court, Case No. BC467838

Spampinato v. Wind & Sea Restaurants, Inc., San Bernardino County Superior Court, Case No. CIVVS1205154

Spitzer, et al. v. FRHI Hotels & Resorts (Canada) Inc., San Bernardino County Superior Court, Case No. C IVDS1712220

Stephens v. C.S., Inc., Riverside County Superior Court, Case No. PSC1301224

Stevenson v. Harvest Management Sub LLC, Ventura County Superior Court, Case No. 56-2011-00397420-CU-OE-SIM

Thompson v. Continental Labor Resources, Inc. d/b/a Continental Labor & Staffing Resources, Kern County Superior Court, Case No. S-1500-CV-278751-DRL

Thompson v. Sidhu Truck Line, Inc., Kern County Superior Court, Case No. BCV-15-101308-DRL

Tigas v. Ajilon Communications, Los Angeles County Superior Court, Case No. BC409737

Torres v. Coastal Employment Inc., Los Angeles County Superior Court, Case No. BC529207

Tran v. CSP Fiber Services, San Bernardino County Superior Court, Case No. CIVDS172758

Tripp v. California Guest Services, Inc., Plumas County Superior Court, Case No. CV16-00036

Valdez v. Diamond Landscaping, Inc., Los Angeles County Superior Court, Case No. BC497097

Valencia v. American Team Managers, Inc., Orange County Superior Court, Case No. 30-2016-00857365-CU-CR-CXC

Van Son v. Rush Truck Centers of California, Inc., Los Angeles County Superior Court, Case No. BC494747

Vasquez v. Schurman Fine Papers, San Joaquin County Superior Court, Case No. STK-CV-LMC-2015-10035

Velasquez v. Modesto Ventures, LLC, Sacramento County Superior Court, Case No. 32-2012-00126159

Victoria v. Bali Limousines Inc., San Mateo County Superior Court, Case No. CIV507774

Victorian v. Vision X, Inc., Los Angeles County Superior Court, Case No. BC400333

Wade v. Frito Lay, Kern County Superior Court, Case No. BCV-17-102014

Walls v. E. & J. Gallo, Stanislaus County Superior Court, Case No. 2015874

Warner v. Waterdrops Express Car Wash, LLC, Tulare County Superior Court, Case No. 265708

Waybright v. EAH, Inc., Stanislaus County Superior Court, Case No. 2011677

Weiss v. C.A.R. Enterprises, Inc., Riverside County Superior Court, Case No. RIC1113165

White v. Sally Beauty Supply, LLC, Imperial County Superior Court, Case No. ECU08177

Williams v. Dennis Dillon RV, LLC, San Bernardino County Superior Court, Case No. CIVDS 16006879

Williams v. Closet World, Inc., Los Angeles County Superior Court, Case No. BC400178

Williams v. Progress Rail Services Corporation, Kern County Superior Court, Case No. S-1500-CV-280236 DRL

Wing v. Three Group, Inc., Los Angeles County Superior Court, Case No. BC643883

Wilson v. ALSCO, Inc., Imperial County Superior Court, Case No. ECU07406

Wilson v. Michael C. Stead, Inc., Contra Costa Superior Court, Case No. C1400135

Winningham v. Storer Transportation Service, San Joaquin County Superior Court, Case No. 39-2015-00324708-CU-STK

Woody v. WBN Home Design, San Bernardino County Superior Court, Case No. CIVDS1613367

Woods, et al. v. F&B Innovations, LLC, San Bernardino County Superior Court, Case No. CIVDS1717765

Woodyard v. Bellus ALC Acquisition, LLC, USDC – Central District of California (Los Angeles), Case No. 2:13-cv-05285 SJO AGRx

Wright v. Social Vocational Services, Inc., Kern County Superior Court, Case No. BCV-15-101264

Ybarra v. New Legend, Inc., Sutter County Superior Court, Case No. CVCS-16-2097

Zaragoza v. Center Automotive, Inc., Los Angeles Superior Court, Case No. BC505194

EXHIBIT B

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF MERCED**

SHAVELLA CRAWFORD, on behalf of
herself and all "aggrieved employees"
pursuant to Labor Code § 2698 *et seq.*,

Plaintiff,

v.

KAINTH HOSPITALITY INC., a
California corporation, and DOES 1 through
10, inclusive,

Defendants.

CASE NO: 21CV-01252

Assigned to the Hon. Brian McCabe, Dept. 8

CLASS ACTION

**SETTLEMENT AGREEMENT AND
RELEASE OF CLAIMS**

Complaint Filed: April 14, 2021

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SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

This Settlement Agreement and Release of Claims (“Settlement Agreement” or “Stipulation of Settlement”) is made and entered into by and between Plaintiff Shavella Crawford (“Crawford” or “Plaintiff” or “Class Representative”), individually and on behalf of the Settlement Class and all others similarly situated, and Defendant Kainth Hospitality Inc., a California corporation, and/or any subsidiaries or affiliated companies (“Defendant”), subject to the terms and conditions herein and the Court’s approval.

A. Definitions.

1. Plaintiff, the Settlement Class (as defined below), and Defendant are collectively referred to herein as “the Parties.”
2. Daniel F. Gaines and Alex P. Katofsky of Gaines & Gaines, APLC are counsel of record for Plaintiff. For purposes of this settlement only, the firm of Gaines & Gaines, APLC shall be designated as “Class Counsel.”
3. The “Action” means the case entitled *Shavella Crawford v. Kainth Hospitality Inc.*, Case No. 21CV-01252, pending before the Superior Court of the State of California for the County of Merced.
4. The “Settlement Class” shall be defined as “all non-exempt California employees of Defendant from April 14, 2017 through February 17, 2022” (the “Class Period”). Defendant represents that this Class contains no more than approximately 40 individuals who worked no more than 5,200 workweeks during the Class Period.
5. Members of the Settlement Class shall collectively be referred to as a “Class Member” or “Class Members.” Any Class Member who files a timely Request for Exclusion, as detailed below, will be excluded from the final Settlement Class.

B. General.

1. On November 18, 2020 and January 28, 2021, Plaintiff exhausted the pre-filing requirements of the Labor Code Private Attorneys General Act of 2004 (“PAGA”).
2. On or about April 14, 2021, Plaintiff initiated the Action by filing a Representative Action Complaint for Penalties, pursuant to PAGA, on behalf of herself and all other aggrieved

1 employees (the "Complaint"). The First Amended Complaint, attached hereto as **Exhibit 3** and
2 which will be filed as part of the settlement approval process, asserts class and PAGA representative
3 action claims against Defendant for (1) failure to provide compliant rest periods or compensation
4 in lieu thereof (Labor Code § 226.7; IWC Wage Order 5-2001); (2) failure to provide compliant
5 meal periods or compensation in lieu thereof (Labor Code §§ 226.7, 510, 512, and 1194; IWC
6 Wage Order 5-2001); (3) failure to comply with itemized employee wage statement provisions
7 (Labor Code § 226); (4) failure to timely pay wages due at separation of employment (Labor Code
8 §§ 201-203); (5) violation of Business and Professions Code §§ 17200, *et seq.*; and (6) civil
9 penalties pursuant to Labor Code §§ 2698, *et seq.* for violations of Labor Code §§ 201, 202, 226,
10 226.3, 226.7, 510, 512, 558, 1194, and 1198 (the "First Amended Complaint").

11 3. Defendant denies any liability or wrongdoing of any kind associated with the claims
12 alleged in the Action, and further denies that the Action is appropriate for class treatment for any
13 purpose other than this settlement. Defendant contends that it has complied at all times with the
14 California Labor Code, Industrial Welfare Commission Wage Orders, and all other applicable
15 federal, state, and local laws and regulations. It is Defendant's position that, if this case were to be
16 litigated, class certification would be inappropriate because Plaintiff is not an adequate class
17 representative, Plaintiff's claims are not typical of putative class members, and individual issues
18 predominate over class issues. The Action, the negotiation and execution of this Settlement
19 Agreement, and all acts performed or documents executed pursuant to or in furtherance of the
20 Settlement Agreement (i) shall not be used as an admission or evidence of wrongdoing on behalf
21 of Defendant; (ii) shall not be an admission or evidence of fault on behalf of Defendant in any
22 action before a civil, criminal, or administrative agency; and (iii) shall not be deemed to be, and
23 may not be used as, an admission or evidence of the appropriateness of these or similar claims for
24 class certification in the Action or with respect to any other proceeding.

25 4. The Class Representative contends that Defendant violated the California Labor
26 Code and Industrial Welfare Commission Wage Order(s), and that this case is appropriate for class
27 certification.

28 ///

1 5. Class Counsel represent that they have conducted a thorough investigation into the
2 facts and law during the prosecution of this class action case, including the exchange of extensive
3 formal and informal discovery and the review and verification of statistical data and other facts and
4 information provided by Defendant. Counsel for the Parties also represent that they have
5 investigated the applicable law as applied to the facts discovered regarding the alleged claims of
6 Plaintiff and potential defenses thereto, and the damages and other losses claimed by Plaintiff.

7 6. On February 17, 2022, following their exchange of information and documents
8 regarding the Settlement Class and the claims and defenses asserted by the Parties, the Parties
9 engaged in arm's-length negotiations with the assistance of mediator Marc Feder, Esq., through
10 which they were able to reach the resolution of the Action set forth herein.

11 7. Based on their own independent investigation and evaluation, Class Counsel are of
12 the opinion (and will so represent to the Court) that settlement for the consideration and on the
13 terms set forth in this Settlement Agreement is fair, reasonable, and adequate and is in the best
14 interest of the Settlement Class in light of all known facts and circumstances, including the risk of
15 significant delay, the risk the Settlement Class will not be certified by the Court, and the defenses
16 asserted by Defendant. Defendant and its counsel also agree (and will so represent to the Court)
17 that this settlement is fair and in the best interest of the Settlement Class.

18 8. The Parties agree that the Settlement Class described herein may be certified for
19 settlement purposes only and that any motion for approval seeking, *inter alia*, certification of the
20 Settlement Class is for purposes of the settlement only. If for any reason the settlement is not
21 approved, the certification will have no force or effect and will immediately be revoked. The
22 Parties further agree that certification for purposes of the settlement is in no way an admission that
23 class certification is proper under the more stringent standard applied for litigation and that
24 evidence of this limited stipulation for settlement purposes only will not be admissible for any
25 purpose in this or any other proceeding.

26 **C. Terms of Settlement.**

27 1. The financial terms of the settlement are as follows:
28

1 (a) **Maximum Settlement Amount:** The Parties agree to settle this Action for
2 a Maximum Settlement Amount of Two Hundred Thousand Dollars (\$200,000.00) (the "Maximum
3 Settlement Amount"), subject to any increase based on the escalator provision in paragraph H(16)
4 herein. The Maximum Settlement Amount includes the attorneys' fees of Class Counsel; litigation
5 costs and expenses (which includes, without limitation, all such fees and costs incurred to date, as
6 well as such fees and costs to be incurred in documenting the settlement, providing any notices
7 required as part of the settlement, securing Court approval of the settlement, and obtaining
8 judgment in the Action); the Enhancement Payment to the Class Representative, as approved by
9 the Court; the PAGA payment to the California Labor and Workforce Development Agency
10 ("LWDA"); all employer payroll tax obligations due on wage payments made from the Net
11 Settlement Proceeds; and all costs of administration, including, without limitation, settlement
12 administration fees and expenses.

13 (b) **Net Settlement Proceeds:** "Net Settlement Proceeds" is defined as the
14 Maximum Settlement Amount less the amounts approved and awarded by the Court for: attorneys'
15 fees and documented litigation costs and expenses incurred or advanced by Class Counsel; the
16 Enhancement Payment to the Class Representative; the payment to the LWDA pursuant to PAGA;
17 and the costs of administering the settlement.

18 (c) **Individual Payment Amounts:** "Individual Payment Amount" means the
19 portion of the Net Settlement Proceeds distributable to each Class Member who participates in the
20 Settlement (i.e., who does not submit a valid request for exclusion form). The Individual Payment
21 Amounts will be calculated by dividing the Net Settlement Proceeds by the total weeks worked by
22 all participating Class Members in California in a non-exempt position during the Class Period,
23 which will yield the applicable weekly rate. The weekly rate shall be multiplied by the number of
24 weeks each individual participating Class Member worked for Defendant in California in a non-
25 exempt position during the Class Period to yield their Individual Payment Amount. Each
26 Participating Settlement Class Member who does not opt out will receive an Individual Payment
27 Amount equal to their individual weeks worked in California in a non-exempt position during the
28 Class Period multiplied by the weekly rate.

1 i. For tax purposes, each Individual Payment Amount will be
2 apportioned (a) 20% as wages (reported on an IRS Form W-2 and subject to applicable
3 withholdings); (b) 55% to penalties (reported on an IRS Form 1099); and (c) 25% to interest
4 (reported on an IRS Form 1099). All Individual Payment Amounts paid to Class Members will be
5 subject to any applicable wage garnishments, liens, or other legally mandated treatment as required
6 by law.

7 (d) **PAGA Payment:** The Parties agree that Ten Thousand Dollars
8 (\$10,000.00) shall be allocated to settle Plaintiff's claims brought pursuant to PAGA. Of this
9 amount, Seventy-Five percent (75%), or Seven Thousand Five Hundred Dollars (\$7,500.00), shall
10 be paid to the LWDA, and the remaining Twenty-Five percent (25%), or Two Thousand Five
11 Hundred Dollars (\$2,500.00), shall be included in the Net Settlement Proceeds for payment to Class
12 Members.

13 (e) **Enhancement Payment to Class Representative:** The amount awarded to
14 the Class Representative as an Enhancement Payment will be set by the Court in its discretion, not
15 to exceed Ten Thousand Dollars (\$10,000.00). This amount will be deducted from the Maximum
16 Settlement Amount. An IRS Form 1099 will be issued to the Class Representative for his
17 Enhancement Payment. Defendant agrees not to dispute or otherwise object to the Enhancement
18 Payment if Plaintiff requests \$10,000 or less.

19 (f) **Attorneys' Fees:** An award to Class Counsel of attorneys' fees will be
20 deducted from the Maximum Settlement Amount in an amount to be set by the Court taking into
21 account the settlement award that has been made available for the Settlement Class by the efforts
22 of Class Counsel. The amount awarded shall not exceed 40% of the Maximum Settlement Amount
23 (i.e., Eighty Thousand Dollars (\$80,000.00)). An IRS Form 1099 will be issued to Class Counsel
24 with respect to its award of attorneys' fees. Defendant agrees not to dispute or otherwise object to
25 the attorneys' fee award requested by Class Counsel so long as the request does not exceed 40% of
26 the Maximum Settlement Amount.

27 (g) **Attorneys' Costs and Expenses:** Class Counsel will be reimbursed from
28 the Maximum Settlement Amount in an amount to be set by the Court for documented out-of-

SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

1 pocket litigation costs and expenses, not to exceed Twelve Thousand Dollars (\$12,000.00). An
2 IRS Form 1099 will be issued to Class Counsel with respect to its award of costs and expenses.
3 Defendant agrees not to dispute or otherwise object to the attorneys' cost award requested by Class
4 Counsel so long as the request does not exceed \$12,000.

5 (h) **Settlement Administration Costs:** The fees and other charges of the
6 Settlement Administrator to administer the Settlement are expected to total no more than Five
7 Thousand Five Hundred Dollars (\$5,500.00), and will be paid from the Maximum Settlement
8 Amount. These fees shall include any costs associated with the required tax reporting on any
9 Individual Payment Amounts, and the issuing of any and all W-2 and 1099 forms. Subject to
10 approval of the Court, the Parties have agreed that Phoenix Class Action Administration Solutions
11 will serve as a neutral third-party claims' administrator ("Settlement Administrator") to perform all
12 acts related to providing notice to the Settlement Class. Settlement Administrator shall be
13 responsible for (a) printing and distributing the Court-approved Notice of Class Action Settlement
14 ("Class Notice") to all Class Members; (b) administering the settlement; (c) processing exclusions,
15 objections, and field inquiries from Class Members; (d) resolving disputes; (e) calculating the
16 Individual Payment Amount each Participating Class Members is eligible to receive; (f) distributing
17 the Maximum Settlement Amount as directed by the Court and set forth herein; (g) tax reporting;
18 (h) providing necessary weekly status reports; and (i) other duties and responsibilities set forth
19 herein.

20 (i) **No Warranty by Defendant:** Plaintiff understands and agrees that
21 Defendant is not providing Plaintiff or Class Members with tax or legal advice and that Defendant
22 makes no representations regarding tax obligations or consequences, if any, related to this
23 Settlement Agreement.

24 **D. Release of Claims.**

25 I. Upon the Effective Date, and subject to Defendant's full payment of the Maximum
26 Settlement Amount, Plaintiff and all Settlement Class Members who do not timely opt-out will be
27 deemed to have fully released and discharged Defendant Kainth Hospitality, Inc. and its present
28 and former officers, directors, members, owners, managers, shareholders, agents, operators,

SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

1 partners, joint ventures, subsidiaries, parent companies, related entities, consultants, attorneys,
2 successors or assignees ("Released Parties") from any and all Released Claims which arose during
3 their employment in a non-exempt position in California during the Class Period.

4 2. The "Released Claims" are all claims and allegations made or that could have been
5 made in the Action based on the First Amended Complaint, including all claims for unpaid meal
6 and rest period premium wages, inaccurate wage statements, waiting time penalties, suitable
7 seating, and late payment of wages at the separation of employment, including claims arising under
8 Labor Code sections 201-203, 226(a) and (e), 226.3, 226.7, 510, 512, 558, 1194, and 1198, the
9 applicable Industrial Wage Commission Wage Orders, and PAGA and Business and Professions
10 Code section 17200 as they relate to the underlying Labor Code claims referenced above.

11 **E. Notice and Exclusion Process.**

12 1. Within ten (10) calendar days after entry of the order granting preliminary approval
13 of this Settlement, Defendant shall provide to the Settlement Administrator a list of all Class
14 Members, including their last known addresses, telephone numbers, social security numbers, and
15 their dates of employment in a non-exempt position in California during the Class Period
16 ("Settlement Class Information"). The names, addresses, telephone numbers, and Social Security
17 numbers will only be disclosed to the Settlement Administrator and not to Plaintiff's Counsel. All
18 information provided to the Settlement Administrator will be marked CONFIDENTIAL. This
19 information shall be kept confidential and shall not be disclosed, either in writing or orally, by the
20 Settlement Administrator. The Settlement Administrator shall use due care with respect to the
21 storage, custody, use, and/or dissemination of the confidential information. Such information must
22 be stored in a secure fashion and all persons who access the data must agree to keep it confidential.

23 2. A notice of pendency of class action, proposed settlement, and hearing date for
24 Court approval ("Class Notice") in the form attached hereto as **Exhibit 1**, and as approved by the
25 Court, shall be sent by the Settlement Administrator to the Class Members, by first class mail,
26 within twenty (20) calendar days after entry of the order granting preliminary approval. Attached
27 to the Class Notice will be a request for exclusion form ("Request for Exclusion Form") in the form
28 attached hereto as **Exhibit 2**.

1 3. The Settlement Administrator will make reasonable efforts to ensure that the Class
2 Notice and Request for Exclusion Form are sent to all Class Members. It will conclusively be
3 presumed that if an envelope has not been returned within thirty (30) days of the mailing that the
4 Class Member received the Class Notice. In the event of returned or non-deliverable notices, the
5 Settlement Administrator will make reasonable efforts to locate Class Members and re-send the
6 notices.

7 4. Each Class Member will be fully advised of the settlement, the ability to object to
8 the settlement, and the ability to submit a Request for Exclusion Form. The Class Notice will
9 inform the Class Members of the Court-established deadlines for filing objections and a Request
10 for Exclusion Form.

11 5. Each Class Notice will contain personalized information setting forth the number of
12 weeks each Class Member worked for Defendant in California in a non-exempt position during the
13 Class Period and their estimated Individual Payment Amount. To the extent a Class Member
14 disputes any of the information listed on his or her Class Notice, the Class Member may produce
15 evidence to the Settlement Administrator showing such information the Class Member contends
16 should be reflected in the Class Notice. Defendant's records will be presumed determinative,
17 however, and the Settlement Administrator's decision on these matters will be final. The Class
18 Notice will also set forth IRS W-9 information if required.

19 6. All Class Members who do not submit a Request for Exclusion Form will be eligible
20 to receive an Individual Payment Amount which shall be mailed to them if and when the Effective
21 Date occurs.

22 7. In order to elect not to participate in the Settlement, a Class Member must submit a
23 Request for Exclusion Form, and mail it to the Settlement Administrator no later than forty-five
24 (45) calendar days after the initial mailing of the Class Notice and Request for Exclusion Form to
25 Class Members, unless the Court requires a longer period, in which case the Court ordered
26 exclusion period will apply. The date of the postmark shall be deemed the date of submission. The
27 timeliness of submitted Request for Exclusion Forms will be determined by valid postmark. If the
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1 45th day falls on a Sunday or federal holiday, the time to request exclusion will be extended to the
2 next day on which the U.S. Postal Service is open.

3 8. The deadline for submission of Exclusion Forms shall be extended once by 30 days
4 for those Class Members whose Class Notice and Exclusion Form are returned as "undeliverable."
5 If the 30th day falls on a Sunday or federal holiday, this deadline will be extended to the next day
6 on which the U.S. Postal Service is open.

7 9. The Settlement Administrator will search for additional addresses on returned mail
8 and will re-mail the Class Notice and Exclusion Form to an updated address (if any) within 15 days
9 of receipt of the returned mail. The 30-day extended time limit will run from the date of the second
10 mailing for those Class Members. To the extent a Class Notice from the initial mailing is not
11 returned within 30 days, it shall be deemed to have been sent to a valid address even if it is thereafter
12 returned. It is the intent of the Parties that reasonable, but not extraordinary, efforts be used to
13 locate Class Members. If the initial Class Notice and Request for Exclusion Form is returned, the
14 Settlement Administrator will search using the social security number for a more current address.
15 If no address is found within 10 days, no further action is required.

16 10. The Settlement Administrator will notify the Parties of the total number of valid
17 Request for Exclusion Forms within ten (10) calendar days after the deadline for receipt of the
18 Request for Exclusion Forms (fifty-five (55) days following the initial mailing of the Class Notice
19 and Request for Exclusion Forms to Class Members).

20 11. In order to object to the settlement, a Class Member must mail his or her objection
21 to the Settlement Administrator no later than forty-five (45) calendar days after the mailing of the
22 Class Notice and Request for Exclusion Form to Class Members, unless the Court requires a longer
23 period, in which case the Court ordered objection period will apply. If the 45th day falls on a
24 Sunday or federal holiday, the time to object to the settlement will be extended to the next day on
25 which the U.S. Postal Service is open. Under no circumstances shall the objection deadline be
26 extended for any reason.

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12. The Settlement Administrator shall provide to the Parties, at least twelve (12) calendar days prior to the final approval hearing, or as otherwise ordered by the Court, a declaration of due diligence and proof of mailing with regard to the mailing of the Class Notice and Request for Exclusion Forms. The Settlement Administrator will also provide to the Parties, at least twelve (12) calendar days prior to the final approval hearing, or as otherwise ordered by the Court, a report listing the amount of all payments to be made to each Class Member without names or personal identifying information.

13. Defendant shall deposit the Maximum Settlement Amount with the Settlement Administrator within (10) calendar days after the Effective Date. The effective date of this Settlement Agreement ("Effective Date") is the later of (a) final approval by the Court; or (b) if there are objections to the settlement which are not withdrawn, and if an appeal, review, or writ is not sought from the judgment, the sixty-first (61st) day after service of notice of entry of judgment; or (c) the dismissal or denial of an appeal, review, or writ, if the Judgment is no longer subject to judicial review.

14. The Settlement Administrator shall disburse the Maximum Settlement Amount within ten (10) calendar days after its receipt thereof. Class Members must cash each of their Individual Settlement Payment checks within one hundred eighty (180) calendar days after they are mailed by the Settlement Administrator. The value of any checks uncashed more than one hundred eighty (180) days after mailing shall be paid to the State of California State Controller's Office, to be held in the name of the respective Class Member.

F. Duties of the Parties Prior to Court Approval.

1. Promptly after execution of this Settlement Agreement, Plaintiff shall move the Court for preliminary approval of this settlement and entry of an order accomplishing the following:

- (a) scheduling a fairness hearing on the question of whether the proposed settlement should be finally approved as fair, reasonable and adequate as to the Class Members;
- (b) approving as to form and content the proposed Class Notice;

- 1 (c) approving as to form and content the proposed Request for Exclusion
2 Form;
- 3 (d) preliminarily certifying the Settlement Class for purposes of settlement;
- 4 (e) preliminarily approving the PAGA payment of \$7,500 to the LWDA;
- 5 (f) preliminarily setting attorneys' fees and costs payable to Class Counsel;
- 6 (g) preliminarily setting the enhancement payment to the Class Representative;
- 7 (h) preliminarily approving Phoenix Class Action Administration Solutions as
8 the Settlement Administrator and its estimated fees and costs of \$5,500; and
- 9 (i) permitting Plaintiff to file the First Amended Complaint.

10 The Parties shall submit this Settlement Agreement to the Court and the LWDA in support
11 of Plaintiff's unopposed motion for preliminary approval of the settlement.

12 **G. Duties of the Parties in Connection with and Following Final Court Approval.**

13 1. In connection with the hearing on final approval of the settlement provided for in
14 this Settlement Agreement, the Parties will submit a proposed final order no later than ten (10)
15 calendar days prior to the scheduled date of the hearing on final approval (unless otherwise ordered
16 by the Court):

17 (a) approving the settlement, adjudging the terms thereof to be fair, reasonable
18 and adequate, and directing consummation of its terms and provisions;

19 (b) approving Class Counsel's application for an award of attorneys' fees and
20 reimbursement of documented litigation costs and expenses, the Enhancement Payment to the
21 Class Representative, the PAGA Payment to the LWDA, and the costs of administering the
22 settlement; and

23 (c) entering judgment in this Action in accordance with this Stipulation,
24 pursuant to Cal. Rules of Court, Rule 3.769(h).

25 2. Class Counsel shall file an application for attorneys' fees and reimbursement of
26 costs and expenses no later than ten (10) calendar days prior to the scheduled date of the hearing
27 on final approval (unless otherwise ordered by the Court).

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1 **H. Miscellaneous Provisions:**

2 1. **Voiding the Agreement.**

3 A failure of the Court to approve any material condition of this Settlement Agreement which
4 effects “a fundamental change of the Parties’ settlement,” or if the settlement is reversed or
5 materially modified on appellate review, shall render the entire Stipulation of Settlement voidable
6 and unenforceable as to all Parties herein at the option of any Party.

7 2. **Parties’ Authority.**

8 The signatories hereto represent that they are fully authorized to enter into this Settlement
9 Agreement and bind the Parties hereto to the terms and conditions hereof.

10 3. **Mutual Full Cooperation.**

11 The Parties agree to fully cooperate with each other to accomplish the terms of this
12 Stipulation of Settlement, including but not limited to, execution of such documents and such other
13 action as may reasonably be necessary to implement the terms of this Settlement Agreement. The
14 Parties to this Settlement Agreement shall use their best efforts, including all efforts contemplated
15 by this Settlement Agreement and any other efforts that may become necessary by order of the
16 Court, or otherwise, to effectuate this Settlement Agreement and the terms set forth herein. As
17 soon as practicable after execution of this Settlement Agreement, Class Counsel shall, with the
18 assistance and cooperation of Defendant and its counsel, take all necessary steps to secure the
19 Court’s preliminary and final approval of the settlement.

20 4. **No Prior Assignments.**

21 The Parties hereto represent, covenant, and warrant that they have not directly or indirectly,
22 assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or
23 entity any portion of any liability, claim, demand, action, cause of action or rights released and
24 discharged by this Stipulation of Settlement.

25 5. **No Admission.**

26 Nothing contained herein, nor the consummation of this Stipulation of Settlement, is to be
27 construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part
28 of Defendant or any of the other Released Parties. Each of the Parties hereto has entered into this

SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

1 Settlement Agreement with the intention of avoiding further disputes and litigation with the
2 attendant inconvenience and expenses. This Settlement Agreement is a settlement document and
3 shall, pursuant to California Evidence Code section 1152 and/or Federal Rule of Evidence 408
4 and/or any other similar law, be inadmissible in evidence in any proceeding, except an action or
5 proceeding to approve the settlement, and/or interpret or enforce this Settlement Agreement.

6 **6. Construction.**

7 The Parties hereto agree that the terms and conditions of this Settlement Agreement are the
8 result of lengthy, intensive arms' length negotiations between the Parties and that this Settlement
9 Agreement shall not be construed in favor of or against any Party by reason of the extent to which
10 any Party or her or its counsel participated in the drafting of this Settlement Agreement.

11 **7. Captions and Interpretations.**

12 Paragraph titles or captions contained herein are inserted as a matter of convenience and for
13 reference, and in no way define, limit, extend, or describe the scope of this Settlement Agreement
14 or any provision hereof. Each term of this Settlement Agreement is contractual and not merely a
15 recital.

16 **8. Modification.**

17 This Settlement Agreement may not be changed, altered, or modified, except in writing and
18 signed by the Parties hereto, and approved by the Court. This Settlement Agreement may not be
19 discharged except by performance in accordance with its terms or by a writing signed by each of
20 the Parties hereto on their attorneys.

21 **9. Integration Clause.**

22 This Settlement Agreement contains the entire agreement between the Parties relating to
23 the settlement and transactions contemplated hereby, and all prior or contemporaneous agreements,
24 understandings, representations, and statements, whether oral or written and whether by a Party or
25 such Party's legal counsel, are merged herein. No rights hereunder may be waived except in
26 writing.

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1 10. **Binding on Assigns.**

2 This Settlement Agreement shall be binding upon and inure to the benefit of the Parties
3 hereto and their respective heirs, trustees, executors, administrators, successors, and assigns.

4 11. **Governing Law.**

5 All terms of this Settlement Agreement and its exhibits shall be governed by and interpreted
6 according to the laws of the State of California, without giving effect to any conflict of law
7 principles or choice of law principles.

8 12. **Signatures of All Class Members Unnecessary to be Binding.**

9 It is agreed that, because the members of the Settlement Class are numerous, it is impossible
10 or impractical to have each Class Member execute this Settlement Agreement. The Class Notice,
11 attached hereto as Exhibit 1, will advise all Class Members of the binding nature of the release
12 provided herein and such shall have the same force and effect as if this Settlement Agreement was
13 executed by each Class Member.

14 13. **Counterparts.**

15 This Settlement Agreement may be executed in counterparts, and when each Party has
16 signed and delivered at least one such counterpart, each counterpart shall be deemed an original,
17 and when taken together with other signed counterparts, shall constitute one fully-signed Settlement
18 Agreement, which shall be binding upon and effective as to all Parties.

19 14. **Confidentiality**

20 Until Plaintiff files his motion for preliminary approval of the class action settlement, the
21 Parties and their Counsel agree to maintain confidentiality as to the Settlement, including the
22 amount and terms of the Settlement, except as to spouses, tax or financial advisors, attorneys, taxing
23 agencies, or as otherwise required by law.

24 15. **No Publicity**

25 Plaintiff and her Counsel will not contact the media about the settlement or respond to any
26 inquiries by the media regarding the Settlement, other than to state that the matter was amicably
27 settled, and the Court did not find Defendant liable. Plaintiff and her Counsel also will not post
28 any information about the settlement on social media or their firms' websites.

SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

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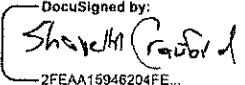
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March 28, 2022
Dated: March _____, 2022

By: 
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SHAVELLA CRAWFORD
Plaintiff and Class Representative

Dated: March _____, 2022

KAINTH HOSPITALITY INC.

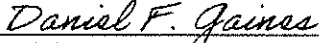
By: _____

Its: _____

APPROVED AS TO FORM AND CONTENT:

Dated: March 28, 2022

GAINES & GAINES, APLC

By: 
Daniel F. Gaines, Esq.
Alex P. Katofsky, Esq.
Counsel for Plaintiff and Class
Representative

Dated: March _____, 2022

SAGASER, WATKINS & WIELAND, PC

By: _____
Paul J. Bauer, Esq.
Charles P. Hamamjian, Esq.
Counsel for Defendant

1 Dated: March _____, 2022

By:

SHAVELLA CRAWFORD
Plaintiff and Class Representative

2
3
4 April 4th
Dated: ~~March~~ _____, 2022

KAINTH HOSPITALITY INC.

By: Edwin K. Anthony
Its: President

8
9 **APPROVED AS TO FORM AND CONTENT:**

10 Dated: March _____, 2022

GAINES & GAINES, APLC

11 By: _____
12 Daniel F. Gaines, Esq.
13 Alex P. Katofsky, Esq.
14 Counsel for Plaintiff and Class
15 Representative

16 April 4
Dated: ~~March~~ _____, 2022

SAGASER, WATKINS & WIELAND, PC

17 By: [Signature]
18 Paul J. Bauer, Esq.
19 Charles P. Hamamjian, Esq.
20 Counsel for Defendant

EXHIBIT 1

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF MERCED**

SHAVELLA CRAWFORD, on behalf of herself
and all "aggrieved employees" pursuant to Labor
Code § 2698 et seq.

Plaintiff,

v.

KAINTH HOSPITALITY INC., a California
corporation, and DOES 1 through 10, inclusive,

Defendants.

CASE NO: 21CV-01252

*Assigned to the Honorable Brian McCabe,
Dept. 8*

**NOTICE OF PENDENCY OF PROPOSED
CLASS ACTION SETTLEMENT AND
FINAL HEARING**

**YOU MAY BE ENTITLED TO RECEIVE MONEY FROM A SETTLEMENT
PLEASE READ THIS NOTICE CAREFULLY. YOUR RIGHTS MAY BE AFFECTED.**

A California court authorized this notice. This is not a solicitation from a lawyer.

- A settlement will provide \$200,000 to pay claims to all individuals who worked for Kainth Hospitality Inc. a California corporation, and/or any subsidiaries or affiliated companies ("Defendant") as a non-exempt employee in California at any time between April 14, 2017 through February 17, 2022.
- The settlement resolves a lawsuit alleging that Defendant failed to provide compliant meal and rest periods or premium compensation in lieu thereof; timely issue final wages upon separation of employment; and issue accurate and complete itemized wage statements. The Settlement avoids costs and risks of continuing the lawsuit; pays money to employees; and releases Defendant from liability from the claims asserted in this lawsuit.
- Lawyers for the employees will ask the Court to award them up to \$80,000 as attorneys' fees and \$12,000 as expenses for investigating the facts, litigating the case, and negotiating the settlement. This will be paid from the settlement amount.
- Defendant denies liability and the Parties disagree on how much money could have been awarded if employees won at trial.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
Do Nothing	You do not need to take any action if you wish to receive your settlement payment. If the settlement is approved by the Court, you will automatically be mailed a settlement check at the address on file with the Settlement Administrator. If your address has changed, you must notify the Settlement Administrator of your new address. In exchange for the settlement payment, you will release claims against the Defendant, as detailed below.
Exclude Yourself	To exclude yourself, you must send a written Request for Exclusion to the Settlement Administrator by the applicable deadline, as detailed below. If you request exclusion, you may receive no money from the Settlement . This is the only option that allows you to ever be part of any other lawsuit against Kainth Hospitality Inc. a California corporation, and/or any subsidiaries or affiliated companies, about the legal claims that were brought in this case.
Object	Write to the Settlement Administrator about why you don't like the settlement by the applicable deadline, as detailed below, and/or appear at the Final Approval Hearing to make an oral objection.
Go to a Hearing	Ask to speak in Court about the fairness of the settlement, as detailed below.

WHY DID YOU RECEIVE THIS NOTICE?

This notice explains a proposed settlement of a class action lawsuit and informs you of your legal rights under that proposed settlement. You are receiving this notice because you may be a member of the Class on whose behalf this class action lawsuit has been brought.

WHAT IS THIS LAWSUIT ABOUT?

On April 14, 2021, Plaintiff Shavella Crawford ("Plaintiff"), a former employee of Kainth Hospitality Inc., filed this lawsuit in the Merced County Superior Court. The lawsuit alleges violations of the California Labor Code and California Business and Professions Code. The lawsuit seeks to certify a class of all current and former non-exempt California employees of Defendant at any time between April 14, 2017 through February 17, 2022 ("Class Period"). Specifically, the lawsuit alleges that members of the Class were not provided all compliant meal and rest periods or premium compensation in lieu thereof; were not timely issued final wages upon separation of employment; and were not issued accurate and complete itemized wage statements. The Settlement seeks recovery of wages, damages, interest, statutory and civil penalties, restitution, attorneys' fees and costs. Defendant denies all of the material allegations in the lawsuit and denies that it owes Class Members any remedies. The Court has not made a ruling on the merits of the case.

The lawyers for the parties are:

Plaintiff's Attorneys
Daniel F. Gaines, Esq.
Alex P. Katofsky, Esq.
Gaines & Gaines, APLC
4550 E. Thousand Oaks Blvd., Suite 100
Westlake Village, CA 91362
Phone: (866) 550-0855

Defendant's Attorneys
Paul J. Bauer, Esq.
Charles P. Hamamjian, Esq.
Sagaser, Watkins & Wieland, PC
5260 North Palm Avenue, Suite 400
Fresno, CA 93704

SUMMARY OF THE SETTLEMENT

A. Why is there a Settlement?

The Court did not decide in favor of Plaintiff or Defendant. Plaintiff believes she would have prevailed on her claims at a trial. Defendant does not believe that Plaintiff would have won anything from a trial. There has been no trial. Instead, both sides agreed to a settlement, which is memorialized in the Settlement Agreement and Release of Claims ("Settlement" or "Settlement Agreement"), in order to avoid the further costs, risks, and uncertainty of a trial. Plaintiff and Plaintiff's Attorneys believe the settlement is fair, reasonable, adequate, and in the best interests of all Class Members.

B. Who is in the Settlement Class?

The Settlement encompasses a class composed of all individuals who worked for Kainth Hospitality Inc. as a non-exempt employee in California at any time between April 14, 2017 through February 17, 2022.

C. What does the Settlement provide?

1. Maximum Settlement Amount.

The Settlement provides that Defendant will pay \$200,000 (the "Maximum Settlement Amount") to settle the lawsuit.

2. Net Settlement Proceeds.

The "Net Settlement Proceeds" is the portion of the Maximum Settlement Amount that will be available for distribution to Class Members who do not submit timely and valid requests for exclusion in exchange for the release of their class claims. The Net Settlement Proceeds amount is the Maximum Settlement Amount less the following amounts that will be requested at the Final Approval Hearing and are subject to comment or objection by Participating Class Members. The Court will fix these amounts at the Final Approval Hearing.

(a) **Class Counsel's Attorneys' Fees** in an amount set by the Court, not to exceed \$80,000;

(b) **Class Counsel's Documented Litigation Costs/Expenses** in an amount set by the Court, not to exceed \$12,000;

(c) **Service Payments to the Class Representative** in an amount set by the Court, not to exceed \$10,000 for her service in the lawsuit;

(d) **Settlement Administration Costs** which are currently estimated to not exceed \$5,500.00, for administering the settlement; and

(e) **PAGA Payment** in the total amount of \$10,000 for the settlement of claims arising under the California Private Attorneys General Act ("PAGA"). 75% or \$7,500, shall be paid to the California Labor and Workforce Development Agency ("LWDA"). The remaining 25% or \$2,500, shall be included in the Net Settlement Proceeds for payment to Class Members.

3. Individual Payment Amount.

Your share of the Net Settlement Proceeds will be determined by the formula detailed in Section E, below.

D. What Are You Giving Up To Get A Payment Or Stay In The Class?

Upon the Effective Date, and subject to Defendant's full payment of the Maximum Settlement Amount, Plaintiff and all Settlement Class Members who do not timely opt-out will be deemed to have fully released and discharged Defendant Kainth Hospitality, Inc. and its present and former officers, directors, members, owners, managers, shareholders, agents, operators, partners, joint ventures, subsidiaries, parent companies, related entities, consultants, attorneys, successors or assignees ("Released Parties") from any and all Released Claims which arose during employment as a non-exempt employee in California during the Class Period.

The "Released Claims" are all claims and allegations made or that could have been made in the Action based on the First Amended Complaint, including all claims for unpaid meal and rest period premium wages, inaccurate wage statements, waiting time penalties, suitable seating, and late payment of wages at the separation of employment, including claims arising under Labor Code sections 201-203, 226(a) and (e), 226.3, 226.7, 510, 512, 558, 1194, and 1198, the applicable Industrial Wage Commission Wage Orders, and PAGA and Business and Professions Code section 17200 as they relate to the underlying Labor Code claims referenced above.

E. How Is My Share Of The Settlement Calculated?

Each participating Class Member (those who do not opt out of the Settlement) shall receive an "Individual Payment Amount," which is distributable to each Class Member who participates in the Settlement (i.e., who does not submit a valid request for exclusion form).

The Individual Payment Amounts will be calculated by dividing the Net Settlement Proceeds by the total weeks worked by all participating Class Members in California in a non-exempt position during the Class Period, which will yield the applicable weekly rate. The weekly rate shall be multiplied by the number of weeks each individual participating Class Member worked for Defendant in California in a non-exempt position during the Class Period to yield their Individual Payment Amount. Each Participating Settlement Class Member who does not opt out will receive an Individual Payment Amount equal to their individual weeks worked in California in a non-exempt position during the Class Period multiplied by the weekly rate.

For tax purposes, each Individual Payment Amount will be apportioned (a) 20% as wages (reported on an IRS Form W-2 and subject to applicable withholdings); (b) 55% to penalties (reported on an IRS Form 1099); and (c) 25% to interest (reported on an IRS Form 1099). All Individual Payment Amounts paid to Class Members will be subject to any applicable wage garnishments, liens, or other legally mandated treatment as required by law.

According to the records of Defendant, you worked [] weeks while employed as a non-exempt employee in California from April 14, 2017 through February 17, 2022. Based on these weeks worked, you are entitled to an Individual Payment Amount of approximately \$[]. This amount is subject to change based on the final ruling of the Court.

Please be advised that the individual data above is presumed to be correct unless you submit documentation proving otherwise. If you disagree with the data, please submit an explanation and evidence in support of your position to the Settlement Administrator no later than , 2022. In the event of a dispute, the Settlement Administrator will resolve the challenge with input from the Defendant and will make a final and binding determination without a hearing or right of appeal by you.

THE SETTLEMENT HEARING

The Court will conduct a final fairness hearing regarding the proposed settlement (the "Final Settlement Hearing") on , at 8:30 a.m., in the Courtroom of Judge Brian McCabe of the Merced County Superior Court, Department 8, located at 627 W 21st Street, Merced, California 95340. The Court will determine: (i) whether the lawsuit should finally be certified as a class action for settlement purposes; (ii) whether the settlement should be given the Court's final approval as fair, reasonable, adequate and in the best interests of the Settlement Class Members; (iii) whether the Settlement Class Members should be bound by the terms of the settlement; (iv) the amount of the attorneys' fees and costs to be awarded to Plaintiff's Attorneys; and (v) the amount that should be awarded to Plaintiff as a service payment. At the Final Settlement Hearing, the Court will hear all properly filed objections, as well as arguments for and against the proposed settlement. You have a right to attend this hearing, but you are not required to do so. You also have the right to hire an attorney to represent you, or to enter an appearance and represent yourself.

WHAT ARE YOUR OPTIONS?

- **OPTION 1 – DO NOTHING AND PARTICIPATE IN THE SETTLEMENT**

IF YOU TAKE NO ACTION IN RESPONSE TO THIS NOTICE, YOU WILL AUTOMATICALLY RECEIVE YOUR SHARE OF THE SETTLEMENT IF IT IS APPROVED BY THE COURT. YOU ARE NEVER REQUIRED TO GO TO COURT OR PAY ANYTHING TO THE LAWYERS IN THIS CASE. If you move, you must update your address with the Settlement Administrator. If you disagree with pre-printed data indicated in section E above, you must submit an explanation and/or documentation to the Settlement Administrator to justify your position, postmarked no later than . The Settlement Administrator's address is [Settlement Administrator address].

- **OPTION 2 – OBJECT TO THE SETTLEMENT**

If you wish to remain a Settlement Class Member, but you object to the proposed settlement (or any of its terms) and wish the Court to consider your objection at the Final Settlement Hearing, you may object to the proposed settlement in writing. You may also appear at the Final Approval Hearing, either in person or through an attorney at your own expense. All written objections, supporting papers, and/or notices of intent to appear at the Final Approval Hearing must clearly identify the case name and number and be mailed to the Settlement Administrator at [Settlement Administrator address]. Written objections must be postmarked no later than .

• **OPTION 3 – EXCLUDE YOURSELF FROM THE SETTLEMENT**

You have a right to exclude yourself (“opt out”) from the Settlement Class, but if you choose to do so, you will not receive any benefits from the proposed settlement. You will not be bound by a judgment in this case and you will have the right to file your own lawsuit against the Defendant and pursue your own claims in a separate suit. You can opt out of the Class by completely filling out and mailing the enclosed Request for Exclusion Form to the Settlement Administrator at the above-stated address, such that it is postmarked no later than .

ARE THERE MORE DETAILS ABOUT THE SETTLEMENT?

The above is a summary of the basic terms of the settlement. For the precise terms and conditions of the settlement, you should review the detailed “Settlement Agreement and Release of Claims” which is on file with the Clerk of the Court. The pleadings and other records in the Lawsuit may be examined at any time during regular business hours at the Office of the Clerk of the Merced County Superior Court, located at 627 W 21st Street, Merced, California 95340.

IF YOU NEED MORE INFORMATION OR HAVE ANY QUESTIONS, you may contact the Settlement Administrator at [address], [telephone number].

PLEASE DO NOT TELEPHONE THE COURT FOR INFORMATION ABOUT THIS SETTLEMENT OR THE CLAIMS PROCESS.

**BY ORDER OF THE SUPERIOR COURT OF
THE STATE OF CALIFORNIA**

EXHIBIT 2

REQUEST FOR EXCLUSION

ONLY COMPLETE THIS REQUEST FOR EXCLUSION FORM IF YOU WANT TO OPT OUT OF (NOT PARTICIPATE IN) THE SETTLEMENT OF THE ACTION KNOWN AS *Shavella Crawford v. Kainth Hospitality Inc., and Does 1 Through 10, Inclusive, Defendants* Merced County Superior Court, Case No. 21CV-01252. **IF YOU OPT OUT OF THE SETTLEMENT, YOU WILL NOT RECEIVE ANY PORTION OF THE SETTLEMENT AMOUNT.**

I confirm that I was employed by Defendant Kainth Hospitality Inc. as a non-exempt employee in California between April 14, 2017 through February 17, 2022.

I do not wish to receive any payment under the terms of the proposed class action settlement or to otherwise participate in the proposed settlement.

Date: _____

Signature: _____

Print Name: _____

Residence Street Address: _____

City, State and Zip Code: _____

IN ORDER TO BE VALID, THIS REQUEST FOR EXCLUSION FORM MUST BE COMPLETED, SIGNED, MAILED BY FIRST CLASS MAIL, AND POSTMARKED ON OR BEFORE **[45 days after mailing of Notice]**. Send this signed request for exclusion form to the Settlement Administrator:

Kainth Hospitality Inc. Claims Administrator
c/o Phoenix Class Action Administration Solutions

EXHIBIT 3

DANIEL F. GAINES, ESQ. SBN 251488
daniel@gaineslawfirm.com
ALEX P. KATOFISKY, ESQ. SBN 202754
alex@gaineslawfirm.com
EVAN S. GAINES, ESQ. SBN 287668
evan@gaineslawfirm.com
GAINES & GAINES, APLC
27200 Agoura Rd., Suite 101
Calabasas, CA 91301
Telephone: (818) 703-8985
Facsimile: (818) 703-8984

Attorneys for Plaintiff Shavella Crawford, on behalf of herself and on behalf of all similarly situated individuals and all "aggrieved employees" pursuant to Labor Code § 2698 *et seq.*

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF MERCED**

SHAVELLA CRAWFORD, on behalf of
herself and all "aggrieved employees"
pursuant to Labor Code § 2698 *et seq.*,

Plaintiff,

v.

KAINTH HOSPITALITY INC., a California
corporation, and DOES 1 through 10,
inclusive,

Defendants.

CASE NO: 21CV-01252

Assigned to the Hon. Brian McCabe, Dept. 8

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT FOR:**

**1. FAILURE TO PROVIDE COMPLIANT
REST PERIODS OR COMPENSATION
IN LIEU THEREOF (LABOR CODE §
226.7; IWC WAGE ORDER 5-2001)**

**2. FAILURE TO PROVIDE COMPLIANT
MEAL PERIODS OR COMPENSATION
IN LIEU THEREOF (LABOR CODE §§
226.7, 510, 512, AND 1194; IWC WAGE
ORDER 5-2001)**

**3. FAILURE TO COMPLY WITH
ITEMIZED EMPLOYEE WAGE
STATEMENT PROVISIONS (LABOR
CODE § 226(a))**

**4. FAILURE TO TIMELY PAY WAGES
DUE AT SEPARATION OF
EMPLOYMENT (LABOR CODE §§ 201-
203)**

**5. VIOLATION OF BUSINESS AND
PROFESSIONS CODE § 17200 ET SEQ.**

**6. CIVIL PENALTIES PURSUANT TO
LABOR CODE § 2698 ET SEQ. FOR
VIOLATIONS OF LABOR CODE §§ 201,
202, 226(a), 226.7, 510, 512, 1194 AND 1198**

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**AND PURSUANT TO LABOR CODE §
2699(a) FOR VIOLATIONS OF LABOR
CODE §§ 226.3 AND 558**

DEMAND FOR JURY TRIAL

Complaint Filed: April 14, 2021

Plaintiff SHAVELLA CRAWFORD ("Plaintiff"), individually and on behalf of all similarly situated individuals (the "Class" or "Plaintiff Class"), on behalf of the general public, and as an "aggrieved employee" under the Labor Code Private Attorneys General Act of 2004, complains of Kainth Hospitality Inc., a California corporation, and any subsidiaries or affiliated companies (hereinafter collectively referred to as "Defendants"), and each of them, as follows:

I.

INTRODUCTION AND FACTUAL BACKGROUND

1. This is a Class Action and Representative Action, pursuant to Code of Civil Procedure § 382 and Labor Code § 2698 *et seq.*, on behalf of Plaintiff and all other non-exempt employees who work or formerly worked for Defendants within the State of California.

2. From April 14, 2017 through the present, Defendants have had a consistent policy of failing to provide legally compliant meal and rest periods or compensation in lieu thereof to Class Members (as defined below); provide suitable seating to Class Members; provide accurately itemized wage statements to Class Members; and to timely pay wages upon separation of employment to Class Members.

3. Plaintiff, on behalf of herself and the members of the Class, brings this action pursuant to Labor Code §§ 201, 202, 203, 226(a), 226.3, 226.7, 510, 512, 558, 1194, and 1198, seeking compensation for unpaid premium meal and rest period wages, statutory penalties, injunctive and other equitable relief, and reasonable attorneys' fees and costs.

4. Plaintiff, on behalf of herself and Class Members and pursuant to Business & Professions Code §§ 17200-17208, seeks injunctive relief, restitution, and disgorgement of all benefits Defendants enjoyed from their failure to pay all wages due to Class Members.

5. Plaintiff, on behalf of herself and all aggrieved employees pursuant to Labor Code §§ 2698 *et seq.*, seeks penalties for Defendants' various violations of the California Labor Code.

6. Venue is proper in this judicial district, pursuant to Code of Civil Procedure § 395 because Defendants employed Plaintiff and Class Members in Merced County, California.

II.

PARTIES

A. Plaintiff

7. Plaintiff SHAVELLA CRAWFORD was employed by Defendants from May 2007 through September 2020 as a non-exempt employee in Merced County, California.

8. During her work with Defendants, Plaintiff was:

- a. Willfully denied compliant rest periods or compensation in lieu thereof;
- b. Willfully denied compliant meal periods or compensation in lieu thereof;
- c. Willfully denied suitable seating;
- d. Willfully denied accurately itemized wage statements; and
- e. Denied the timely payment of wages upon separation of her employment.

B. Defendants

9. Defendant Kainth Hospitality Inc. is a California corporation that employed Plaintiff and Class Members throughout the State of California, including Merced County, California.

10. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants sued herein as DOES 1 to 10, inclusive, are currently unknown to Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants designated hereinafter as DOES when such identities become known.

11. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable to the other Defendants.

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12. The Defendants named herein as DOE 1 through DOE 10 are and were persons acting on behalf of, or acting jointly with, Defendants, who violated, or caused to be violated, one or more provisions of the California Labor Code as alleged herein.

III.

CLASS ACTION ALLEGATIONS

13. Plaintiff brings this action on behalf of herself, and all others similarly situated as a Class Action pursuant to § 382 of the Code of Civil Procedure. Plaintiff seeks to represent the following class composed of and defined as follows:

THE CLASS

All non-exempt California employees of Kainth Hospitality Inc. from April 14, 2017 through February 17, 2022.

14. Plaintiff reserves the right under Rule 3.765, California Rules of Court, to amend or modify these class descriptions with greater specificity or further division into subclasses or limitation to particular issues.

15. This action has been brought and may properly be maintained as a class action under the provisions of § 382 of the Code of Civil Procedure because there is a well-defined community of interest in the litigation and the proposed Class is easily ascertainable.

A. Numerosity

16. The potential members of the Class as defined are so numerous that joinder of all Class Members is impracticable. While the precise number of members of the Class has not been ascertained at this time, Plaintiff is informed and believes, and based thereon alleges, that Defendants currently employ, and during the relevant time periods employed, over 35 persons in the State of California who fall within the Class definition.

17. Accounting for employee turnover during the relevant period necessarily increases this number. Plaintiff alleges Defendants' employment records would provide information as to the number and location of members of the Class. Joinder of members of the Class is not practicable.

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1 **B. Commonality**

2 18. There are questions of law and fact common to the Class that predominate over any
3 questions affecting only individual Class Members. These common questions of law and fact include,
4 without limitation:

- 5 a. Whether Defendants failed to properly provide compliant rest periods or
6 compensation in lieu thereof to Plaintiff and Class Members, in violation of
7 Labor Code § 226.7 and IWC Wage Order 5-2001;
- 8 b. Whether Defendants failed to properly provide compliant meal periods or
9 compensation in lieu thereof to Plaintiff and Class Members, in violation of
10 Labor Code §§ 226.7, 510, 512 and 1194 and IWC Wage Order 5-2001;
- 11 c. Whether Defendants failed to provide Plaintiff and Class Members with
12 accurately itemized wage statements, in accordance with Labor Code § 226(a);
- 13 d. Whether Defendants failed to timely pay Plaintiff and Class Members all
14 wages due and owing at the separation of their employment, in violation of
15 Labor Code §§ 201-203; and
- 16 e. Whether Plaintiff and Class Members are entitled to equitable relief pursuant
17 to Business & Professions Code § 17200 *et seq.*

18 **C. Typicality**

19 19. The claims of the named Plaintiff are typical of the claims of members of the Class.
20 Plaintiff and members of the Class sustained injuries and damages arising out of and caused by
21 Defendants' common course of conduct in violation of laws, regulations that have the force and effect
22 of law, and statutes as alleged herein.

23 **D. Adequacy of Representation**

24 20. Plaintiff will fairly and adequately represent and protect the interests of members of
25 the Class. Counsel who represents Plaintiff are competent and experienced in litigating large
26 employment class actions.

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1 **E. Superiority of Class Action**

2 21. A class action is superior to other available means for the fair and efficient adjudication
3 of this controversy. Individual joinder of all proposed members of the Class is not practicable, and
4 questions of law and fact common to the proposed Class predominate over any questions affecting
5 only individual members of the proposed Class. Each member of the proposed Class has been
6 damaged and is entitled to recovery by reason of Defendants' illegal policies and/or practices.

7 22. Class action treatment will allow those similarly situated persons to litigate their
8 claims in the manner that is most efficient and economical for the parties and the judicial system.
9 Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this
10 action that would preclude its maintenance as a class action.

11 **IV.**

12 **CAUSES OF ACTION**

13 **FIRST CAUSE OF ACTION**

14 **PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS**

15 **FAILURE TO PROVIDE COMPLIANT REST PERIODS OR COMPENSATION IN LIEU**

16 **THEREOF**

17 **(LABOR CODE §§ 226.7 AND IWC WAGE ORDER 5-2001)**

18 23. Plaintiff incorporates paragraphs 1 through 22 of this Complaint as though fully set
19 forth herein.

20 24. Plaintiff and Class Members are entitled to one hour of pay for each day that
21 Defendants failed to properly provide one or more rest periods as set forth in Labor Code § 226.7 and
22 IWC Wage Order 5-2001.

23 25. Defendants failed to pay premium wages to Plaintiff and Class Members who were
24 denied rest periods, in violation of Labor Code § 226.7 and IWC Wage Order 5-2001. Plaintiff and
25 Class Members were routinely not authorized and unable to take an off-duty, 10-minute rest period
26 for every four (4) hours of work or major fraction thereof, but were not paid premium wages of one
27 hour's pay for each missed rest period. Plaintiff and Class Members were simply too busy to take
28

1 their rest periods or would be required to work through them. This violates Labor Code § 226.7 and
2 IWC Wage Order No. 5-2001.

3 26. Pursuant to Labor Code § 226.7 and IWC Wage Order 5-2001, Plaintiff seeks the
4 payment of all rest period compensation which she and Class Members are owed, according to proof.

5 Wherefore, Plaintiff and the Class she seeks to represent request relief as described below.

6 V.

7 **SECOND CAUSE OF ACTION**

8 **PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS**

9 **FAILURE TO PROVIDE COMPLIANT MEAL PERIODS OR COMPENSATION IN LIEU**
10 **THEREOF**

11 **(LABOR CODE §§ 226.7, 510, 512, AND 1194 AND IWC WAGE ORDER 5-2001)**

12 27. Plaintiff incorporates paragraphs 1 through 26 of this Complaint as though fully set
13 forth herein.

14 28. Plaintiff and Class Members are entitled to one hour of pay for each day that
15 Defendants failed to properly provide one or more compliant meal periods as set forth in Labor Code
16 §§ 226.7 and 512 and IWC Wage Order 5-2001.

17 29. Defendants failed to pay premium wages to Plaintiff and Class Members who were
18 denied meal periods, in violation of Labor Code §§ 226.7, 510, 512 and 1194 and IWC Wage Order
19 5-2001. Plaintiff and Class Members were routinely denied, and not authorized to take, an
20 uninterrupted, 30-minute meal period for every shift worked that exceeded five hours in duration, and
21 a second meal period when they worked shifts greater than ten hours, but were not paid premium
22 wages of one hour's pay for each missed meal period. When they were provided with a meal period,
23 they were late, cut short or they would be required to work through them. This violates Labor Code
24 §§ 226.7, 510, 512, and 1194 and IWC Wage Order 5-2001.

25 30. Pursuant to Labor Code §§ 226.7 and 512 and IWC Wage Order 5-2001, Plaintiff
26 seeks the payment of all unpaid meal period compensation which she and Class Members are owed,
27 according to proof.

28 Wherefore, Plaintiff and the Class she seeks to represent request relief as described below.

1 VI.

2 THIRD CAUSE OF ACTION

3 PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS

4 FAILURE TO COMPLY WITH ITEMIZED EMPLOYEE WAGE STATEMENT

5 PROVISIONS

6 (LABOR CODE § 226(a), (e), (h))

7 31. Plaintiff incorporates paragraphs 1 through 30 of this Complaint as though fully set
8 forth herein.

9 32. Section 226(a) of the California Labor Code requires Defendants to provide wage
10 statements to employees. In those wage statements, Defendants must provide an accurate itemized
11 statement in writing showing (1) gross wages earned, (2) total hours worked by the employee..., (3)
12 the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-
13 rate basis, (4) all deductions, provided that all deductions made on written orders of the employee
14 may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period
15 for which the employee is paid, (7) the name of the employee and only the last four digits of his or
16 her social security number or an employee identification number other than a social security number,
17 (8) the name and address of the legal entity that is the employer . . . , and (9) all applicable hourly
18 rates in effect during the pay period and the corresponding number of hours worked at each hourly
19 rate by the employee. Defendants have failed to comply with Labor Code § 226(a).

20 33. Defendants failed to issue Plaintiff and Class Members wage statements that fully and
21 accurately itemized the requirements set forth in Labor Code § 226(a). Plaintiff and Class Members
22 were not paid all premium wages for unauthorized meal and rest periods, as stated above. As such,
23 the wage statements provided by Defendants failed to accurately state all gross wages earned, in
24 violation of Labor Code § 226(a)(1), total hours worked, in violation of Labor Code § 226(a)(2), net
25 wages earned, in violation of Labor Code § 226(a)(5), and all applicable hourly rates in effect during
26 the pay period and the corresponding number of hours worked at each hourly rate, in violation of
27 Labor Code § 226(a)(9).

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34. Moreover, and independent of the above allegations, the wage statements issued to Plaintiff and Class Members failed to accurately set forth the legal name of the entity that employed them, in violation of Labor Code § 226(a)(8). The wage statements set forth the employing entity as Five Star Management and Five Star Hotel Management, entities which did not employ Plaintiff or Class Members.

35. As a consequence of Defendants' willful conduct in failing to provide Class Members with accurate itemized wage statements, Plaintiff and Class Members have been injured because they have not been paid all wages due and were issued wage statements which do not reflect, and fail to accurately state, all information required by Labor Code § 226(a). The missing information cannot be discerned at all from the face of the wage statements themselves. As a result, Plaintiff and Class Members are entitled to penalties pursuant to Labor Code § 226(e) to recover the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of \$4,000 per employee, and are entitled to an award of costs and reasonable attorneys' fees pursuant to Labor Code § 226(h).

Wherefore, Plaintiff and the Class she seeks to represent request relief as described below.

VII.

FOURTH CAUSE OF ACTION

PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS

FAILURE TO TIMELY PAY WAGES DUE AT

SEPARATION OF EMPLOYMENT

(LABOR CODE §§ 201-203)

36. Plaintiff incorporates paragraphs 1 through 35 of this Complaint as though fully set forth herein.

37. California Labor Code § 201 and § 202 require Defendants to pay employees all wages due within 72 hours after resignation of employment or the day of termination of employment. Labor Code § 203 provides that if an employer willfully fails to timely pay such wages, the employer must, as a penalty, continue to pay the subject employee's daily wages until the back wages are paid in full or an action is commenced. The penalty cannot exceed 30 days of wages.

38. Defendants paid Plaintiff and Class Members their final wages beyond the time frames set forth in Labor Code §§ 201 and 202, in violation of Labor Code § 203. Plaintiff and Class Members were not paid all wages due and owing throughout the course of their employment, including premium wages for missed and denied meal and rest periods, as detailed above. Consequently, at the time of their separation from employment with Defendants, they were not paid all final wages due and owing for the entirety of their employment.

39. More than 30 days have passed since Plaintiff and Class Members have left Defendants' employ.

40. As a consequence of Defendants' willful conduct in not paying wages owed timely upon separation of employment, Plaintiff and Class Members are entitled to up to 30 days' wages as a penalty under Labor Code § 203 for Defendants' failure to timely pay legal wages at separation of employment.

Wherefore, Plaintiff and the Class she seeks to represent request relief as described below.

VIII.

FIFTH CAUSE OF ACTION

PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS

UNFAIR COMPETITION PURSUANT TO

BUSINESS & PROFESSIONS CODE § 17200 ET SEQ.

41. Plaintiff incorporates paragraphs 1 through 40 of this Complaint as though fully set forth herein.

42. This is a Class Action for Unfair Business Practices. Plaintiff, on her own behalf and on behalf of the general public, and on behalf of others similarly situated, brings this claim pursuant to Business & Professions Code § 17200 *et seq.* The conduct of all Defendants as alleged in this Complaint has been and continues to be unfair, unlawful, and harmful to Plaintiff, the general public, and Class Members. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure § 1021.5.

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1 43. Plaintiff is a "person" within the meaning of Business & Professions Code § 17204,
2 and therefore has standing to bring this cause of action for injunctive relief, restitution, and other
3 appropriate equitable relief.

4 44. Business & Professions Code § 17200 *et seq.* prohibits unlawful and unfair business
5 practices.

6 45. Wage and hour laws express fundamental public policies. Properly providing
7 employees with all wages due is a fundamental public policy of this State and of the United States.
8 Labor Code § 90.5(a) articulates the public policies of this State to enforce vigorously minimum labor
9 standards, to ensure that employees are not required or permitted to work under substandard and
10 unlawful conditions, and to protect law-abiding employers and its employees from competitors who
11 lower their costs by failing to comply with minimum labor standards.

12 46. Defendants have violated statutes and public policies. Through the conduct alleged
13 in this Complaint, Defendants, and each of them, have acted contrary to these public policies, have
14 violated specific provisions of the Labor Code, and have engaged in other unlawful and unfair
15 business practices in violation of Business & Professions Code § 17200 *et seq.* depriving Plaintiff,
16 and all persons similarly situated, and all interested persons of rights, benefits, and privileges
17 guaranteed to all employees under law.

18 47. Defendants' conduct, as alleged herein, constitutes unfair competition in violation of
19 §17200 *et seq.* of the Business & Professions Code.

20 48. Defendants, by engaging in the conduct herein alleged, either knew or in the exercise
21 of reasonable care should have known that the conduct was unlawful. As such, it is a violation of §
22 17200 *et seq.* of the Business & Professions Code.

23 49. As a proximate result of the above-mentioned acts of Defendants, Plaintiff and others
24 similarly situated have been damaged in a sum as may be proven.

25 50. Unless restrained by this Court, Defendants will continue to engage in the unlawful
26 conduct, as alleged above. Pursuant to Business & Professions Code § 17200 *et seq.*, this Court
27 should make such orders or judgments, including the appointment of a receiver, as may be necessary
28 to prevent the use or employment, by Defendants, its agents, or employees, of any unlawful or

1 deceptive practice prohibited by the Business & Professions Code, and/or, including but not limited
2 to, disgorgement of profits which may be necessary to restore Plaintiff and Class Members to the
3 money Defendants have unlawfully failed to pay.

4 **IX.**

5 **SIXTH CAUSE OF ACTION**

6 **PLAINTIFF AND ALL AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS**
7 **CIVIL PENALTIES PURSUANT TO LABOR CODE § 2698 ET SEQ. FOR VIOLATIONS**
8 **OF LABOR CODE §§ 201, 202, 226(a), 226.7, 510, 512, 1194, AND 1198 AND PURSUANT**
9 **TO LABOR CODE § 2699(a) FOR VIOLATIONS OF LABOR CODE §§ 226.3 AND 558**

10 51. Plaintiff incorporates paragraphs 1 through 50 of this Complaint as though fully set
11 forth herein.

12 52. As a result of the acts alleged above, including the Labor Code violations set forth
13 herein, Plaintiff seeks penalties pursuant to Labor Code § 2698 *et seq.* Furthermore, and independent
14 of the above allegations, Plaintiff and Class Members were not provided with suitable seating.
15 Pursuant to California Labor Code § 1198 and IWC Wage Order 5-2001, § 14, "(A) All working
16 employees shall be provided with suitable seats when the nature of the work reasonably permits the
17 use of seats. (B) When employees are not engaged in the active duties of their employment and the
18 nature of the work requires standing, an adequate number of suitable seats shall be placed in
19 reasonable proximity to the work area and employees shall be permitted to use such seats when it
20 does not interfere with the performance of their duties." Plaintiff was employed by Defendant with
21 the job title of "Front Desk" and was not provided with a seat even though a seat would not have
22 interfered with her job duties.

23 53. For each such violation, Plaintiff and all other aggrieved employees are entitled to
24 penalties in an amount to be shown at the time of trial subject to the following formula:

- 25 a. Pursuant to Labor Code § 2699(f), \$100 for each initial violation and \$200 for
26 each subsequent violation of Labor Code §§ 201, 202, 226(a), 226.7, 510, 512,
27 1194, and 1198; and
28

b. Pursuant to Labor Code § 2699(a), the civil penalties as authorized by Labor Code §§ 226.3 and 558.

54. Penalties recovered will be allocated 75% to the Labor and Workforce Development Agency, and 25% to the affected employees.

55. On November 18, 2020 and January 28, 2021, Plaintiff sent letters, by online submission to the LWDA and by certified mail, return receipt requested, to Defendants setting forth the facts and theories of the violations alleged against Defendant, as prescribed by Labor Code § 2698 *et seq.* Pursuant to Labor Code § 2699.3(a)(2)(A), no notice was received by Plaintiff from the LWDA within sixty-five (65) calendar days of November 18, 2020 and January 28, 2021. Plaintiff may therefore commence this action to seek civil penalties pursuant to Labor Code § 2698 *et seq.*

Wherefore, Plaintiff and the aggrieved employees she seeks to represent request relief as described below.

XI.

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

1. For compensatory damages pursuant to Labor Code § 1194 in the amount of all unpaid wages due to Plaintiff and Class Members;
2. For compensatory damages in the amount of one hour of wages for each day on which a rest period was not properly provided to Plaintiff and Class Members pursuant to Labor Code § 226.7;
3. For compensatory damages in the amount of one hour of wages for each day on which a meal period was not properly provided to Plaintiff and Class Members pursuant to Labor Code §§ 226.7 and 512;
4. For penalties pursuant to Labor Code § 226(e) for Plaintiff and Class Members;
5. For penalties pursuant to Labor Code § 203 for Plaintiff and Class Members;
6. For restitution for unfair competition pursuant to Business & Professions Code § 17200 *et seq.* for Plaintiff and Class Members;

- 1 7. For civil penalties pursuant to Labor Code § 2698 et seq. for Plaintiff and all other
2 Aggrieved Employees;
3 8. An award of prejudgment and post-judgment interest;
4 9. An award providing for payment of costs of suit;
5 10. An award of attorneys' fees; and
6 11. Such other and further relief as this Court may deem just and proper.

7
8 Dated: April 5, 2022

Respectfully submitted,

9 GAINES & GAINES
10 A Professional Law Corporation

11 By: _____
12 DANIEL F. GAINES
13 EVAN S. GAINES
14 Attorney for Plaintiff

15 **DEMAND FOR JURY TRIAL**

16 Plaintiff hereby demands a trial of her claims by jury to the extent authorized by law.

17 Dated: April 5, 2022

Respectfully submitted,

18 GAINES & GAINES
19 A Professional Law Corporation

20 By: _____
21 DANIEL F. GAINES
22 EVAN S. GAINES
23 Attorney for Plaintiff
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