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13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

14 **FOR THE COUNTY OF ORANGE**

15 **COMPLEX JUSTICE CENTER**

16 **REBECCA DALTON, INDIVIDUALLY)**
17 **AND ON BEHALF OF OTHERS)**
18 **SIMILARLY SITUATED, AND ON)**
19 **BEHALF OF THE PEOPLE OF THE)**
20 **STATE OF CALIFORNIA, ROES 1-20,)**

21 **v.)**

22 **STUBRIK'S STEAKHOUSE, WFO, ENT.)**
23 **GROUP, INC.; DENNIS RAINEY; CRAIG)**
24 **VOORTING; DOES I through X, inclusive,)**
25 **Defendants.**

26 **CASE NO. 30-2021-01177894-CU-OE-CX**
27 **DATE FILED: January 8, 2021**
28 **COURTROOM: CX 102**
JUDGE: PETER WILSON
DECLARATION OF MAURICE MANDEL II
IN SUPPORT OF MOTION FOR APPROVAL
OF PAGA SETTLEMENT, EXHIBITS

Date: November 11, 2021
Time: 2:00 PM
Dept: CX 102

29 **DECLARATION OF MAURICE MANDEL II**

30 **IN SUPPORT OF MOTION FOR APPROVAL OF PAGA SETTLEMENT**

TABLE OF CONTENTS

EXHIBITS	3
MY CREDENTIALS	4
MS. DALTON’S CASE	6
THE PAGA CASE	7
Formal discovery in this case, vs. early mediation	7
Documents received from Defendants, and our assessment of them	8
Pre-mediation and mediation confidentiality	8
The information provided failed to support PAGA claims to the extent anticipated	9
Why meal and rest period violations would be difficult to prove in this case	13
The difficulty in proving the “working off the clock” claims as a represented group	14
WHY PLAINTIFF SEEKS RELIEF FROM THE SCOPE OF THE PAGA CLAIM ON THE MOU	15
Why Plaintiff’s proposed PAGA period and Scope of Labor Code sections is in the Court’s power	16
ATTORNEY’S TIME AND REASONABLE RATE	17

1 I, Maurice Mandel II, do hereby declare:

2 1. I am an attorney duly licensed to practice before the Courts of California, and a percipient
3 witness to the following facts who could competently testify to their veracity under oath.

4 2. I am co-counsel with Mr. William Crosby in representing Plaintiff Rebecca Dalton. I prepared
5 the above Motion for Approval of PAGA Settlement and have personal knowledge of the items stated therein-
6 except that I was not an employee of the Defendants and have never visited the restaurant.

7 **EXHIBITS**

8 3. Attached hereto as Exhibit 1 is a true and correct copy of the LWDA Notice of Claims that I
9 composed, and electronically submitted to the LWDA on December 30, 2020. I also mailed by certified mail,
10 RRR, and by first class mail, a copy of the letter to Stubrik's Steakhouse, in Orange, CA, on December 31,
11 2020. The last page is a true copy of the responsive email I received from the LWDA. The LWDA did not
12 act within the 65-day period following Plaintiff's Notice of Claims. To date, I have not received any notice
13 or other communications from the LWDA regarding this matter. The LWDA has not directly intervened in
14 this case. When we filed the FAC, by error a copy was not sent to the LWDA but this was corrected on
15 August 19, 2021, see Exhibit 4.

16 4. Attached hereto as Exhibit 2 is a true and correct copy of the original complaint of Ms. Dalton,
17 composed by Mr. Crosby, which was filed with the Court on January 8, 2021.

18 5. Attached hereto as Exhibit 3 is a true and correct copy of the First Amended Complaint (FAC)
19 of Ms. Dalton, which was filed with the Court on March 29, 2021, and which alleges the PAGA claim.

20 6. Attached hereto as Exhibit 4 is a true and correct copy of the confirmation of the receipt of the
21 Court Complaint by the LWDA, which occurred on August 19, 2021. I discovered that the FAC had not been
22 filed with the LWDA while preparing for the Mediation of this case, it should have been done on March 29,
23 I do not have an explanation for the oversight.

24 7. Attached hereto as Exhibit 5 is a true and correct copy of the administrative complaint to the
25
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27
28

1 DFEH, prepared by Mr. Crosby and submitted on January 5, 2021, and the Right to Sue Notice issued by the
2 DFEH at the same time.

3 8. Attached hereto as Exhibit 6 is a true and correct copy of the amended administrative complaint
4 to the DFEH which was filed on March 29, 2021.

5 9. Attached hereto as Exhibit 7 is a true and correct copy of the Answer to the FAC.

6 10. Attached hereto as Exhibit 8 is a true and correct copy of the Memorandum of Understanding
7 reached between Plaintiff and Defendants at the Mediation, setting forth basic terms for the settlement of this
8 case and the PAGA claims of represented individuals, dated August 30, 2021.

9 11. Attached hereto as Exhibit 9 is a true and correct copy of the Order of the US District Court
10 in the *Patel* case which is a published decision. Orders such as these were frequently published in the Federal
11 Supplement, and are now published on Westlaw.

12 12. Attached hereto as Exhibit 10, is a true and correct copy of an email from Defendants attorney
13 Summer Young-Agresti (Ms. Young) dated September 10, 2021, advising me that she would have a formal
14 settlement agreement to me the week of September 13, 2021.

15 13. Attached hereto as Exhibit 11 is a true and correct copy of two documents from the Plaintiff's
16 file produced in response to a Labor Code request for the file, showing meal and rest period policies.

17 14. Attached hereto as Exhibit 12 is a true and correct copy of the notice to be sent to the
18 Aggrieved Employees with their check in settlement of their PAGA claims.

19 **MY CREDENTIALS**

20 15. I have practiced employment law since 1980, when I was admitted to the Bars of California,
21 the USDC/CDCA and the 9th Circuit. I am also admitted to the USDC/SDCA and the United States Supreme
22 Court. Since entering practice, my emphasis has been on employment law although I occasionally take cases
23 in other areas of law.

24 16. I have handled at least 5 cases involving PAGA claims since 2005, including a class action

1 involving wage and hour claims and PAGA claims for a group of over 100 Car Wash employees that is now
2 in its 8th year of litigation. We have received final approval from Judge Sherman on the Order and Judgment
3 granting Final Approval.

4 17. Currently my only professional affiliation is with the Orange County Trial Lawyers association
5 which is affiliated with the Consumer Attorneys of California.

6 18. I am a mediator for the USDC/CDCA and handle a variety of cases but primarily Handicap
7 Access cases which are akin to PAGA cases since they involve an individual stepping into the place of the
8 government to enforce laws for the public benefit.

9 19. I am honored to be co-counsel with William Crosby, with whom I have had a professional
10 relationship for at least 35 years. Mr. Crosby founded attorney associations which focused on representation
11 of employees with respect to workplace issues, which began in the 1980s. I was a founding member. In my
12 opinion, his CV is unduly modest.

13 20. I have conducted both Court and Jury trials of both discrimination and wage and hour claims
14 for employees, in Southern California, in both State and Federal Court. I am well aware of the risks of going
15 to trial on these kind of cases. These cases have spanned a broad spectrum of industries including
16 manufacturing, hotel and hospitality, rental management, retail, food service, government service and others.

17 21. I regularly attend MCLE events on advanced topics in employment law, including meal-and-
18 rest litigation on a class and representative basis. In addition, I monitor and review all 9th Circuit and
19 California appellate published opinions related to employment law to stay informed of the latest developments
20 in the ever-changing landscape of California employment law. I also study pending and recently-enacted state
21 and federal employment law legislation and regulations.

22 22. My current practice is equally divided between cases involving wage claims and cases
23 involving discrimination in employment, including physical disability discrimination and sexual harassment/
24 gender discrimination. However, at one time my practice was almost exclusively in the representation of
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26
27
28

1 victims of sexual harassment in employment. As a result of this experience (which is shared by Mr. Crosby)
2 I am in an excellent position to opine about the gravamen of this case and its value.

3 **MS. DALTON'S CASE**

4
5 23. Ms. Dalton originally brought this case because of the sexual harassment that she experienced
6 while working as a server/ bartender/beverage server at Stubrik's Steakhouse, for a period of over 10 years.
7 When I first discussed the case with Mr. Crosby and Ms. Dalton via conference call, I believed that the sexual
8 harassment aspect of her case was the most important aspect of the case and the true focal point of her
9 complaints. Ms. Dalton discussed with me at length the negative effect that the long term harassment had on
10 her, emotionally, for a lengthy period of 14. Ms. Dalton was also particularly distressed when she and another
11 employee went to the owner, Mr. Voorting to complain about Mr. Rainey only to have no effective remedial
12 (or any remedial) action taken.
13

14 24. There is no doubt in my mind that the gravamen of Ms. Dalton's case was the harassment that
15 she suffered at the hands of Mr. Rainey, and that the wage and hour claims and the PAGA claims arose as a
16 result of her attorneys being thorough to explore all potential claims which would end up being released in
17 a settlement or after a trial.
18

19 25. In my opinion, the value of the sexual harassment case- vividly described in detail in the
20 Complaint and FAC, exceeds the value of the entire settlement.

21 26. In the interview process, Ms. Dalton disclosed facts which gave rise to a potential of wage and
22 hour claims. If these claims applied to Ms. Dalton, it was possible that her co-workers experienced the same
23 and this would give rise to a PAGA claim on their behalf. The aspect that was of greatest import to Mr.
24 Crosby and myself was the "chargeback" that was occurring to servers if a customer's credit card transaction
25 was subsequently denied and it had been irregular- not run through the computer for whatever reason. Both
26 Mr. Crosby and I were under the impression that this was a widespread and serious kickback of wages by a
27 majority of employees. This chargeback situation is the primary reason we decided to bring a PAGA claim.
28

1 **THE PAGA CASE**

2 **Formal discovery in this case, vs. early mediation**

3 27. One of the first things done in this case was to send the employer a demand pursuant to Labor
4 Code § 226, 432 and 1198.5 for the employee's file. In conjunction with that we received over 100 pages of
5 time records and other documents, including Exhibit 12, which are a meal period waiver and a receipt of
6 notice of the meal and rest period policies. We did not have this, nor did Ms. Dalton recall these documents,
7 at the time we made the PAGA claims to the LWDA, the documents were received by me on or about
8 February 26, 2021, after I had drafted the FAC.
9

10 28. Shortly thereafter, Mr. Crosby advised me that he had several contacts with opposing counsel
11 in this case, during which the Defendants expressed an interest in an early mediation, and that the expressed
12 intention was in order to keep litigation costs down. Mr. Crosby and I discussed this at length and agreed with
13 Defendants' counsel to an early mediation if we could engage in an informal exchange of information from
14 Defendant in lieu of formal discovery, relating to the PAGA claims. At the time the Defendants had already
15 propounded formal written discovery and had noticed the deposition of Plaintiff.
16

17 29. Mr. Crosby and I decided to respond to the formal discovery in order to provide the Defendants
18 the type of information, under oath, that, based on our collective experience, was necessary in order for
19 Defendants to meaningfully participate in a mediation. We provided responses to the written discovery. This
20 information, from our own client, assisted us in evaluating not only the factual basis of Ms. Dalton's claim
21 but the scope of the PAGA claim. We also decided, given the apparently cooperative attitude of the
22 Defendants, to refrain from sending written discovery or discovery about the "Aggrieved Employees" pending
23 the informal exchange. Defendants unilaterally took Ms. Dalton's deposition off calendar and it was never
24 rescheduled.
25

26 30. The Defendants' counsel agreed to an informal exchange of information relating to the PAGA
27 claims in which they were going to provide us with documentary records about shifts worked by the Aggrieved
28

1 Employees, records relating to chargebacks, and information about Ms. Dalton's individual Labor Code
2 claims. We ultimately received the documents just before the Mediation date, however, I had enough time
3 to review the documents and their potential effect on the PAGA claims.

4
5 31. As Part of the exchange, I sent our calculations about the general damages incurred by Ms.
6 Dalton as a result of the sexual harassment, and calculations regarding her individual Labor Code claims.

7 **Documents received from Defendants, and our assessment of them**

8 32. Without disclosing the contents of the documents, these were computer generated records of
9 Aggrieved Employees, numbering 22 people and identified only by employee number, covering the period
10 of December, 2019 to April, 2021, which contained time records for the shifts worked; all time and pay
11 records for Ms. Dalton; and records of chargebacks to servers which were being contested.

12
13 33. All of the provided information formed the basis for the opinions about the strength of the
14 PAGA claim which Mr. Crosby and I held by the time of the meditation.

15 34. All information that Mr. Crosby and I had to consider in order to evaluate the strength of the
16 PAGA claims either came from: 1. the materials furnished by the Defendants on August 6, 2021, pre-
17 mediation as a part of the mediation process; 2. came from hearsay reports of current employees about changes
18 to wage and hour practices at the workplace and payments by the Defendants to Aggrieved Employees; or
19 3. came from information provided to us by the Mediator during the meditation.
20

21 **Pre-mediation and mediation confidentiality**

22 35. I cannot attach any documents received from the Defendants in conjunction with the mediation,
23 to this declaration because the documents are subject to confidentiality rules. Likewise, I cannot quote directly
24 any of the information provided by the Defendants in their documentation provided to us. Neither am I able
25 to specify what the Mediator told us during the mediation were the positions of the Defendants with respect
26 to evidence and proof of PAGA claims, again, based on the confidentiality provisions relating to Mediation
27 and statements made thereat. This is why I am restricted in providing the Court only generalities, my own
28

1 estimates, and my impressions and opinions about the strength of the PAGA claims.

2 **The information provided failed to support PAGA claims to the extent anticipated**

3 36. Based on the information provided by Ms. Dalton; the documentary information provided by
4 the Defendants on August 6, 2021, prior to mediation; and the information conveyed to us at the mediation
5 by our mediator, I came to the following assessments, opinions and conclusions:
6

- 7 a. Shortly (1 week) after we served the December 30, 2020, PAGA letter on the Defendants,
8 changes in how wage and hour policies at the workplace went into effect:
- 9 i. Remedial action, rest periods: Employee rest periods were given additional emphasis
10 and employees were provided additional opportunity to take statutory rest periods in
11 accord with the Wage Order;
12
- 13 ii. Remedial action, meal periods: Employee meal periods were given additional emphasis
14 and employees were provided additional incentive to take statutory meal periods in
15 accord with the Wage Order;
16
- 17 iii. Remedial action, payments: It was reported to us through Ms. Dalton, via contacts she
18 had with her former co-workers, that the Defendants had repaid the Aggrieved
19 Employees any “chargebacks” in which employees were required to repay on defaulted
20 credit payments by customers. According to our information, the employees were
21 repaid 100% of amounts previously withheld;
- 22 b. I analyzed the documentary evidence provided in the informal exchange and came to the
23 following assessments, opinions and conclusions:
- 24 i. Size of the represented Aggrieved Employees group: Based on the information
25 provided to me I saw the Aggrieved Employees group numbering 22 individuals,
26 including Ms. Dalton. This was for the period December 30, 2019 to April 1, 2021.
27
- 28 ii. Meal period claims; my analysis of the time records for employees during the time

1 period from December, 2019 through April, 2021 showed that the vast majority of
2 shifts worked by the Aggrieved Employees were less than the 6 hours required to
3 mandate a statutory meal period, according to the records of the employer. My rough
4 estimate is less than 10% of the shifts exceeded 6 hours and most of those were Ms.
5 Dalton. The **significance** of this data was that, to prove the PAGA claim that the
6 records were not correct would require a series of individual trials, not consistent with
7 a representative action. I believed that it was possible that the Court would not allow
8 such a trial in a representative action;
9

10 iii. Rest period claims: There was no documentation regarding rest period claims. Based
11 on the information provided to me I formed the opinion that the Defendants disputed
12 ever denying any Aggrieved Employee a rest period and that if any such employee
13 worked through a mandated rest period it was a voluntary waiver, without coercion by
14 the employer. The employer had provided Ms. Dalton's file which contained a
15 statement about employees taking their statutory meal and rest periods. Since the
16 Manager, Mr. Rainey, was one of the Defendants and disputing the rest period claim,
17 I believed that he would be testifying to that at trial, again, requiring a series of mini
18 trials on the rest period issue to establish both that the employer performed actions to
19 discourage the taking of the rest period and the number of rest periods each Aggrieved
20 Employee failed to take. I believed this was inconsistent with the nature of a
21 representative action and that it was possible the Court would not allow such a trial.
22

23 iv. Unpaid overtime claims: These claims were based on the assumption that the denial
24 of the statutory meal period claim resulted in unpaid overtime worked. Since the great
25 majority of shifts were less than 6 hours, I concluded that the unpaid overtime claims
26 (other than Ms. Dalton's) would involve possibly 4-8 shifts over the 18 month period
27
28

1 in question, and would require an individual trial for each of the individuals involved,
2 not consistent with a representative action;

3 v. Chargeback claims: I was provided information showing the number of chargebacks,
4 and was surprised at the limited number involved. While I cannot say the exact
5 number or amount of money involved, there were less than 10 chargeback incidents
6 and about \$600.00 was involved. Since I was informed by outside sources, prior to the
7 mediation, that the deducted amounts had been repaid to the employees involved, there
8 was an issue of whether any PAGA penalty would apply. In my opinion, there were
9 two sections of the Labor Code, each with a penalty of \$50.00, for a total of \$100.00
10 per incident, for a total of less than \$600.00, based on the number of incidents. At the
11 mediation I was informed that the Defendants disputed there was any money owing to
12 any Aggrieved Employees, which I took to mean that if there were Aggrieved
13 Employees, and if there was a violation of the Labor Code, the Defendants had repaid
14 the amounts to the individuals, in remediation.
15
16

17 37. Based on the information we had at hand, we determined at the mediation that the PAGA claim
18 was not of the scope which we had previously believed, and with respect to particular claims made in the
19 FAC, the results were:
20

21 a. Alleged violations of Labor Code (LC) § 202- failure to pay all wages owed at the time or
22 within 72 hours of termination or quitting. ¶54: Without meal and rest period claims, or
23 evidence of widespread failure to pay overtime, and with a limited group of 22, this claim had
24 a minimal settlement value to prove a \$50 penalty for a limited number of employees, and
25 would require a mini trial for each employee. The individuals who had chargebacks may have
26 had individual claims unless they were still employed, this could have been as many as 3
27 penalties @ \$50 per penalty= \$150.00 total.
28

- 1 b. Alleged violations of LC § 206.5- requiring employees to create false time records by punching
2 the time clock while continuing to work. ¶ 55: The records that I reviewed did not show a
3 widespread practice of punching out for lunch in the first place; the great majority of
4 employees clocked less than 6 hours for their shift; and Defendants heavily disputed the
5 practice. The cost to pursue this PAGA penalty would far outstrip the value of the penalty in
6 about a month of litigation. I opined this had minimal settlement value.
- 7
- 8 c. Alleged violations of LC § 226 (a)- failing to provide accurate statements of earnings with
9 each paycheck, penalty proscribed in LC § 226.3. ¶ 56-57: Unless there was proof of meal
10 and rest period violations and proof of working off the clock, the statements of earnings would
11 not give rise to a PAGA penalty. The chargebacks established a basis for awarding the penalty
12 which is covered by the proposed PAGA settlement. There was other minimal settlement
13 value with respect to this claim.
- 14
- 15 d. Alleged violations of LC § 510- failing to pay overtime premium pay. ¶ 59: My analysis of the
16 time records showed perhaps 6 shifts over the course of the time period where the employee
17 worked over 7 hours. Even with a meal period violation, the time records disputed an
18 overtime claim. The settlement value of this claim was minimal.
- 19
- 20 e. Alleged violations of LC § 558 and 558.1- failing to pay overtime premium pay. ¶ 60: My
21 analysis of the time records showed perhaps 6 shifts over the course of the time period where
22 the employee worked over 7 hours. Even with a meal period violation, the time records
23 disputed an overtime claim. The settlement value of this claim was minimal.
- 24
- 25 f. Alleged violations of LC § 1174- failing to keep accurate records, with a penalty proscribed
26 by LC § 1174.5- ¶61: This claim depended on proving up the meal/rest period violation,
27 working off the clock, and the chargeback claim. Since only the chargeback claim was clear,
28 there were perhaps 4-6 employees who had a claim for \$50. This claim had a minimal

1 settlement value.

- 2 g. Alleged violations of LC § 1198- working overtime hours without being paid overtime
3 premium pay- ¶62: My analysis of the time records showed perhaps 6 shifts over the course
4 of the time period where the employee worked over 7 hours. Even with a meal period
5 violation, the time records disputed an overtime claim. The settlement value of this claim was
6 minimal.
- 7
- 8 h. Alleged violations of LC § 1199- working more than 8 hours a day or 40 hours a week without
9 being paid overtime premium pay- ¶ 63: My analysis of the time records showed perhaps 6
10 shifts over the course of the time period where the employee worked over 7 hours. Even with
11 a meal period violation, the time records disputed an overtime claim. No employee worked
12 more than 40 hours a week. The settlement value of this claim was minimal.
- 13
- 14 i. Alleged violations of LC § 221 and 223- by requiring wait staff to “cover” refused or disputed
15 credit card charges by a customer from the earnings of the wait staff, and/or requiring wait staff
16 to pay for refused meals if there was an error by the wait staff- ¶65: As discussed above, I did
17 conclude that there was a violation based on these allegations, that the total dollar amount
18 involved was about \$600.00, and less than 10 employees were involved. In my opinion, this
19 alleged violation had settlement value commensurate with the PAGA award.
- 20

21 **Why meal and rest period violations would be difficult to prove in this case**

22 38. A meal or rest period violation requires something more than an employee voluntarily giving
23 up their statutory right to a meal or rest period. In this instance the employer provided a notification in Ms.
24 Dalton’s employee file about the employee’s statutory rights to meal and/or rest periods, signed by Ms. Dalton,
25 and a meal period waiver if the shift was less than 6 hours. (Exhibit 12). It would be reasonable to assume
26 that the same employer would have the same document in each employee’s file. Disputing any such
27 documentation would require an individual trial for each employee.

28

1 39. In the setting of a restaurant such as Stubrik's, the staff is compensated more by tips than by
2 their hourly wages. Wait staff is not going to earn tips unless they are on the service floor providing service.
3 This is not a coercion by the employer it is motivation for the Wait person to maximize their own tip income.
4 Under the *Brinker* decision, the employer need do no more than "authorize and permit" the meal and rest
5 periods. The employer cannot force employees to take meal or rest breaks, per *Brinker*, nor can the employer
6 prevent employees from voluntarily waiving the breaks.
7

8 40. It is foreseeable that each claim for a meal or rest period violation would require a mini trial
9 over whether any missed meal or rest period on any particular date in question was missed due to the
10 employee's desire to maximize tips or whether it was due to pressure from management to continue working
11 through the break period. And it equally foreseeable that the Court, in following existing precedent, could
12 decline to engage in such an exercise in a representative action.
13

14 **The difficulty in proving the "working off the clock" claims as a represented group**

15 41. One of the allegations that led to several of the PAGA claims (for overtime, statement of
16 earning inaccuracy, waiting time penalties, record keeping violations) was that the employer required
17 employees to clock out and continue working. In the records that I reviewed, I did not find that the employees
18 had clocked out for meal periods to the extent we were led to believe before reviewing records. In addition,
19 in instances where the employee had clocked out for a meal period, the shift was rarely more than 6 hours.
20

21 42. There were a few instances of clock in/clock out, and where this occurred, it was the only entry
22 for the day for the employee. I was informed and reached the opinion that this was done because an employee
23 had forgotten to clock in at the beginning of the shift and this allowed the manager to adjust the employee's
24 time record so they got paid for the day.
25

26 43. I formed the opinion that the value of this claim was very small, and the settlement value even
27 less.
28

1 **WHY PLAINTIFF SEEKS RELIEF FROM THE SCOPE OF THE PAGA CLAIM ON THE MOU**

2 44. The mediation was held on August 30, 2021, via Zoom. Mr. Crosby and I appeared from our
3 respective offices. Ms. Dalton appeared from Georgia. None of us ever saw the defendants or their counsel
4 during the mediation. The mediator was attorney Mark Lemke.
5

6 45. At the conclusion of the mediation I worked on the details with Ms. Young about the terms of
7 the MOU which we were exchanging by email. During this process, since the Defendants were requesting
8 a long form settlement agreement, I inquired when that would be prepared, particularly with a small PAGA
9 amount and an open end to the PAGA period. Ms. Young assured me that we would have an agreement by
10 the end of the week.
11

12 46. No long form agreement was forthcoming that week nor the next. I sent an email, Thursday
13 September 9 asking about the completion, and Ms. Young's response is Exhibit 10.

14 47. I received the first draft of the long form agreement on September 23, from the Defendants. I
15 wrote emails to Counsel on September 24, 26, 27, 28 and sent an amended version of the settlement agreement
16 to counsel on September 28, both in pdf and WordPerfect. I also sent a draft of the employee notice on
17 September 29. The emails that were sent in the interim were addressing some concerns I had about certain
18 aspects of the agreement.
19

20 48. In my opinion, the long form agreement proposed by the Defendants was not acceptable
21 because 1. The PAGA period was being increased beyond the period in the FAC and this period was
22 increasing in term during the delay occasioned by the Defendants; 2. The PAGA class was increasing in size
23 due to new hires, I could foresee many new hires going into the Holiday season at year end, this is not what
24 we bargained for; and 3. The proposed agreement included many Labor Code sections not plead in the FAC
25 to be subject to the release by the Aggrieved Class.
26

27 49. I did not receive a revised proposed long form agreement until October 8. I never received a
28 revised Notice, or comments on the notice. I received a complete different draft of a notice.

1 50. On October 8, Defendants sought to expand the “PAGA class” to 67 employees, which
2 completely ignored the language of the FAC that the Aggrieved Employees were “similarly situated” to Ms.
3 Dalton, and which included employees for which we never received any information during the informal
4 exchange. Defendants also insisted on maintaining the PAGA period until the court ultimately issued an
5 order approving the PAGA settlement. Defendants insisted that Plaintiff’s release cover her claims
6 individually and as PAGA representative, to which I had no problem agreeing, but the agreement provided
7 for the reverse- that the Aggrieved Employees also released claims in all the categories that were part of
8 Plaintiff’s individual claims, this went beyond a release of the PAGA claims, to individual claims for wages
9 or other claims.
10

11 51. On October 13, I wrote to Counsel and expressed my concerns over the ‘major’ disagreements
12 we had in these three areas. I received a response on October 18, that indicated to me that the negotiation
13 process had broken down and we were not able to reach any compromises. Nevertheless, I responded and
14 invited Counsel to discuss a middle ground. I never received a response to that reply.
15

16 **Why Plaintiff’s proposed PAGA period and Scope of Labor Code sections is in the Court’s power**
17

18 52. In my opinion, limiting the PAGA period and to PAGA Labor Code sections to those pled in
19 the FAC is within the power of the Court without regard to a PAGA period stated in the MOU because of two
20 reasons: First, the FAC sets forth the scope of the PAGA claims, based on the PAGA notice to the LWDA,
21 not the MOU, I know of no case that provides that the Court is entitled to expand the PAGA period beyond
22 what is pled, in the absence of the agreement of the parties, and this applies to the Code Sections as well; and
23 Second, the Court has to power to refuse to approve the release if the Court deems it to be unfair, and in this
24 case, the Defendants are using a delay that they have created to their own advantage, to settle more potential
25 PAGA claims by more potential Aggrieved Employees for a minimal PAGA payment which was based on
26 a status in place as of April 1, 2021.
27
28

1 **ATTORNEY'S TIME AND REASONABLE RATE**

2 53. I have been in practicing Employment Law for over 40 years. My reasonable rate, as
3 adjudicated in the case of *Garcia v Lee*, OCSC 3-2014-00738848-CL-OE-CX, by Judge Randall Sherman,
4 in September, 2021, is \$650.00 per hour. My reasonable rate on the Laffey Matrix is over \$900 per hour based
5 on my years of practice. Garcia was a class action and a PAGA claim.
6

7 54. I have reviewed my time records for the time that I have spent on this case, exclusive of the
8 PAGA claim, for which I am not requesting payment, and expended approximately 34.25 hours total. I
9 stopped recording my time after we signed the MOU. My reasonable fee for the 34.25 hours is \$22,262.50,
10 which is more than I will receive for representing Plaintiff on her sexual harassment claim.
11

12 55. In addition to to the time I have expended on the case in chief, I estimate that I have expended
13 an additional 20 hours working on the PAGA claim with at least 14 of those hours expended post mediation
14 and post MOU. I am not requesting payment for those hours but I want the court to consider them in
15 determining the reasonableness of the total fee, and the fact that Mr. Crosby and I are foregoing claims for
16 hours spend on PAGA.
17

18 56. In my opinion, I was able to expend such a small amount of time due to the early mediation,
19 and the informal exchange associated therewith.
20

21 57. I have known William Crosby for at least 33 years in relation to the practice of law for the
22 benefit of employees. I first knew of him in the 1980's when he and Joseph Posner, an LA based employee
23 rights attorney, first sought to establish an association of practitioners who worked for employee rights in the
24 areas of wrongful discharge, employment discrimination, and wage & hour claims. I recall when Mr. Crosby
25 started the "Employee Rights Council" in Orange County with the likes of myself, Grace Emery and Michael
26 Balmages in attendance. This eventually grew into CELA, the California Employment Law Attorneys, a
27 statewide organization.
28

58. In my estimation, based on his experience and years of practice, the Laffey Matrix would put

1 Mr. Crosby at a reasonable hourly rate over \$900.00.

2 59. In my opinion, based on the results of our investigation into PAGA claims in this case, the
3 amount of time being expended to resolve disputes over settlement, and the delay in receiving the settlement
4 payment agreed to on August 30, Ms. Dalton would have been in a better position had she not brought the
5 PAGA representative claim.
6

7 60. I declare the foregoing to be true and correct under the laws of the State of California, that the
8 opinions and assessments stated are truly my opinions and assessments, and that this declaration is executed
9 in Costa Mesa, CA, on October 26, 2021.
10

11 MMII- my electronic signature
12

13 Maurice Mandel II, Esq.
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On October 26, 2021, I served the foregoing document described as:

on interested parties in this action by ELECTRONIC SERVICE, addressed as follows:



Executed this October 26, 2021, California.

MMII-my electronic signature
Maurice Mandel II

Maurice Mandel II
Attorney at Law
PO Box 411
Newport Beach, CA 92662
(949)646-7799
(949) 874-2002 mobile
E-MAIL: MMANDEL2@AOL.COM

December 30, 2020

California Labor and Workforce Development Agency
via electronic submission on the LWDA website.

Stubrik's Steakhouse, Dennis Rainey, and Craig Voorting
118 E Commonwealth Ave.
Fullerton, CA 92832

Certified Mail/RRR

Item #:7018 0360 0001 4642 3982// 9590940254159189598804

To whom it may concern:

Please take notice that pursuant to the procedures specified in California Labor Code § 2699.3 Rebecca Dalton (hereinafter "EMPLOYEE") on behalf of herself and other current and former employees claims Stubrik's Steakhouse, Dennis Rainey, and Craig Voorting (hereinafter collectively referred to as "EMPLOYER") violated, at least, the following California Labor Code §§ 203, 206.5, 226, 226.3, 510, 558, 1174, 1174.5, 1194, 1198, and 1199.

Sec. 203: EMPLOYER willfully failed to pay, without abatement, discharged or quitting EMPLOYEE all wages and compensation due at the time of discharge or within 72 hours for a quitting employee. EMPLOYER failed to pay EMPLOYEE on or about November 22, 2020, and other formerly discharged or quitting employees, within the time prescribed by Sec. 203, for all wages and earned compensation due by failing to pay EMPLOYEE and other former employees for all hours worked, failing to pay overtime wages, and failing to pay premium pay for denied meal and rest periods. EMPLOYER'S failure to pay as alleged was willful in that EMPLOYER refused to pay said amounts knowing that EMPLOYEE and other current and former employees had worked overtime and were entitled to overtime premiums, without being compensated for such overtime by payment of such premiums; and that EMPLOYEE and other current and former employees were denied permission and opportunity for meal and rest periods by EMPLOYER, yet were not paid premium pay for such denial.

Sec. 206.5 states: (a) An employer shall not require the execution of a release of a claim or right on account of wages due, or to become due, or made as an advance on wages to be earned, unless

payment of those wages has been made. A release required or executed in violation of the provisions of this section shall be null and void as between the employer and the employee. Violation of this section by the employer is a misdemeanor.

(b) For purposes of this section, "execution of a release" includes requiring an employee, as a condition of being paid, to execute a statement of the hours he or she worked during a pay period which the employer knows to be false.

EMPLOYER violated Sec. 206.5 with respect to EMPLOYEE, and similarly situated former and current employees by requiring all such employees to regularly make false time entries into a computerized time record keeping system and to periodically sign for their paychecks on a document that falsely asserted the times reported were correct. The times were false because all such employees were required to work off the clock and were required to perform work during statutory meal and rest periods, without receiving premium pay therefore. There were no "On the clock meal period agreements," between EMPLOYER and any of the former or current employees, nor would such an agreement be statutorily authorized or permitted.

226: EMPLOYER failed to furnish, at the time of each payment of wages, to each of his or her employees, an accurate itemized wage statement reflecting the total hours employees worked. This included all included former and current employees. The wage statements, as known today, were not accurate because all similarly situated employees were required to work off the clock and were required to work through meal and rest periods, by the EMPLOYER, without receiving the statutory premium pay for missing such periods.

226.3: EMPLOYER violated subdivision (a) of section 226 by failing to furnish, at the time of each payment of wages, to each of his or her employees, an accurate itemized wage statement for all EMPLOYEE'S hours worked, as described above. Although EMPLOYER provided an itemized wage statement it did not accurately state the total hours EMPLOYEE and other current and former employees worked or EMPLOYEE'S and other current and former employees' hourly rate. Thus, EMPLOYER is subject to a civil penalty as set forth under this section.

Sec. 510: EMPLOYER failed to pay its non-exempt EMPLOYEE and other current and former employees at the rate of no less than one and one-half times the regular rate of pay for any hours worked in excess of eight hours in one workday; any work in excess of 40 hours in any one workweek; the first eight hours worked on the seventh day of work in any one workweek; and at the rate of no less than twice the regular rate of pay of any employee for any work in excess of 12 hours in one day and any work in excess of eight hours on any seventh day of a workweek.

Sec. 558: EMPLOYER or other person acting on behalf of EMPLOYER violated, or caused to be violated, Labor Code section 500-558 or any provision regulating hours and days of work in any order of the Industrial Welfare Commission. EMPLOYER violated Labor Code sections 510 by failing to pay its non-exempt EMPLOYEE and other current and former employees at the rate of no less than one and one-half times the regular rate of pay for any hours worked in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek.

Sec. 1174: EMPLOYER failed to keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to employees employed at the respective plants or establishments.

Sec. 1174.5: EMPLOYER violated Labor Code §1174 by failing to maintain required records and is, therefore, subject to a civil penalty.

Sec. 1198: EMPLOYER employed EMPLOYEE and other current and former employees for longer hours than those fixed by the order or under conditions of labor prohibited by order of the Industrial Welfare Commission. EMPLOYEE and other current and former employees worked more than 8 hours in a day and/or more than 40 hours in a workweek. EMPLOYER failed to pay the appropriate overtime compensation.

Sec. 1199: EMPLOYER employed EMPLOYEE and other current and former employees for longer hours than those fixed by order of the Industrial Welfare Commission or under conditions of labor prohibited by the order of the Industrial Welfare Commission. EMPLOYEE and other current and former employees worked more than 8 hours a day and/or more than 40 hours in a workweek. EMPLOYER failed to pay the appropriate overtime compensation.

EMPLOYER required EMPLOYEE and other current and former employees, to pay for business losses incurred by EMPLOYER, which, in part, were caused by the ordinary negligence of employees and which, in part, were caused by the negligence of EMPLOYER.

EMPLOYEE is not currently aware of all potential claims by the represented additional similarly situated current and former employees, and reserves the right to amend this LWDA letter to more fully state those claims when they become known to EMPLOYEE.

EMPLOYEE makes this letter on her own behalf and on behalf of the People of the State of California as provided in PAGA, for all similarly situated former and current employees of EMPLOYER.


Maurice Mandel II, Attorney for
Rebecca Dalton, individually and on behalf
of similarly situated current and former employees
of Stubik's Steakhouse

12/30/2020

LWDA Case No. LWDA-CM-817487-20

Law Firm : ATTORNEY AT LAW

Plaintiff Name : REBECCA DALTON

Employer: STUBIK'S STEAKHOUSE

Filing Fee : \$75.00

IFP Claimed : No

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

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4 MAURICE MANDEL II (SBN: 98593)
5 P.O. Box 411
Newport Beach, CA 92662
6 Telephone: (949) 874-2002
Email: mmandel12@aol.com

7 Attorneys for Plaintiff
8 REBECCA DALTON

9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF ORANGE
12

13 Assigned for all purposes

14 Judge Gregory H. Lewis

15 REBECCA DALTON,
16 Plaintiff,

17 v.

18 STUBRIK'S STEAKHOUSE; DENNIS
RAINEY; CRAIG VOORTING;
19 DOES I through X, inclusive,
20 Defendants.

)
) CASE NO. 30-2021-01177894-CU-OE-CJC
)
) COMPLAINT FOR SEXUAL HARASSMENT
) (GOV. CODE, § 12940(i) AND (j));
) FAILURE TO PROVIDE MEAL AND REST
) PERIODS (LABOR CODE, §§ 512(a)
) AND 226.7); FAILURE TO PAY
) EXPENSE REIMBURSEMENTS (LABOR
) CODE, § 2802); VIOLATION OF
) BUSINESS & PROFESSIONS CODE,
) § 17200; VIOLATION OF LABOR CODE,
) § 202, ET SEQ.; JURY TRIAL DEMAND

21
22 Plaintiff alleges:

23 SUMMARY OF CLAIMS

24 1. This is an action for damages by plaintiff against her former
25 employer, its owner and her manager for multiple statutory claims
26 arising out of an outrageous and bad faith course of conduct.

27
28 COMPLAINT FOR SEXUAL HARASSMENT (GOV. CODE, § 12940(i) AND (j)); FAILURE TO PROVIDE
MEAL AND REST PERIODS (LABOR CODE, §§ 512(a) AND 226.7); FAILURE TO PAY EXPENSE
REIMBURSEMENTS (LABOR CODE, § 2802); VIOLATION OF BUSINESS & PROFESSIONS CODE, §
17200; VIOLATION OF LABOR CODE, § 202, ET SEQ.; JURY TRIAL DEMAND

1 Plaintiff claims that she was denied meal and rest periods, was not
2 reimbursed for all business expenses which were wrongfully debited
3 from her own pay, and was not paid all accrued wages and vacation pay
4 in a timely manner following her resignation. Plaintiff also claims
5 that her manager and her employer are both jointly liable for sexual
6 harassment and the creation of a hostile work environment. Plaintiff
7 further claims that her employer's Labor Code violations constituted
8 violations of the Unfair Competition Law. Plaintiff seeks
9 compensatory damages, including economic damages for past and future
10 loss of earnings and benefits, unpaid meal and rest period
11 compensation, unpaid business expense reimbursements, and accrued
12 vacation; general damages for emotional distress; statutory penalties;
13 prejudgment interest; punitive damages; and statutory attorneys' fees.

14 PARTIES

15 2. At all times herein mentioned plaintiff REBECCA DALTON
16 (hereinafter "plaintiff") was a resident of the County of Los Angeles,
17 State of California. Plaintiff recently moved to Tennessee where she
18 currently resides.

19 3. Plaintiff is informed and believes and based on such
20 information and belief alleges that at all times herein mentioned
21 defendant STUBRIK'S STEAKHOUSE (hereinafter "STUBRIK'S") was and is a
22 restaurant located in the City of Fullerton, County of Orange, State
23 of California.

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1 4. Plaintiff is further informed and believes and based on such
2 information and belief alleges that at all times herein mentioned
3 defendant DENNIS RAINEY (hereinafter "RAINEY") was and is a resident
4 of the County of Riverside, State of California.

5 5. Plaintiff is further informed and believes and based on such
6 information and belief alleges that at all times herein mentioned
7 defendant CRAIG VOORTING (hereinafter "VOORTING") was and is the owner
8 of defendant STUBRIK'S and a resident of the County of Orange, State
9 of California.

10 6. Plaintiff is unaware of the true names and capacities, whether
11 corporate, associate, individual, or otherwise, of defendants named as
12 DOES I through X, inclusive. Pursuant to Code of Civil Procedure
13 Section 474, plaintiff will seek leave of court to amend this
14 complaint to state said defendants' true names and capacities when the
15 same have been ascertained. Plaintiff is informed and believes and
16 based upon such information and belief alleges that said fictitiously-
17 named defendants are responsible in some manner for the injury and
18 damages to plaintiff as further hereinafter alleged.

19 AGENCY

20 7. Plaintiff is informed and believes and upon such information
21 and belief alleges that defendants, and each of them, at all times
22 herein mentioned were the agents, employees, servants, joint
23 venturers, and/or co-conspirators of the remaining defendants, and
24 were acting in the course and scope of such agency, employment, joint
25 venture, and/or conspiracy; that defendants, and each of them, were
26

1 doing the things herein alleged, were the actual and/or ostensible
2 agents of the remaining defendants and were acting within the course
3 and scope of said agency; and that each and every defendant, as
4 aforesaid, when acting as a principal, was negligent in selecting,
5 hiring, supervising and continuing the employment of each and every
6 defendant as an agent, employee or joint venturer; and/or that said
7 defendants approved, supported, participated in, authorized, and/or
8 ratified the acts and/or omissions of said employees, agents,
9 servants, conspirators, and/or joint venturers.

10 FACTS

11 Plaintiff's Long Tenure of Competent Performance for Defendant
12 STUBRIK'S:

13 8. Plaintiff is currently 37 years of age, and is engaged to be
14 married. Throughout her employment with defendant STUBRIK'S, she was
15 single and dependent on her own earnings for her sustenance.
16 Plaintiff commenced employment with defendant STUBRIK'S in March of
17 2006 as a Hostess. Within one year, she was promoted to Cocktail
18 Server and the next year she was promoted to Server. Because of her
19 good performance, she was promoted to Bartender/Manager in or about
20 2010. Thereafter plaintiff remained continuously employed with
21 defendant STUBRIK'S through November of 2020.

22 9. In late November of 2013, because a customer disputed a credit
23 card charge, defendant VOORTING, owner of defendant STUBRIK'S, accused
24 plaintiff of not encrypting the card and debited the credit card
25 charge from her own pay. When plaintiff inquired as to why there was
26

1 no employee handbook setting forth such requirement, she was demoted
2 from Bartender/Manager back to Server and was no longer allowed to
3 work one of her shifts.

4 10. Thereafter plaintiff continued to perform her job
5 responsibilities competently and conscientiously, and with dedication
6 and loyalty to defendant STUBRIK'S.

7 Defendant STUBRIK'S Unlawful Practice of Requiring Employees to
8 Pay for Customer Losses:

9 11. Throughout plaintiff's employment, she as well as other
10 employees, on occasion were required to reimburse defendant STUBRIK'S
11 from their own pay for any disputed credit card charges. In addition,
12 plaintiff and other employees were periodically required to reimburse
13 defendant STUBRIK'S from their own pay for one-half of any meals when
14 they mistakenly ordered the wrong food item.

15 Defendant STUBRIK'S Practice of Falsifying Employee Time Records:

16 12. Throughout plaintiff's employment, defendants RAINEY and
17 VOORTING, individually and in their respective managerial and owner
18 capacities on behalf of defendant STUBRIK'S, violated Labor Code, §
19 206.5, a misdemeanor, by requiring plaintiff and other employees to
20 sign a document professing to be a waiver of their right to take a 30
21 minute meal period after five hours as required by Labor Code, §
22 512(a), and then directing plaintiff and other employees to push a
23 button on a computer screen showing that they had taken an unpaid meal
24 period each day. If plaintiff and other employees forgot to hit the
25 button, they were directed to clock back in after clocking out so that

1 an adjustment could be made. Plaintiff and other employees were
2 therefore denied their legally required 30 minute meal periods, and
3 were not compensated for any such meal periods not taken, in violation
4 of Labor Code, §§ 512(a) and 226.7.

5 Defendant RAINEY's Sexual Harassment of Plaintiff:

6 13. Throughout her employment plaintiff was subject to unwelcome
7 and offensive words and touching by her manager, defendant RAINEY,
8 which created a hostile work environment for plaintiff. This conduct
9 included, but was not limited to the following:

10 a) Asking plaintiff if plaintiff wished to "go to the kitchen and
11 watch pornography;"

12 b) Masturbating in plaintiff's presence in the kitchen;

13 c) Repeatedly telling plaintiff that she "had the nicest ass of
14 all the girls;"

15 d) Telling plaintiff, "I want to see you naked in an ice bath;"

16 e) Telling plaintiff that another manager had "invited a female
17 customer into the liquor room and fingered her butt;"

18 f) Kicking plaintiff in the rear end with his foot while she was
19 standing at the salad bar;

20 g) Asking plaintiff in the presence of another employee while
21 plaintiff was drinking a green smoothie, "are you drinking Shrek's
22 cum?;" and,

23 h) Routinely using the "F" word and other profanities while
24 working in plaintiff's presence.

25 ///

1 14. Plaintiff never complained regarding defendants' unreasonable
2 and unlawful work directives or defendant RAINEY's inappropriate
3 conduct for fear of retaliation as she was dependent on her employment
4 to make ends meet financially. On one recent occasion, plaintiff and
5 Melinda Renz ("Renz") did complain to defendant VOORTING that "Dennis'
6 behavior is out of control and servers feel the need to tip toe around
7 him." Defendant VOORTING responded by stating, "yes, he's become quite
8 the bear in the last year or so." However, defendant VOORTING failed
9 to take any effective remedial action regarding the complaints by
10 plaintiff and Renz.

11 15. Due to the intolerable working conditions caused by
12 defendants, on November 10, 2020 plaintiff gave defendant STUBRIK'S
13 two weeks notice of her resignation.

14 16. Plaintiff experienced depression and anxiety as a result of
15 defendant RAINEY's harassing conduct and defendant STUBRIK'S unlawful
16 practices that prevented plaintiff from taking meal or rest periods.

17 EXHAUSTION OF ADMINISTRATIVE REMEDIES

18 17. On January 5, 2021, plaintiff filed a Complaint against
19 defendants RAINEY and STUBRIK'S with the Department of Fair Employment
20 and Housing ("DFEH"). A copy thereof is attached hereto as **Exhibit A**.
21 Thereafter on January 5, 2021, the DFEH issued a "right to sue"
22 letter. A copy thereof is attached hereto as **Exhibit B**. Plaintiff
23 has therefore exhausted her administrative remedies as a precondition
24 to filing this action.

25 ///

FIRST CAUSE OF ACTION

(Sexual Harassment (Gov. Code, § 12940 (i) and (j))
Against Defendants RAINEY and STUBRIK'S)

18. Plaintiff hereby realleges and incorporates by reference paragraphs 1 through 17 as if set forth in full.

19. By virtue of the conduct described in paragraphs 13(a) through (h) above, defendant RAINEY, individually and in his managerial capacity on behalf of defendant STUBRIK'S, subjected plaintiff and otherwise aided and abetted in subjecting plaintiff to an unwanted and offensive "hostile work environment" based on sex, in violation of Government Code, § 12940(j).

20. As a direct and proximate result of said sexual harassment, plaintiff was compelled to resign and thereby sustained economic damages for past and future loss of earnings and benefits, according to proof.

21. As a further direct and proximate result of said sexual harassment, plaintiff sustained general damages for severe mental and emotional distress.

22. Defendant RAINEY, individually and in his managerial capacity on behalf of defendant STUBRIK'S, acted with malice and oppression toward plaintiff and with conscious and wanton disregard of plaintiff's rights, and defendants RAINEY and STUBRIK'S should therefore be assessed punitive and exemplary damages in sums sufficient to punish them and set an example in view of their respective financial conditions.

///

1 23. Plaintiff is further entitled to an award of statutory
2 attorneys' fees pursuant to Government Code, § 12965(b).

3 SECOND CAUSE OF ACTION

4 (Failure to Provide Meal and Rest Periods
5 (Labor Code, §§ 512(a) and 226.7)
6 Against Defendants RAINEY, VOORTING and STUBRIK'S)

7 24. Plaintiff hereby realleges and incorporates by reference
8 paragraphs 1 through 17 as if set forth in full.

9 25. Throughout plaintiff's employment with defendant STUBRIK'S,
10 defendants RAINEY and VOORTING, individually and in their respective
11 managerial and owner capacities on behalf of defendant STUBRIK'S,
12 failed to provide plaintiff with meal and rest periods and failed to
13 compensate plaintiff for each such failure, in violation of Labor
14 Code, §§ 512(a) and 226.7, as well as Wage Order 5, Sections 11 and
15 12.

16 26. As a direct and proximate result of said failure to provide
17 meal periods, plaintiff is entitled to payment of one hour of premium
18 pay at plaintiff's regular rate of compensation for each workday that
19 a statutory meal period was not provided to plaintiff, pursuant to
20 Labor Code, § 226.7(c);

21 27. As a direct and proximate result of said failure to provide
22 rest periods, plaintiff is entitled to payment of one hour of premium
23 pay at plaintiff's regular rate of compensation for each workday that
24 a statutory rest period was not provided to plaintiff, pursuant to
25 Labor Code, § 226.7(c);

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1 28. Plaintiff is further entitled to statutory attorneys' fees
2 pursuant to Labor Code, § 1021.5, and interest at 10% per annum on all
3 accrued and unpaid premium pay.

4 THIRD CAUSE OF ACTION

5 (Failure to Pay Expense Reimbursements (Labor Code, § 2802)
6 Against Defendants VOORTING and STUBRIK'S)

7 29. Plaintiff hereby realleges and incorporates by reference
8 paragraphs 1 through 17 as if set forth in full.

9 30. Labor Code, § 2802 provides in pertinent part: "(a) An
10 employer shall indemnify his or her employee for all necessary
11 expenditures or losses incurred by the employee in direct consequence
12 of the discharge of his or her duties" By virtue of the
13 conduct described at paragraph 11 above, plaintiff is entitled to
14 reimbursement of all business expenses which were wrongfully debited
15 from her pay by defendant VOORTING, individually and in his capacity
16 as owner of defendant STUBRIK'S.

17 31. As a direct and proximate result of said statutory violation,
18 defendants VOORTING and STUBRIK'S are jointly obligated to reimburse
19 plaintiff for all business expenses which were wrongfully debited from
20 her pay, in an amount that will be demonstrated according to proof.

21 32. Plaintiff is further entitled to an award of statutory
22 attorneys' fees pursuant to Labor Code, § 2802(c).

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33. Plaintiff hereby realleges and incorporates by reference paragraphs 1 through 17 as if set forth in full.

35. As a direct and proximate result of said statutory violation, plaintiff is entitled to restitution for all losses incurred by plaintiff during her employment with defendant STUBRIK'S, in amounts that will be demonstrated according to proof for a period of four years preceding the filing of this complaint pursuant to Business and Professions Code, § 17206.

37. Plaintiff is further entitled to an award of statutory attorneys' fees as allowed by law.

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1 FIFTH CAUSE OF ACTION

2 (Violation of Labor Code, § 202, Et Seq.
3 Against Defendant STUBRIK'S)

4 38. Plaintiff hereby realleges and incorporates by reference
5 paragraphs 1 through 17 as if set forth in full.

6 39. Plaintiff was not paid all accrued wages and vacation pay due
7 within 72 hours of her resignation, in violation of Labor Code, § 202(a).

8 40. As a direct and proximate result of said statutory violation,
9 plaintiff sustained economic damages for all accrued wages and vacation
10 pay, according to proof.

11 41. As a further result of said statutory violation, plaintiff is
12 entitled to statutory penalties for up to 30 days unpaid wages as a
13 result of defendant STUBRIK'S failure to pay plaintiff all accrued wages
14 and vacation pay due within 72 hours of her resignation pursuant to Labor
15 Code, § 203.

16 42. Plaintiff is further entitled to statutory attorneys' fees
17 pursuant to Labor Code, § 218.5.

18 PRAYER

19 WHEREFORE plaintiff prays judgment against defendants as follows:

20 As to the First Cause of Action:

- 21 1. For economic damages for past and future loss of earnings and
22 benefits, according to proof;
23 2. For general damages, according to proof;
24 3. For punitive damages, according to proof;
25 4. For statutory attorneys' fees pursuant to Government Code, §
26 12965(b).

1 As to the Second Cause of Action:

- 2 1. For payment of one hour of premium pay at plaintiff's
3 regular rate of compensation for each workday that a
4 statutory meal period was not provided to plaintiff,
5 pursuant to Labor Code, § 226.7(c);
- 6 2. For payment of one hour of premium pay at plaintiff's
7 regular rate of compensation for each workday that a
8 statutory rest period was not provided to plaintiff,
9 pursuant to Labor Code, § 226.7(c);
- 10 3. For statutory attorneys' fees pursuant to Labor Code, §
11 1021.5.
- 12 4. For interest at 10% per annum on all accrued and unpaid
13 premium pay.

14 As to the Third Cause of Action:

- 15 1. For reimbursement of all business expenses which were
16 wrongfully debited from plaintiff's pay, according to proof.
- 17 2. For statutory attorneys' fees pursuant to Labor Code, §
18 2802(c).

19 As to the Fourth Cause of Action:

- 20 1. For restitution of all sums due and owing to plaintiff,
21 pursuant to the Unfair Competition Law, for a period of four
22 years preceding the filing of this complaint pursuant to
23 Business and Professions Code, § 17206;
- 24 2. For injunctive relief to prevent future violations of the
25 Unfair Competition Law by defendant STUBRIK'S;

3. For other appropriate injunctive relief;
4. For statutory attorneys' fees as allowed by law.

As to the Fifth Cause of Action:

1. For economic damages for all unpaid accrued wages and vacation pay, according to proof;
2. For statutory penalties pursuant to Labor Code, § 203;
3. For statutory attorneys' fees pursuant to Labor Code, § 218.5.

As to All Causes of Action:

1. For costs of suit incurred;
2. For prejudgment interest as provided by law;
3. For such further relief as Court deems proper.

Dated: January 8, 2021


WILLIAM M. CROSBY
MAURICE MANDEL II
Attorneys for Plaintiff
REBECCA DALTON

JURY TRIAL DEMAND

Plaintiff REBECCA DALTON hereby demands trial by jury of the above cause.

Dated: January 8, 2021


WILLIAM M. CROSBY
MAURICE MANDEL II
Attorneys for Plaintiff
REBECCA DALTON

EXHIBIT A
TO COMPLAINT

1 **COMPLAINT OF EMPLOYMENT DISCRIMINATION**
2 **BEFORE THE STATE OF CALIFORNIA**
3 **DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING**
4 **Under the California Fair Employment and Housing Act**
 (Gov. Code, § 12900 et seq.)

5 **In the Matter of the Complaint of**

Rebecca Dalton

DFEH No. 202012-12034209

6 Complainant,

7 vs.

8 Stubrik's Steakhouse
9 118 E. Commonwealth Ave.
 Fullerton, California 92832

10 Dennis Rainey
11 118 E. Commonwealth Ave.
 Fullerton, California 92832

12 Respondents

13 _____
14 1. Respondent **Stubrik's Steakhouse** is an employer **Stubrik's Steakhouse** subject to suit
15 under the California Fair Employment and Housing Act (FEHA) (Gov. Code, § 12900 et seq.).

16 2. Complainant is naming **Dennis Rainey** as individual Co-Respondent(s).

17 3. Complainant **Rebecca Dalton**, resides in the City of **Old Hickory**, State of **Tennessee**.

18 4. Complainant alleges that on or about **November 23, 2020**, respondent took the
19 following adverse actions:

20 **Complainant was harassed** because of complainant's sex/gender, sexual harassment-
21 hostile environment.

22 **Complainant was discriminated against** because of complainant's sex/gender, sexual
23 harassment- hostile environment and as a result of the discrimination was reprimanded,
24 asked impermissible non-job-related questions, other.

25 **Additional Complaint Details:**
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27
28

1 VERIFICATION

2 I, **William M. Crosby**, am the **Attorney** in the above-entitled complaint. I have read
3 the foregoing complaint and know the contents thereof. The matters alleged are
4 based on information and belief, which I believe to be true.

5 On January 5, 2021, I declare under penalty of perjury under the laws of the State of
6 California that the foregoing is true and correct.

7 **Tustin, California**
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EXHIBIT B
TO COMPLAINT



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

KEVIN KISH, DIRECTOR

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
(800) 884-1684 (Voice) | (800) 700-2320 (TTY) | California's Relay Service at 711
<http://www.dfeh.ca.gov> | Email: contact.center@dfeh.ca.gov

January 5, 2021

Rebecca Dalton
4832 Cascade Dr.
Old Hickory, Tennessee 37138

RE: **Notice of Case Closure and Right to Sue**
DFEH Matter Number: 202012-12034209
Right to Sue: Dalton / Stubrik's Steakhouse et al.

Dear Rebecca Dalton:

This letter informs you that the above-referenced complaint filed with the Department of Fair Employment and Housing (DFEH) has been closed effective January 5, 2021 because an immediate Right to Sue notice was requested.

This letter is also your Right to Sue notice. According to Government Code section 12965, subdivision (b), a civil action may be brought under the provisions of the Fair Employment and Housing Act against the person, employer, labor organization or employment agency named in the above-referenced complaint. The civil action must be filed within one year from the date of this letter.

This matter may qualify for DFEH's Small Employer Family Leave Mediation pilot program. Under this program, established under Government Code section 12945.21, a small employer with 5 -19 employees, charged with violation of the California Family Rights Act, Government Code section 12945.2, has the right to participate in DFEH's free voluntary mediation service. Under this program both the employee requesting an immediate right to sue and the employer charged with the violation may request that all parties participate in DFEH's free voluntary mediation service. A request for mediation must be submitted to the DFEH within 30 days of receipt of the Notice of Case Closure and Right to Sue. If mediation is requested, the employee is prohibited from filing a civil action until mediation is complete. The employee's statute of limitations to file a civil action, including for all related claims not arising under section 12945.2, is tolled from DFEH's receipt of a mediation request under section 12945.21 until mediation is complete. To request DFEH Small Employer Family Leave Mediation, email DRDOnlineRequests@dfeh.ca.gov and include the DFEH matter number indicated on the Right to Sue notice.

To obtain a federal Right to Sue notice, you must contact the U.S. Equal Employment Opportunity Commission (EEOC) to file a complaint within 30 days of receipt of this DFEH Notice of Case Closure or within 300 days of the alleged discriminatory act, whichever is earlier.

Sincerely,



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

KEVIN KISH, DIRECTOR

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
(800) 884-1684 (Voice) | (800) 700-2320 (TTY) | California's Relay Service at 711
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Department of Fair Employment and Housing

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Newport Beach, CA 92662
6 Telephone: (949) 874-2002
Email: MMANDEL2@AOL.COM

7 Attorneys for Plaintiff
8 REBECCA DALTON

9
10
11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF ORANGE

13)
14 REBECCA DALTON, INDIVIDUALLY) CASE NO. CASE NO. 30-2021-01177894
AND ON BEHALF OF OTHERS) Judge Gregory H. Lewis
15 SIMILARLY SITUATED, AND ON) Department C26
BEHALF OF THE PEOPLE OF THE) Action Filed: 1/8/21
16 STATE OF CALIFORNIA, ROES 1-20,)
17 v.) FIRST AMENDED COMPLAINT FOR
WFO, ENT. GROUP, INC.; DENNIS) VIOLATION OF THE FEHA (GOV. CODE,
18 RAINEY; CRAIG VOORTING; DOES I) \$ 12940(h,i,j and k); FAILURE TO
through X, inclusive,) PROVIDE MEAL AND REST PERIODS
19) (LABOR CODE, §§ 512(a) AND
Defendants.) 226.7); FAILURE TO PAY
20) WAGES(LABOR CODE, §§ 202, 203,
21) 204, 221, 223, AND 224);
22) VIOLATION OF BUSINESS &
PROFESSIONS CODE, § 17200;
23) VIOLATION OF LABOR CODE, § 202,
ET SEQ.; RECOVERY OF WAGES,
24) PENALTIES AND INJUNCTIVE RELIEF
UNDER THE CALIFORNIA PRIVATE
25) ATTORNEY'S GENERAL ACT (PAGA
CLAIMS - LABOR CODE, § 2699(a)
AND (f); LABOR CODE, §§ 226 AND
26) 226.3);
JURY TRIAL DEMAND

27 Plaintiff Rebecca Dalton alleges:

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3 SUMMARY OF CLAIMS

4 1. This is an action for damages by Plaintiff against her former
5 employer, its owner and her manager for multiple statutory claims
6 arising out of an outrageous and bad faith course of conduct, in which
7 said defendants violated numerous statutes relating to employment law,
8 and civil rights; and violations of Wage Order 5. Plaintiff claims
9 that she was denied meal and rest periods; had the employer's business
10 expenses wrongfully debited from her own pay; had wages stolen by the
11 employer and his supervisory agents; and was not paid all accrued
12 wages and vacation pay in a timely manner following her resignation.
13 Plaintiff also claims that her manager and her employer are both
14 jointly liable for sexual harassment and the creation of a hostile
15 work environment. Plaintiff further claims that her employer's Labor
16 Code violations constituted violations of the Unfair Competition Law.
17 Plaintiff further claims, on behalf of herself and as a Representative
18 for all former and current employees similarly situated, the policies
19 and practices of the Employer violated Labor Code §§ 2698 et. seq.,
20 the California Private Attorney's General Act. Plaintiff seeks
21 compensatory damages, including economic damages for past and future
22 loss of earnings and benefits, unpaid meal and rest period
23 compensation, unpaid business expense reimbursements, and accrued
24 vacation; general damages for emotional distress; statutory penalties;
25 prejudgment interest; punitive damages; and statutory attorneys' fees.

26 PARTIES

27 2. At all times herein mentioned Plaintiff REBECCA DALTON

1 (hereinafter "Plaintiff") was a resident of the County of Los Angeles,
2 State of California. Plaintiff recently moved to Tennessee where she
3 currently resides.

4 3. Plaintiff is informed and believes and based on such
5 information and belief alleges that at all times herein mentioned
6 defendant WFO, ENT. GROUP, INC. (hereinafter "WFO") was and is a
7 California corporation doing business as Stubrik's Steakhouse located
8 in the City of Fullerton, County of Orange, State of California.

9 4. Plaintiff is further informed and believes and based on such
10 information and belief alleges that at all times herein mentioned
11 defendant DENNIS RAINEY (hereinafter "RAINEY") was and is a resident
12 of the County of Riverside, State of California, and was employed in
13 the County of Orange, State of California.

14 5. Plaintiff is further informed and believes and based on such
15 information and belief alleges that at all times herein mentioned
16 defendant CRAIG VOORTING (hereinafter "VOORTING") was and is the owner
17 of Stubrik's Steakhouse and a resident of the County of Orange, State
18 of California. Plaintiff further alleges that the corporate entity
19 WFO is a sham and a false front for the operation of Stubrik's
20 Steakhouse in the corporate form, that VOORTING exercises complete and
21 utter control over the corporation and the operation of the restaurant
22 as if it were a sole proprietorship, and that the corporate entity
23 should be disregarded, with VOORTING being held individually liable
24 for all damages, in the interest of justice.

25 6. Plaintiff is unaware of the true names and capacities, whether
26 corporate, associate, individual, or otherwise, of defendants named as
27 DOES I through X, inclusive. Pursuant to Code of Civil Procedure
28

1 Section 474, Plaintiff will seek leave of court to amend this
2 complaint to state said defendants' true names and capacities when the
3 same have been ascertained. Plaintiff is informed and believes and
4 based upon such information and belief alleges that said fictitiously-
5 named defendants are responsible in some manner for the injury and
6 damages to Plaintiff as further hereinafter alleged. Plaintiff is
7 unaware of the true names and capacities, of PLAINTIFFS named as ROES
8 1 - 20. Pursuant to Code of Civil Procedure Section 474, Plaintiff
9 will seek leave of court to amend this complaint to state said
10 PLAINTIFFS' true names and capacities when the same have been
11 ascertained. Plaintiff is informed and believes and based upon such
12 information and belief alleges that said fictitiously-named PLAINTIFFS
13 have suffered identical injury and damages as Plaintiff as is further
14 hereinafter alleged, and are proper co-Plaintiffs with Plaintiff.

15 AGENCY

16 7. Plaintiff is informed and believes and upon such information
17 and belief alleges that defendants, and each of them, at all times
18 herein mentioned were the agents, employees, servants, joint
19 venturers, and/or co-conspirators of the remaining defendants, and
20 were acting in the course and scope of such agency, employment, joint
21 venture, and/or conspiracy; that defendants, and each of them, were
22 doing the things herein alleged, were the actual and/or ostensible
23 agents of the remaining defendants and were acting within the course
24 and scope of said agency; and that each and every defendant, as
25 aforesaid, when acting as a principal, was negligent in selecting,
26 hiring, supervising and continuing the employment of each and every
27 defendant as an agent, employee or joint venturer; and/or that said

1 defendants approved, supported, participated in, authorized, and/or
2 ratified the acts and/or omissions of said employees, agents,
3 servants, conspirators, and/or joint venturers.

4 FACTS

5 Plaintiff's Long Tenure of Competent Performance for Defendant
6 WFO:

7 8. Plaintiff is currently 37 years of age, and is engaged to be
8 married. Throughout her employment with defendant WFO, she was single
9 and dependent on her own earnings for her sustenance. Plaintiff
10 commenced employment with defendant WFO in March of 2006 as a Hostess
11 at Stubrik's Steakhouse. Within one year, she was promoted to
12 Cocktail Server and the next year she was promoted to Server. Because
13 of her good performance, she was promoted to Bartender/Manager in or
14 about 2010. Thereafter Plaintiff remained continuously employed with
15 defendant WFO through November of 2020.

16 9. In late November of 2013, because a customer disputed a credit
17 card charge, defendant VOORTING, owner of Stubrik's Steakhouse, accused
18 Plaintiff of not encrypting the card and debited the credit card
19 charge from her own pay. When Plaintiff inquired as to why there was
20 no employee handbook setting forth such requirement, she was demoted
21 from Bartender/Manager back to Server and Plaintiff was no longer
22 allowed to work one of her shifts. The demotion was a continuing
23 violation of the Labor Code as it was in retaliation for Plaintiff's
24 protest of labor practice in violation of the Labor Code.

25 10. Thereafter Plaintiff continued to perform her job
26 responsibilities competently and conscientiously, and with dedication
27 and loyalty to defendant WFO, despite being subjected to

1 discrimination, harassment and retaliation on a continuing basis in
2 violation of the FEHA; despite being subjected to numerous violations
3 of the California Labor Code and Wage Order 5, including a continuing
4 retaliation for opposing illegal wage and hour practices; and despite
5 being repeatedly denied meal and rest breaks in violation of statute
6 and Wage Order. The continuing violation began prior to the November,
7 2013 incident related above, and continued unabated until Plaintiff
8 resigned in 2020, creating a hostile working environment throughout.

9 Defendant WFO's Unlawful Practice of Requiring Employees to Pay
10 for Customer Losses:

11 11. Throughout Plaintiff's employment, she as well as other
12 employees, on occasion were required to reimburse Stubrik's Steahouse
13 from their own pay for any disputed credit card charges. In addition,
14 Plaintiff and other employees were periodically required to reimburse
15 Stubrik's Steahouse from their own pay for one-half of any meals when
16 they mistakenly ordered the wrong food item. These labor practices
17 were continuing violations of the Labor Code which resulted in
18 financial losses to the similarly situated employees represented by
19 Plaintiff herein.

20 Defendant WFO's Practice of Falsifying Employee Time Records:

21 12. Throughout Plaintiff's employment, defendants RAINEY and
22 VOORTING, individually and in their respective managerial capacities
23 on behalf of defendant WFO, violated Labor Code, § 206.5, a
24 misdemeanor, by requiring Plaintiff and other employees to sign a
25 document professing to be a waiver of their right to take a 30 minute
26 meal period after five hours as required by Labor Code, § 512(a), and
27 then directing Plaintiff and other employees to push a button on a

1 computer screen showing that they had taken an unpaid meal period each
2 day. If Plaintiff and other employees forgot to hit the button, they
3 were directed to clock back in after clocking out so that an
4 adjustment could be made. Plaintiff and other employees were
5 therefore denied their legally required 30 minute meal periods, and
6 were not compensated for any such meal periods not taken, in violation
7 of Labor Code, §§ 512(a) and 226.7. This was also a violation of Wage
8 Order 5, under which an "on duty" meal period is a paid meal period,
9 and because there was no reason for Plaintiff or the similarly
10 situated employees to take "on duty" meal periods because the facts of
11 employment did not qualify the employer to require an "on duty" meal
12 period.

13 Defendant RAINEY's Sexual Harassment of Plaintiff:

14 13. Throughout her employment Plaintiff was subject to unwelcome
15 and offensive visual, verbal and physical sexual harassment, by her
16 manager, defendant RAINEY, which created a hostile work environment
17 for Plaintiff. This conduct included, but was not limited to the
18 following:

19 a) Asking Plaintiff if Plaintiff wished to "go to the kitchen and
20 watch pornography;"

21 b) Masturbating in Plaintiff's presence in the kitchen;

22 c) Repeatedly telling Plaintiff that she "had the nicest ass of
23 all the girls;"

24 d) Telling Plaintiff, "I want to see you naked in an ice bath;"

25 e) Telling Plaintiff that another manager had "invited a female
26 customer into the liquor room and fingered her butt;"

27 f) Kicking Plaintiff in the rear end with his foot while she was
28

1 standing at the salad bar;

2 g) Asking Plaintiff in the presence of another employee while
3 Plaintiff was drinking a green smoothie, "are you drinking Shrek's
4 cum?;" and,

5 h) Routinely using the "F" word and other profanities while
6 working in Plaintiff's presence.

7 14. Plaintiff withheld complaints regarding defendants'
8 unreasonable and unlawful work directives or defendant RAINEY's
9 inappropriate conduct for fear of retaliation as she was dependent on
10 her employment to make ends meet financially; and because Plaintiff
11 reasonably believed that any such complaint would be futile. However,
12 the situation got so bad that on one recent occasion, Plaintiff and
13 Melinda Renz ("Renz") did complain to defendant VOORTING that "Dennis'
14 behavior is out of control and servers feel the need to tip toe around
15 him." Defendant VOORTING responded by stating, "yes, he's become quite
16 the bear in the last year or so." However, defendant VOORTING failed
17 to take any effective remedial action regarding the complaints by
18 Plaintiff and Renz.

19 15. Due to the intolerable working conditions caused by
20 defendants, on November 10, 2020 Plaintiff gave defendant WFO two
21 weeks notice of her resignation.

22 16. Plaintiff experienced depression and anxiety as a result of
23 defendant RAINEY's harassing conduct and defendant WFO's unlawful
24 practices that prevented Plaintiff from taking meal or rest periods.

25 EXHAUSTION OF ADMINISTRATIVE REMEDIES

26 17. On January 5, 2021, Plaintiff filed a Complaint against
27 defendants RAINEY and Stubrik's Steakhouse with the Department of Fair
28

1 Employment and Housing ("DFEH"). A copy thereof is attached hereto as
2 **Exhibit A.** Thereafter on January 5, 2021, the DFEH issued a "right to
3 sue" letter. A copy thereof is attached hereto as **Exhibit B.** On
4 March 29, 2021, Plaintiff filed an Amended Complaint against
5 defendants Stubrik's, RAINEY, VOORING and WFO with the DFEH. A copy
6 thereof is attached hereto as **Exhibit C.** Thereafter on March 29,
7 2021, the DFEH issued a "right to sue" letter. A copy thereof is
8 attached hereto as **Exhibit D.** Plaintiff has therefore exhausted her
9 administrative remedies as a precondition to filing this First Amended
10 Complaint.

11 FIRST CAUSE OF ACTION

12 (Violation of Gov. Code, § 12940 (h), (i), (j), and (k) by verbal,
13 visual and physical Sexual Harassment)
Against Defendants RAINEY, VOORTING and WFO)

14 18. Plaintiff hereby realleges and incorporates by reference
15 paragraphs 1 through 17 as if set forth in full.

16 19. By virtue of the conduct of defendant RAINEY described in
17 paragraphs 13(a) through (h) above, defendants WFO and RAINEY,
18 individually and in his managerial capacity on behalf of defendant
19 WFO, subjected Plaintiff to verbal, visual and physical sexual
20 harassment and an unwanted and offensive "hostile work environment"
21 based on sex, in violation of Government Code, § 12940(j); defendants
22 WFO and VOORTING through the imputed actions of RAINEY and by
23 individually failing to act, violated Government Code § 12940 (i) by
24 aiding and abetting RAINEY to accomplish his verbal, visual and
25 physical harassment of Plaintiff; defendants WFO and VOORTING violated
26 Government Code § 12940 (k) by failing to take all reasonable steps
27 necessary to prevent discrimination and harassment from occurring; and
28

1 defendants WFO, VOORTING and RAINEY violated Government Code § 12940
2 (h) by retaliating against Plaintiff for protesting the verbal, visual
3 and physical sexual harassment that RAINEY was committing upon
4 Plaintiff, all to the injury to Plaintiff, financially, physically and
5 emotionally.

6 20. As a direct and proximate result of said sexual harassment,
7 Plaintiff was compelled to resign and thereby sustained economic
8 damages for past and future loss of earnings and benefits, according
9 to proof.

10 21. As a further direct and proximate result of said sexual
11 harassment, Plaintiff sustained general damages for severe mental and
12 emotional distress.

13 22. Defendants WFO, VOORTING and RAINEY, individually and in
14 their managerial capacities on behalf of defendant WFO, acted with
15 malice and oppression toward Plaintiff and with conscious and wanton
16 disregard of Plaintiff's rights, and defendants RAINEY and WFO should
17 therefore be assessed punitive and exemplary damages in sums
18 sufficient to punish them and set an example in view of their
19 respective financial conditions.

20 23. Plaintiff is further entitled to an award of statutory
21 attorneys' fees pursuant to Government Code, § 12965(b).

22 SECOND CAUSE OF ACTION

23 (Failure to Provide Meal and Rest Periods
24 (Labor Code, §§ 512(a) and 226.7 AND WAGE ORDER 5)
Against Defendants RAINEY, VOORTING and WFO)

25 24. Plaintiff hereby realleges and incorporates by reference
26 paragraphs 1 through 17 as if set forth in full.

27 25. Throughout Plaintiff's employment with defendant WFO,

1 defendants RAINEY and VOORTING, individually and in their respective
2 managerial capacities on behalf of defendant WFO, failed to provide
3 Plaintiff with meal and rest periods and failed to compensate
4 Plaintiff for each such failure, in violation of Labor Code, §§ 512(a)
5 and 226.7, as well as Wage Order 5, Sections 11 and 12.

6 26. As a direct and proximate result of said failure to provide
7 meal periods, Plaintiff is entitled to payment of one hour of premium
8 pay at Plaintiff's regular rate of compensation for each workday that
9 a statutory meal period was not provided to Plaintiff, pursuant to
10 Labor Code, § 226.7(c);

11 27. As a direct and proximate result of said failure to provide
12 rest periods, Plaintiff is entitled to payment of one hour of premium
13 pay at Plaintiff's regular rate of compensation for each workday that
14 a statutory rest period was not provided to Plaintiff, pursuant to
15 Labor Code, § 226.7(c); as a result of the failure to pay the premium
16 pay due for the failure to provide meal and rest breaks, Plaintiff is
17 also entitled to Waiting Time Penalties pursuant to Labor Code § 203
18 of 30 day's wages.

19 28. Plaintiff is further entitled to statutory attorneys' fees
20 pursuant to Labor Code, § 1021.5, and interest at 10% per annum on all
21 accrued and unpaid premium pay.

22 THIRD CAUSE OF ACTION

23 (Violations of the Labor Code, failure to pay wages, and unlawful
24 withholding of wages (Labor Code, § 202, 203, 204, 221, 223, 224,
25 225, 225.5, 226, 510, 1194 et seq., and Wage Order 5)
Against Defendants RAINEY, VOORTING and WFO)

26 29. Plaintiff hereby realleges and incorporates by reference
27 paragraphs 1 through 17 as if set forth in full.

1 30. Defendants RAINEY, VOORTING and WFO regularly "shaved hours"
2 from the time records of Plaintiff and co employees similarly situated
3 within the last 3 years, resulting in a failure to pay wages in
4 violation of Labor Code §§ 204, 510 and 1194, and Wage Order 5; this
5 failure to pay wages resulted in Plaintiff and similarly situated
6 employees receiving less than minimum wage for each hour worked,
7 thereby entitling Plaintiff to receive Liquidated Damages pursuant to
8 Labor Code § 1194.52 equal to the amount of minimum wage underpaid;
9 Plaintiff is entitled to interest on the Liquidated Damage pursuant to
10 Labor Code § 1194.2; the shaving of hours resulted in a failure to pay
11 Plaintiff all wages owed upon termination in violation of Labor Code
12 § 202 entitling Plaintiff to a penalty pursuant to Labor Code § 203
13 equal to 30 day's wages; and the shaving of hours resulted in payment
14 of less than minimum wage, for which Plaintiff is entitled to
15 additional penalties under Labor Code § 1199, and other code sections
16 not presently known, according to proof.

17 31. WFO, RAINEY and VOORTING, by requiring Plaintiff and other
18 employees to pay for bad debts that customers owed WFO and other
19 business expenses of WFO, acted in violation of Labor Code §§ 221,
20 223, 224, 225 and 225.5 when they withheld or required repayment, from
21 earned wages, from the employees to cover the business losses of WFO
22 which were a regular cost of doing business at Stubrik's Steakhouse.

23 32. WFO is liable for nonpayment of wages, damages, interest,
24 attorney fees and penalties alleged above as the ostensible employer,
25 pursuant to Labor Code §§ 558.1, 1197.1 and 1199; and the Wage Order.

26 33. RAINEY and VOORTING are liable for nonpayment of wages,
27 damages, interest, attorney fees and penalties alleged above pursuant
28

1 to Labor Code §§ 558.1 1197.1, and 1199; and the Wage Order.

2 34. As a direct and proximate result of said statutory
3 violations, defendants RAINEY, VOORTING and WFO are jointly obligated
4 to reimburse Plaintiff for all wages wrongfully withheld, plus
5 liquidated damages, interest, waiting time penalties, and other
6 penalties, in an amount that will be demonstrated according to proof.

7 35. Plaintiff is further entitled to an award of statutory
8 attorneys' fees, without limitation pursuant to Labor Code, §§ 218.5,
9 1194.3, and others not presently known.

10 FOURTH CAUSE OF ACTION

11 (Violation of Business and Professions Code, § 17200
12 Against Defendant WFO)

13 36. Plaintiff hereby realleges and incorporates by reference all
14 previously pled paragraphs as if set forth in full.

15 37. The practices heretofore described regarding the various
16 violations of the Labor Code, constituted unlawful, unfair and
17 fraudulent business acts or practices, in violation of California's
18 Unfair Competition Law at Business and Professions Code, § 17200.

19 38. As a direct and proximate result of said statutory violation,
20 Plaintiff is entitled to restitution for all losses incurred by
21 Plaintiff during her employment with defendant WFO, in amounts that
22 will be demonstrated according to proof for a period of four years
23 preceding the filing of this complaint pursuant to Business and
24 Professions Code, § 17206.

25 39. Plaintiff is also entitled to appropriate injunctive relief,
26 including injunctions against continuing Labor Code and Wage Order
27 violations.

1 40. Plaintiff is further entitled to an award of statutory
2 attorneys' fees as allowed by law.

3 FIFTH CAUSE OF ACTION

4 (Violation of Labor Code, § 202, Et Seq.
5 Against Defendant WFO)

6 41. Plaintiff hereby realleges and incorporates by reference all
7 previously pled paragraphs as if set forth in full.

8 42. Plaintiff was not paid all accrued wages and vacation pay due
9 within 72 hours of her resignation, in violation of Labor Code, §
10 202(a).

11 43. As a direct and proximate result of said statutory violation,
12 Plaintiff sustained economic damages for all accrued wages and
13 vacation pay, according to proof.

14 44. As a further result of said statutory violation, Plaintiff is
15 entitled to statutory penalties for up to 30 days unpaid wages as a
16 result of defendant WFO's failure to pay Plaintiff all accrued wages
17 and vacation pay due within 72 hours of her resignation pursuant to
18 Labor Code, § 203.

19 45. Plaintiff is further entitled to statutory attorneys' fees
20 pursuant to Labor Code, § 218.5.

21 SIXTH CAUSE OF ACTION

22 (Recovery of Penalties and Injunctive Relief Under the California
23 Private Attorney's General Act (PAGA Claims - Labor Code,
24 § 2699(a) and(f); Labor Code, §§ 226 and 226.3)
25 Against Defendant WFO)

26 46. Plaintiff hereby realleges and incorporates by reference all
27 previously pled paragraphs as if set forth in full.

28 47. This cause of action arises for penalties under the Private
Attorneys General Act (PAGA), Labor Code, § 2698 et. seq., and under

1 Labor Code, §§ 226 and 226.3.

2 48. Plaintiff brings this claim on her own behalf and in the name
3 of the People of the State of California, on behalf of all current and
4 former employees of defendant WFO, similarly situated, within the time
5 period of December 20, 2019 to the present date.

6 49. Plaintiff is required to and has exhausted her administrative
7 remedies by electronically filing a PAGA claim with the California
8 Labor and Workforce Development Agency (LWDA), more than 60 days prior
9 to filing this First Amended Complaint, on December 20, 2020. A copy
10 of the PAGA letter is attached hereto as **Exhibit E**.

11 50. As required by the Labor Code, on December 20, 2020, a
12 certified mail, RRR copy was sent to defendant WFO as "Stubrik's
13 Steakhouse," item # 7018 0360 0001 4642 3982. Defendant WFO refused
14 to take delivery of the letter and it was returned to sender. A
15 second copy was sent to counsel for defendant WFO when they became
16 known to counsel for Plaintiff, on or about January 10, 2021.

17 51. The LWDA has not sent Plaintiff any notice indicating that it
18 intends to investigate the violations alleged on the letter of
19 Plaintiff, despite the passage of 65 days.

20 52. Defendant WFO has not sent Plaintiff any notice of cure
21 despite the passage of over 65 days.

22 53. On November 22, 2020, defendant WFO constructively discharged
23 Plaintiff, and failed to pay Plaintiff all wages due and owing within
24 72 hours of Plaintiff's notification of the ending of Plaintiff's
25 employment, in violation of Labor Code, § 202.

26 54. Plaintiff is informed and believes that there are similarly
27 situated employees who were either terminated or quit and for whom

1 defendant WFO failed to properly pay said employees at the time of
2 their involuntary termination or 72 hours thereafter as provided in
3 Labor Code, § 202.

4 55. Defendant WFO violated Labor Code, § 206.5 with respect to
5 Plaintiff, and similarly situated former and current employees, by
6 requiring all such employees to regularly make false time entries into
7 a computerized time record keeping system and to periodically sign for
8 their paychecks on a document that falsely asserted the times reported
9 were correct. The times were false because all such employees were
10 required to work off the clock and were required to perform work
11 during statutory meal and rest periods, without receiving premium pay
12 therefore. There were no "on the clock meal period agreements,"
13 between defendant WFO and any of the former or current employees, nor
14 would such an agreement be statutorily authorized or permitted.

15 56. Defendant WFO failed to furnish, at the time of each payment
16 of wages, to each of his or her employees, an accurate itemized wage
17 statement reflecting the total hours employees worked. This included
18 all included former and current employees. The wage statements, as
19 known today, were not accurate because all similarly situated
20 employees were required to work off the clock and were required to
21 work through meal and rest periods, by defendant WFO, without
22 receiving the statutory premium pay for missing such periods.

23 57. Defendant WFO violated subdivision (a) of section 226 by
24 failing to furnish, at the time of each payment of wages, to each of
25 its employees, an accurate itemized wage statement for all of the
26 employees' hours worked, as described above. Although defendant WFO
27 provided an itemized wage statement it did not accurately state the

1 total hours Plaintiff and other current and former employees worked,
2 or Plaintiff's and other current and former employees' hourly rate.
3 Thus, defendant WFO is subject to a civil penalty as set forth under
4 Labor Code, § 226.3.

5 58. In addition to the rights to penalties pursuant to PAGA for
6 a violation of Labor Code, § 226, Plaintiff and the represented
7 current and former employees are entitled to recover penalties
8 directly under Labor Code, §§ 226 and 226.3 for failing to provide
9 proper statements of wages, and do hereby make such a claim for
10 penalties.

11 59. Defendant WFO failed to pay its non-exempt employees,
12 including Plaintiff and other current and former employees, at the
13 rate of no less than one and one-half times the regular rate of pay
14 for any hours worked in excess of eight hours in one workday, any work
15 in excess of 40 hours in any one workweek, the first eight hours
16 worked on the seventh day of work in any one workweek, and at the rate
17 of no less than twice the regular rate of pay of any employee for any
18 work in excess of 12 hours in one day and any work in excess of eight
19 hours on any seventh day of a workweek, in violation of Labor Code, §
20 510.

21 60. The aforestated violation of Labor Code, § 510 also
22 constitutes a violation of Labor Code, § 558, for which there is a
23 separate penalty owed to Plaintiff and the represented current and
24 former employees of defendant WFO.

25 61. When defendant WFO failed to keep, at a central location in
26 the state or at the plants or establishments at which employees are
27 employed, payroll records showing the hours worked daily by and the

1 wages paid to employees employed at the respective plants or
2 establishments, it violated Labor Code, § 1174, for which there is a
3 separate and distinct penalty owed to Plaintiff and the represented
4 current and former employees of defendant WFO, pursuant to Labor Code,
5 § 1174.5.

6 62. Defendant WFO employed Plaintiff and other current and former
7 employees for longer hours than those fixed by the order or under
8 conditions of labor prohibited by order of the Industrial Welfare
9 Commission. Plaintiff and other current and former employees of
10 defendant WFO worked more than 8 hours in a day and/or more than 40
11 hours in a workweek. Defendant WFO failed to pay the appropriate
12 overtime compensation pursuant to Labor Code, § 510, and Plaintiff and
13 other current and former employees of defendant WFO are entitled to
14 recover the penalties provided in Labor Code, § 1198.

15 63. Defendant WFO employed Plaintiff and other current and former
16 employees for longer hours than those fixed by order of the Industrial
17 Welfare Commission or under conditions of labor prohibited by the
18 order of the Industrial Welfare Commission. Plaintiff and other
19 current and former employees of defendant WFO worked more than 8 hours
20 a day and/or more than 40 hours in a workweek. Defendant WFO failed
21 to pay the appropriate overtime compensation required by the Wage
22 Order, and Plaintiff and other current and former employees of
23 defendant WFO similarly situated are entitled to recover the penalties
24 provided in Labor Code, § 1199.

25 64. Defendant WFO routinely required Plaintiff and other current
26 and former employees to "cover" bad checks from the restaurant
27 customers, meaning pay out of the earnings of the employees the

1 business loss of defendant WFO, in violation of Labor Code, §§ 221 and
2 223, which are misdemeanors. Plaintiff and the represented former and
3 current employees are entitled to penalties for each such payment to
4 "cover" so required to be paid to defendant WFO, and likewise to
5 recover, not as a penalty but as a wage, the amounts paid to "cover."

6 65. Plaintiff is continuing investigation into the facts
7 regarding the employment practices of defendant WFO in relation to
8 Represented Employees and reserves the right to amend this complaint
9 if and when additional Labor Code violations become known to
10 Plaintiff, to more properly allege all the violations to which
11 penalties apply.

12 66. The afore alleged violations of the Labor Code are likewise,
13 individually and distinctly violations of PAGA, under which Plaintiff
14 and the Represented Employees are entitled to recover PAGA penalties
15 pursuant to the provisions of Labor Code, § 2699, for each and every
16 violation separately in the amounts provided by Labor Code, § 2699,
17 according to proof.

18 67. Pursuant to PAGA, 75% of the penalties collected are to be
19 paid to the LWDA, and 25% of the penalties collected are to be
20 distributed to Plaintiff and the Represented Employees.

21 68. Pursuant to Labor Code, § 2699(g), Plaintiff is entitled to
22 recover her reasonable attorneys' fees for the pursuit of the PAGA
23 claims of Plaintiff and the Represented Employees.

24 PRAYER

25 WHEREFORE Plaintiff prays judgment against defendants as follows:

26 As to the First Cause of Action against all defendants:

27 1. For economic damages for past and future loss of earnings

- 1 and benefits, according to proof;
- 2 2. For general damages, according to proof;
- 3 3. For punitive damages, according to proof;
- 4 4. For statutory attorneys' fees pursuant to Government Code,
- 5 § 12965(b).

6 As to the Second Cause of Action against all defendants:

- 7 1. For payment of one hour of premium pay at Plaintiff's
- 8 regular rate of compensation for each workday that a
- 9 statutory meal period was not provided to Plaintiff,
- 10 pursuant to Labor Code, § 226.7(c);
- 11 2. For payment of one hour of premium pay at Plaintiff's
- 12 regular rate of compensation for each workday that a
- 13 statutory rest period was not provided to Plaintiff,
- 14 pursuant to Labor Code, § 226.7(c);
- 15 3. For statutory attorneys' fees pursuant to Labor Code, §
- 16 1021.5, or such other provision of law according to proof.
- 17 4. For interest at 10% per annum on all accrued and unpaid
- 18 premium pay.

19 As to the Third Cause of Action, against all defendants:

- 20 1. For unpaid wages, liquidated damages, waiting time
- 21 penalties, interest, and other penalties as provided by law,
- 22 according to proof.
- 23 2. For statutory attorneys' fees pursuant to Labor Code, §
- 24 2802(c).

25 As to the Fourth Cause of Action against defendants WFO and

26 VOORTING:

- 27 1. For restitution of all sums due and owing to Plaintiff,

pursuant to the Unfair Competition Law, for a period of four years preceding the filing of this complaint pursuant to Business and Professions Code, § 17206;

2. For injunctive relief to prevent future violations of the Unfair Competition Law by defendant WFO;
3. For other appropriate injunctive relief;
4. For statutory attorneys' fees as allowed by law.

As to the Fifth Cause of Action against all defendants:

1. For economic damages for all unpaid accrued wages and vacation pay, according to proof;
2. For statutory penalties pursuant to Labor Code, § 203;
3. For statutory attorneys' fees pursuant to Labor Code, § 218.5.

As to the Sixth Cause of Action against all defendants:

1. For an award of penalties pursuant to Labor Code, § 2699 for each provision of the Labor Code violated by defendants, for each person employed by defendants during the relevant time period, from December 20, 2019 to the date of judgment, according to proof;
2. For an award of penalties pursuant to Labor Code, §§ 226 and 226.3, individually and not pursuant to PAGA, for Plaintiff and each individual Represented Employee, according to proof;
3. For an award of reasonable attorneys' fees as provided by Labor Code, § 2699.

As to All Causes of Action:

1. For costs of suit incurred;

- 1 2. For prejudgment interest as provided by law;
2 3. For such further relief as Court deems proper.
3 4. For attorney's fees under CCP § 1021.5 where applicable.

4
5 Dated: March 30, 2021

MMII- my electronic signature

6 WILLIAM M. CROSBY

7 by: MAURICE MANDEL II

8 Attorneys for Plaintiff

9 REBECCA DALTON

10
11 JURY TRIAL DEMAND

12 Plaintiff REBECCA DALTON hereby demands trial by jury of the
13 above cause.

14
15 Dated: March 30, 2021

MMII- my electronic signature

16 WILLIAM M. CROSBY

17 by: MAURICE MANDEL II

18 Attorneys for Plaintiff

19 REBECCA DALTON
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1 **COMPLAINT OF EMPLOYMENT DISCRIMINATION**
2 **BEFORE THE STATE OF CALIFORNIA**
3 **DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING**
4 **Under the California Fair Employment and Housing Act**
 (Gov. Code, § 12900 et seq.)

5 **In the Matter of the Complaint of**

Rebecca Dalton

DFEH No. 202012-12034209

6 Complainant,

7 vs.

8 Stubrik's Steakhouse
9 118 E. Commonwealth Ave.
 Fullerton, California 92832

10 Dennis Rainey
11 118 E. Commonwealth Ave.
 Fullerton, California 92832

12 Respondents

13 _____
14 1. Respondent **Stubrik's Steakhouse** is an employer **Stubrik's Steakhouse** subject to suit
15 under the California Fair Employment and Housing Act (FEHA) (Gov. Code, § 12900 et seq.).

16 2. Complainant is naming **Dennis Rainey** as individual Co-Respondent(s).

17 3. Complainant **Rebecca Dalton**, resides in the City of **Old Hickory**, State of **Tennessee**.

18 4. Complainant alleges that on or about **November 23, 2020**, respondent took the
19 following adverse actions:

20 **Complainant was harassed** because of complainant's sex/gender, sexual harassment-
21 hostile environment.

22 **Complainant was discriminated against** because of complainant's sex/gender, sexual
23 harassment- hostile environment and as a result of the discrimination was reprimanded,
24 asked impermissible non-job-related questions, other.

25 **Additional Complaint Details:**
26
27
28

1 VERIFICATION

2 I, **William M. Crosby**, am the **Attorney** in the above-entitled complaint. I have read
3 the foregoing complaint and know the contents thereof. The matters alleged are
4 based on information and belief, which I believe to be true.

5 On January 5, 2021, I declare under penalty of perjury under the laws of the State of
6 California that the foregoing is true and correct.

7 **Tustin, California**
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DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
(800) 884-1684 (Voice) | (800) 700-2320 (TTY) | California's Relay Service at 711
<http://www.dfeh.ca.gov> | Email: contact.center@dfeh.ca.gov

KEVIN KISH, DIRECTOR

January 5, 2021

Rebecca Dalton
4832 Cascade Dr.
Old Hickory, Tennessee 37138

RE: **Notice of Case Closure and Right to Sue**
DFEH Matter Number: 202012-12034209
Right to Sue: Dalton / Stubrik's Steakhouse et al.

Dear Rebecca Dalton:

This letter informs you that the above-referenced complaint filed with the Department of Fair Employment and Housing (DFEH) has been closed effective January 5, 2021 because an immediate Right to Sue notice was requested.

This letter is also your Right to Sue notice. According to Government Code section 12965, subdivision (b), a civil action may be brought under the provisions of the Fair Employment and Housing Act against the person, employer, labor organization or employment agency named in the above-referenced complaint. The civil action must be filed within one year from the date of this letter.

This matter may qualify for DFEH's Small Employer Family Leave Mediation pilot program. Under this program, established under Government Code section 12945.21, a small employer with 5 -19 employees, charged with violation of the California Family Rights Act, Government Code section 12945.2, has the right to participate in DFEH's free voluntary mediation service. Under this program both the employee requesting an immediate right to sue and the employer charged with the violation may request that all parties participate in DFEH's free voluntary mediation service. A request for mediation must be submitted to the DFEH within 30 days of receipt of the Notice of Case Closure and Right to Sue. If mediation is requested, the employee is prohibited from filing a civil action until mediation is complete. The employee's statute of limitations to file a civil action, including for all related claims not arising under section 12945.2, is tolled from DFEH's receipt of a mediation request under section 12945.21 until mediation is complete. To request DFEH Small Employer Family Leave Mediation, email DRDOnlineRequests@dfeh.ca.gov and include the DFEH matter number indicated on the Right to Sue notice.

To obtain a federal Right to Sue notice, you must contact the U.S. Equal Employment Opportunity Commission (EEOC) to file a complaint within 30 days of receipt of this DFEH Notice of Case Closure or within 300 days of the alleged discriminatory act, whichever is earlier.

Sincerely,



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

KEVIN KISH, DIRECTOR

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
(800) 884-1684 (Voice) | (800) 700-2320 (TTY) | California's Relay Service at 711
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Department of Fair Employment and Housing

In the Matter of the Complaint of
Rebecca Dalton

Complainant,

Stubrik's Steakhouse
118 E. Commonwealth Ave.
Fullerton, California 92832

WFO, ENT. GROUP, INC.
118 E COMMONWEALTH AVE.
FULLERTON, California 92832

Craig VOORTING
118 E COMMONWEALTH AVE.
FULLERTON, California 92832

Dennis Rainey
118 E. Commonwealth Ave.
Fullerton, California 92832

Respondents

1. Respondent Stubrik's Steakhouse is an employer **Stubrik's Steakhouse** subject to suit under the California Fair Employment and Housing Act (FEHA) (Gov. Code, § 12900 et seq.).

2. Complainant is naming **WFO, ENT. GROUP, INC.** business as Co-Respondent(s).
Complainant is naming **Craig VOORTING** individual as Co-Respondent(s).
Complainant is naming **Dennis Rainey** individual as Co-Respondent(s).

3. Complainant **Rebecca Dalton**, resides in the City of **Old Hickory**, State of **Tennessee**.

4. Complainant alleges that on or about **November 23, 2020**, respondent took the following adverse actions:

1 **Complainant was harassed** because of complainant's sex/gender, sexual harassment-
2 hostile environment.

3 **Complainant was discriminated against** because of complainant's sex/gender, sexual
4 harassment- hostile environment and as a result of the discrimination was reprimanded,
5 asked impermissible non-job-related questions, other.

6 **Complainant experienced retaliation** because complainant reported or resisted any form
7 of discrimination or harassment and as a result was forced to quit, demoted, other.

8 **Additional Complaint Details:** Throughout her employment, as far back as 2013, Claimant
9 was subject to unwelcome and offensive visual, verbal and physical sexual harassment, by
10 her manager, defendant RAINEY, which created a hostile work environment for Plaintiff.
11 This conduct was open and obvious, known to all employees who worked there, many of
12 whom were similarly harassed. Voorting, the owner, was aware that Rainey was "out of
13 control" yet, despite an obligation to act, failed to act to prevent the employees as Stubrik's
14 Steakhouse from suffering from the harassment by RAINEY. The conduct Rainey directed
15 to Claimant included, but was not limited to the following:

- 16 a) Asking Claimant if Claimant wished to "go to the kitchen and watch pornography;"
- 17 b) Masturbating in Claimant's presence in the kitchen, and bragging about
18 ejaculating on the floor;
- 19 c) Repeatedly telling Claimant that she "had the nicest ass of all the girls;"
- 20 d) Telling Claimant, "I want to see you naked in an ice bath;"
- 21 e) Telling Claimant that another manager had "invited a female customer into the
22 liquor room and fingered her butt;"
- 23 f) Kicking Claimant in the rear end with his foot while she was standing at the salad
24 bar;
- 25 g) Asking Claimant in the presence of another employee while Claimant was drinking
26 a green smoothie, "are you drinking Shrek's cum?;" and,
- 27 h) Routinely using the "F" word and other profanities while working in Claimant's
28 presence.

Claimant protested the verbal, visual and physical harassment by Rainey to Voorting, the
owner, and suffered further harassment by Rainey. Voorting failed to take any action to
prevent the discrimination from continuing to occur. Claimant alleges that Voorting aided
and abetted Rainey in Rainey's commission of the sexual harassment with knowledge of the
hostile working environment by failing to act in violation of the FEHA.

Claimant alleges the activities violated Govt. Code § 12940 sub sections (h, i, j and k) at
least and possibly additional sub sections.

1 VERIFICATION

2 I, **William M. Crosby**, am the **Attorney** in the above-entitled complaint. I have read
3 the foregoing complaint and know the contents thereof. The matters alleged are
4 based on information and belief, which I believe to be true.

5 On March 29, 2021, I declare under penalty of perjury under the laws of the State of
6 California that the foregoing is true and correct.

7 **Tustin, California**
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DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

KEVIN KISH, DIRECTOR

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March 29, 2021

William Crosby
13522 Newport Avenue, Suite 201
Tustin, California 92780

RE: **Notice to Complainant's Attorney**
DFEH Matter Number: 202012-12034209
Right to Sue: Dalton / Stubrik's Steakhouse et al.

Dear William Crosby:

Attached is a copy of your **amended** complaint of discrimination filed with the Department of Fair Employment and Housing (DFEH) pursuant to the California Fair Employment and Housing Act, Government Code section 12900 et seq.

Pursuant to Government Code section 12962, DFEH will not serve these documents on the employer. You or your client must serve the complaint.

The amended complaint is deemed to have the same filing date of the original complaint. This is not a new Right to Sue letter. The original Notice of Case Closure and Right to Sue issued in this case remains the only such notice provided by the DFEH. (Cal. Code Regs., tit. 2, § 10022.)

Be advised that the DFEH does not review or edit the complaint form to ensure that it meets procedural or statutory requirements.

Sincerely,

Department of Fair Employment and Housing

Maurice Mandel II
Attorney at Law
PO Box 411
Newport Beach, CA 92662
(949)646-7799
(949) 874-2002 mobile
E-MAIL: MMANDEL2@AOL.COM

December 30, 2020

California Labor and Workforce Development Agency
via electronic submission on the LWDA website.

Stubrik's Steakhouse, Dennis Rainey, and Craig Voorting
118 E Commonwealth Ave.
Fullerton, CA 92832

Certified Mail/RRR

Item #:7018 0360 0001 4642 3982// 9590940254159189598804

To whom it may concern:

Please take notice that pursuant to the procedures specified in California Labor Code § 2699.3 Rebecca Dalton (hereinafter "EMPLOYEE") on behalf of herself and other current and former employees claims Stubrik's Steakhouse, Dennis Rainey, and Craig Voorting (hereinafter collectively referred to as "EMPLOYER") violated, at least, the following California Labor Code §§ 203, 206.5, 226, 226.3, 510, 558, 1174, 1174.5, 1194, 1198, and 1199.

Sec. 203: EMPLOYER willfully failed to pay, without abatement, discharged or quitting EMPLOYEE all wages and compensation due at the time of discharge or within 72 hours for a quitting employee. EMPLOYER failed to pay EMPLOYEE on or about November 22, 2020, and other formerly discharged or quitting employees, within the time prescribed by Sec. 203, for all wages and earned compensation due by failing to pay EMPLOYEE and other former employees for all hours worked, failing to pay overtime wages, and failing to pay premium pay for denied meal and rest periods. EMPLOYER'S failure to pay as alleged was willful in that EMPLOYER refused to pay said amounts knowing that EMPLOYEE and other current and former employees had worked overtime and were entitled to overtime premiums, without being compensated for such overtime by payment of such premiums; and that EMPLOYEE and other current and former employees were denied permission and opportunity for meal and rest periods by EMPLOYER, yet were not paid premium pay for such denial.

Sec. 206.5 states: (a) An employer shall not require the execution of a release of a claim or right on account of wages due, or to become due, or made as an advance on wages to be earned, unless

payment of those wages has been made. A release required or executed in violation of the provisions of this section shall be null and void as between the employer and the employee. Violation of this section by the employer is a misdemeanor.

(b) For purposes of this section, "execution of a release" includes requiring an employee, as a condition of being paid, to execute a statement of the hours he or she worked during a pay period which the employer knows to be false.

EMPLOYER violated Sec. 206.5 with respect to EMPLOYEE, and similarly situated former and current employees by requiring all such employees to regularly make false time entries into a computerized time record keeping system and to periodically sign for their paychecks on a document that falsely asserted the times reported were correct. The times were false because all such employees were required to work off the clock and were required to perform work during statutory meal and rest periods, without receiving premium pay therefore. There were no "On the clock meal period agreements," between EMPLOYER and any of the former or current employees, nor would such an agreement be statutorily authorized or permitted.

226: EMPLOYER failed to furnish, at the time of each payment of wages, to each of his or her employees, an accurate itemized wage statement reflecting the total hours employees worked. This included all included former and current employees. The wage statements, as known today, were not accurate because all similarly situated employees were required to work off the clock and were required to work through meal and rest periods, by the EMPLOYER, without receiving the statutory premium pay for missing such periods.

226.3: EMPLOYER violated subdivision (a) of section 226 by failing to furnish, at the time of each payment of wages, to each of his or her employees, an accurate itemized wage statement for all EMPLOYEE'S hours worked, as described above. Although EMPLOYER provided an itemized wage statement it did not accurately state the total hours EMPLOYEE and other current and former employees worked or EMPLOYEE'S and other current and former employees' hourly rate. Thus, EMPLOYER is subject to a civil penalty as set forth under this section.

Sec. 510: EMPLOYER failed to pay its non-exempt EMPLOYEE and other current and former employees at the rate of no less than one and one-half times the regular rate of pay for any hours worked in excess of eight hours in one workday; any work in excess of 40 hours in any one workweek; the first eight hours worked on the seventh day of work in any one workweek; and at the rate of no less than twice the regular rate of pay of any employee for any work in excess of 12 hours in one day and any work in excess of eight hours on any seventh day of a workweek.

Sec. 558: EMPLOYER or other person acting on behalf of EMPLOYER violated, or caused to be violated, Labor Code section 500-558 or any provision regulating hours and days of work in any order of the Industrial Welfare Commission. EMPLOYER violated Labor Code sections 510 by failing to pay its non-exempt EMPLOYEE and other current and former employees at the rate of no less than one and one-half times the regular rate of pay for any hours worked in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek.

Sec. 1174: EMPLOYER failed to keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to employees employed at the respective plants or establishments.

Sec. 1174.5: EMPLOYER violated Labor Code §1174 by failing to maintain required records and is, therefore, subject to a civil penalty.

Sec. 1198: EMPLOYER employed EMPLOYEE and other current and former employees for longer hours than those fixed by the order or under conditions of labor prohibited by order of the Industrial Welfare Commission. EMPLOYEE and other current and former employees worked more than 8 hours in a day and/or more than 40 hours in a workweek. EMPLOYER failed to pay the appropriate overtime compensation.

Sec. 1199: EMPLOYER employed EMPLOYEE and other current and former employees for longer hours than those fixed by order of the Industrial Welfare Commission or under conditions of labor prohibited by the order of the Industrial Welfare Commission. EMPLOYEE and other current and former employees worked more than 8 hours a day and/or more than 40 hours in a workweek. EMPLOYER failed to pay the appropriate overtime compensation.

EMPLOYER required EMPLOYEE and other current and former employees, to pay for business losses incurred by EMPLOYER, which, in part, were caused by the ordinary negligence of employees and which, in part, were caused by the negligence of EMPLOYER.

EMPLOYEE is not currently aware of all potential claims by the represented additional similarly situated current and former employees, and reserves the right to amend this LWDA letter to more fully state those claims when they become known to EMPLOYEE.

EMPLOYEE makes this letter on her own behalf and on behalf of the People of the State of California as provided in PAGA, for all similarly situated former and current employees of EMPLOYER.


Maurice Mandel II, Attorney for
Rebecca Dalton, individually and on behalf
of similarly situated current and former employees
of Stubik's Steakhouse

Subject: Thank you for your Court Complaint Submission.
Date: 8/19/2021 6:52:45 PM Pacific Standard Time
From: lwdadonotreply@dir.ca.gov
To: MMANDEL2@AOL.COM

08/19/2021 06:52:31 PM

Thank you for your submission to the Labor and Workforce Development Agency.

Item submitted: Court Complaint

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

1 **COMPLAINT OF EMPLOYMENT DISCRIMINATION**
2 **BEFORE THE STATE OF CALIFORNIA**
3 **DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING**
4 **Under the California Fair Employment and Housing Act**
 (Gov. Code, § 12900 et seq.)

5 **In the Matter of the Complaint of**

Rebecca Dalton

DFEH No. 202012-12034209

6 Complainant,

7 vs.

8 Stubrik's Steakhouse
9 118 E. Commonwealth Ave.
 Fullerton, California 92832

10 Dennis Rainey
11 118 E. Commonwealth Ave.
 Fullerton, California 92832

12 Respondents

13 _____
14 1. Respondent **Stubrik's Steakhouse** is an employer **Stubrik's Steakhouse** subject to suit
15 under the California Fair Employment and Housing Act (FEHA) (Gov. Code, § 12900 et seq.).

16 2. Complainant is naming **Dennis Rainey** as individual Co-Respondent(s).

17 3. Complainant **Rebecca Dalton**, resides in the City of **Old Hickory**, State of **Tennessee**.

18 4. Complainant alleges that on or about **November 23, 2020**, respondent took the
19 following adverse actions:

20 **Complainant was harassed** because of complainant's sex/gender, sexual harassment-
21 hostile environment.

22 **Complainant was discriminated against** because of complainant's sex/gender, sexual
23 harassment- hostile environment and as a result of the discrimination was reprimanded,
24 asked impermissible non-job-related questions, other.

25 **Additional Complaint Details:**
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1 VERIFICATION

2 I, **William M. Crosby**, am the **Attorney** in the above-entitled complaint. I have read
3 the foregoing complaint and know the contents thereof. The matters alleged are
4 based on information and belief, which I believe to be true.

5 On January 5, 2021, I declare under penalty of perjury under the laws of the State of
6 California that the foregoing is true and correct.

7 **Tustin, California**
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DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

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KEVIN KISH, DIRECTOR

January 5, 2021

Rebecca Dalton
4832 Cascade Dr.
Old Hickory, Tennessee 37138

RE: **Notice of Case Closure and Right to Sue**
DFEH Matter Number: 202012-12034209
Right to Sue: Dalton / Stubrik's Steakhouse et al.

Dear Rebecca Dalton:

This letter informs you that the above-referenced complaint filed with the Department of Fair Employment and Housing (DFEH) has been closed effective January 5, 2021 because an immediate Right to Sue notice was requested.

This letter is also your Right to Sue notice. According to Government Code section 12965, subdivision (b), a civil action may be brought under the provisions of the Fair Employment and Housing Act against the person, employer, labor organization or employment agency named in the above-referenced complaint. The civil action must be filed within one year from the date of this letter.

This matter may qualify for DFEH's Small Employer Family Leave Mediation pilot program. Under this program, established under Government Code section 12945.21, a small employer with 5 -19 employees, charged with violation of the California Family Rights Act, Government Code section 12945.2, has the right to participate in DFEH's free voluntary mediation service. Under this program both the employee requesting an immediate right to sue and the employer charged with the violation may request that all parties participate in DFEH's free voluntary mediation service. A request for mediation must be submitted to the DFEH within 30 days of receipt of the Notice of Case Closure and Right to Sue. If mediation is requested, the employee is prohibited from filing a civil action until mediation is complete. The employee's statute of limitations to file a civil action, including for all related claims not arising under section 12945.2, is tolled from DFEH's receipt of a mediation request under section 12945.21 until mediation is complete. To request DFEH Small Employer Family Leave Mediation, email DRDOnlineRequests@dfeh.ca.gov and include the DFEH matter number indicated on the Right to Sue notice.

To obtain a federal Right to Sue notice, you must contact the U.S. Equal Employment Opportunity Commission (EEOC) to file a complaint within 30 days of receipt of this DFEH Notice of Case Closure or within 300 days of the alleged discriminatory act, whichever is earlier.

Sincerely,



STATE OF CALIFORNIA | Business, Consumer Services and Housing Agency

GAVIN NEWSOM, GOVERNOR

DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

KEVIN KISH, DIRECTOR

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758

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Department of Fair Employment and Housing

In the Matter of the Complaint of
Rebecca Dalton

Complainant,

Respondents

- 1-

Date Filed: January 5, 2021
Date Amended: March 29, 2021

1 **Complainant was harassed** because of complainant's sex/gender, sexual harassment-
2 hostile environment.

3 **Complainant was discriminated against** because of complainant's sex/gender, sexual
4 harassment- hostile environment and as a result of the discrimination was reprimanded,
5 asked impermissible non-job-related questions, other.

6 **Complainant experienced retaliation** because complainant reported or resisted any form
7 of discrimination or harassment and as a result was forced to quit, demoted, other.

8 **Additional Complaint Details:** Throughout her employment, as far back as 2013, Claimant
9 was subject to unwelcome and offensive visual, verbal and physical sexual harassment, by
10 her manager, defendant RAINEY, which created a hostile work environment for Plaintiff.
11 This conduct was open and obvious, known to all employees who worked there, many of
12 whom were similarly harassed. Voorting, the owner, was aware that Rainey was "out of
13 control" yet, despite an obligation to act, failed to act to prevent the employees as Stubrik's
14 Steakhouse from suffering from the harassment by RAINEY. The conduct Rainey directed
15 to Claimant included, but was not limited to the following:

- 16 a) Asking Claimant if Claimant wished to "go to the kitchen and watch pornography;"
- 17 b) Masturbating in Claimant's presence in the kitchen, and bragging about
18 ejaculating on the floor;
- 19 c) Repeatedly telling Claimant that she "had the nicest ass of all the girls;"
- 20 d) Telling Claimant, "I want to see you naked in an ice bath;"
- 21 e) Telling Claimant that another manager had "invited a female customer into the
22 liquor room and fingered her butt;"
- 23 f) Kicking Claimant in the rear end with his foot while she was standing at the salad
24 bar;
- 25 g) Asking Claimant in the presence of another employee while Claimant was drinking
26 a green smoothie, "are you drinking Shrek's cum?;" and,
- 27 h) Routinely using the "F" word and other profanities while working in Claimant's
28 presence.

Claimant protested the verbal, visual and physical harassment by Rainey to Voorting, the
owner, and suffered further harassment by Rainey. Voorting failed to take any action to
prevent the discrimination from continuing to occur. Claimant alleges that Voorting aided
and abetted Rainey in Rainey's commission of the sexual harassment with knowledge of the
hostile working environment by failing to act in violation of the FEHA.

Claimant alleges the activities violated Govt. Code § 12940 sub sections (h, i, j and k) at
least and possibly additional sub sections.

1 VERIFICATION

2 I, **William M. Crosby**, am the **Attorney** in the above-entitled complaint. I have read
3 the foregoing complaint and know the contents thereof. The matters alleged are
4 based on information and belief, which I believe to be true.

5 On March 29, 2021, I declare under penalty of perjury under the laws of the State of
6 California that the foregoing is true and correct.

7 **Tustin, California**
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DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

KEVIN KISH, DIRECTOR

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
(800) 884-1684 (Voice) | (800) 700-2320 (TTY) | California's Relay Service at 711
<http://www.dfeh.ca.gov> | Email: contact.center@dfefh.ca.gov

March 29, 2021

William Crosby
13522 Newport Avenue, Suite 201
Tustin, California 92780

RE: **Notice to Complainant's Attorney**
DFEH Matter Number: 202012-12034209
Right to Sue: Dalton / Stubrik's Steakhouse et al.

Dear William Crosby:

Attached is a copy of your **amended** complaint of discrimination filed with the Department of Fair Employment and Housing (DFEH) pursuant to the California Fair Employment and Housing Act, Government Code section 12900 et seq.

Pursuant to Government Code section 12962, DFEH will not serve these documents on the employer. You or your client must serve the complaint.

The amended complaint is deemed to have the same filing date of the original complaint. This is not a new Right to Sue letter. The original Notice of Case Closure and Right to Sue issued in this case remains the only such notice provided by the DFEH. (Cal. Code Regs., tit. 2, § 10022.)

Be advised that the DFEH does not review or edit the complaint form to ensure that it meets procedural or statutory requirements.

Sincerely,

Department of Fair Employment and Housing

In the Matter of the Complaint of
Rebecca Dalton

Complainant,

Respondents

- 1-

Date Filed: January 5, 2021
Date Amended: March 29, 2021

1 **Complainant was harassed** because of complainant's sex/gender, sexual harassment-
2 hostile environment.

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7 **Tustin, California**
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1 Summer Young-Agriesti (State Bar No. 232883)
syoun@kbylaw.com
2 Yeun C. Yim (State Bar No. 253748)
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3 Klatte, Budensiek & Young-Agriesti, LLP
1111A Quail Street
4 Newport Beach, California 92660
Telephone: (949) 221-8700
5 Facsimile: (949) 222-1044

6 Attorneys for Defendants
WFO, Ent. Group, Inc., Dennis Rainey,
7 and Craig Voorting

8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF ORANGE, CENTRAL JUSTICE CENTER

11 REBECCA DALTON, INDIVIDUALLY
AND ON BEHALF OF OTHERS
12 SIMILARLY SITUATED, AND ON
BEHALF OF THE PEOPLE OF THE
13 STATE OF CALIFORNIA, ROES 1-20,

14 Plaintiff,

15 vs.

16 WFO, ENT. GROUP, INC.; DENNIS
RAINEY; CRAIG VOORTING; DOES I
17 through X, inclusive,

18 Defendants.

CASE No.: 30-2021-01177894-CU-OE-CJC

ASSIGNED TO THE HONORABLE GREGORY LEWIS
DEPT. C26

**DEFENDANTS WFO, ENT. GROUP, INC.,
DENNIS RAINEY, AND CRAIG
VOORTING'S ANSWER TO PLAINTIFF'S
FIRST AMENDED COMPLAINT**

Date Action Filed: January 8, 2021
Trial Date: None Set

19
20
21 Defendants WFO, Ent. Group, Inc., Dennis Rainey, and Craig Voorting ("Defendants")
22 answer the First Amended Complaint for Damages of Plaintiff Rebecca Dalton ("Plaintiff")
23 ("Complaint") as follows:

24 **GENERAL DENIAL**

25 Pursuant to section 431.30(d) of the *Code of Civil Procedure*, Defendants generally deny
26 each allegation and purported cause of action in the Complaint, and further deny that Plaintiff was
27 damaged in any amount due to any act or omission by Defendants or any of its employees or
28 agents.

1 **AFFIRMATIVE DEFENSES**

2 Without conceding that it bears the burden of proof, Defendants pleads the following
3 separate and independent affirmative defenses to the Complaint:

4 **FIRST AFFIRMATIVE DEFENSE**

5 **(Failure to State a Cause of Action)**

6 1. The Complaint fails to state facts sufficient to constitute a cause of action against
7 Defendants.

8 **SECOND AFFIRMATIVE DEFENSE**

9 **(Statute of Limitations)**

10 2. Plaintiff's purported causes of action have lapsed either pursuant to the applicable
11 statutes of limitations (i.e., *Code of Civil Procedure* sections 335.1, 337, 338, 340, 342 and 343;
12 *Government Code* sections 12965; *California Labor Code* section 203 and *California Business &*
13 *Professions Code* section 17208; and all other applicable sections of the California Codes), or
14 because they are based on allegations outside an applicable limitations period.

15 **THIRD AFFIRMATIVE DEFENSE**

16 **(Stand or Fall with Related Claims)**

17 3. Plaintiff's purported causes of action are merely alternative legal theories for
18 holding Defendants liable for the same conduct that underlies a related claim, and being
19 redundant, must stand or fall with the related claim.

20 **FOURTH AFFIRMATIVE DEFENSE**

21 **(Waiver)**

22 4. Plaintiff, by her own representations, actions or conduct, has waived her rights to
23 assert the causes of action in the Complaint.

24 **FIFTH AFFIRMATIVE DEFENSE**

25 **(Equitable Estoppel)**

26 5. Plaintiff is estopped from asserting the causes of action in the Complaint to the
27 extent she knowingly and intentionally induced Defendants to rely, to its detriment, on her prior
28 inconsistent representations and conduct.

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SIXTH AFFIRMATIVE DEFENSE

(Judicial Estoppel)

6. Plaintiff’s purported causes of action are barred by judicial estoppel to the extent she took inconsistent positions involving the same claims in a prior legal or administrative proceeding.

SEVENTH AFFIRMATIVE DEFENSE

(Res Judicata and Collateral Estoppel)

7. Plaintiff’s purported causes of action are barred by res judicata or collateral estoppel to the extent she litigated the same claims or issues in a prior legal or administrative proceeding and did not prevail on those claims or issues.

EIGHTH AFFIRMATIVE DEFENSE

(Unclean Hands)

8. Plaintiff’s own inequitable conduct and unclean hands in connection with the matter in controversy precludes relief.

NINTH AFFIRMATIVE DEFENSE

(Avoidable Consequences)

9. The Complaint is barred in whole or in part because Plaintiff unreasonably failed to use the internal measures Defendants provided to prevent and correct workplace harassment, discrimination, retaliation, and to correct payroll and/or compensation issues. Reasonable use of these measures would have prevented at least some, if not all, of the damages Plaintiff alleges she and others suffered.

TENTH AFFIRMATIVE DEFENSE

(No Willful Failure to Timely Pay/Good Faith Dispute)

10. The Complaint, and Plaintiff’s claim for waiting time penalties, is barred in whole or in part to the extent that any failure of Defendants to timely pay wages was not “willful” within the meaning of California *Labor Code* section 203 and the subject of a good faith dispute.

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1 **ELEVENTH AFFIRMATIVE DEFENSE**

2 **(Standing)**

3 11. The Complaint is barred because Plaintiff lacks standing to bring the claim in a
4 representative capacity and/or is not an adequate and proper representative of the allegedly
5 “similar situated” employees she seeks to represent.

6 **TWELFTH AFFIRMATIVE DEFENSE**

7 **(Proper Payment)**

8 12. The Complaint is barred to the extent that Plaintiff and the purported similar
9 situated employees received proper payment for all hours worked and/or other compensation
10 allegedly due.

11 **THIRTEENTH AFFIRMATIVE DEFENSE**

12 **(No Subsequent Violation)**

13 13. The Complaint is barred to the extent that Plaintiff seeks a penalty for “subsequent”
14 violations because Defendants has never committed an “initial” violation.

15 **FOURTEENTH AFFIRMATIVE DEFENSE**

16 **(Good Faith)**

17 14. Plaintiff’s Complaint, and each purported cause of action alleged therein, is barred
18 to the extent that Defendants had reasonable grounds for believing that its payment practices
19 complied with all applicable laws. To the extent any of Defendants’ compensation/payment
20 practices are determined not to comply with any applicable laws, such violations were not willful
21 or intentional.

22 **FIFTEENTH AFFIRMATIVE DEFENSE**

23 **(Excessive Fines/Due Process)**

24 15. Defendants alleges that Plaintiff’s claim for excessive penalties does not comport
25 with the due process protections guaranteed by the United States and California Constitutions,
26 including the Eighth Amendment to the United States Constitution and Article I, Section 7 of the
27 California Constitution. Further, the Complaint is barred because PAGA, *Labor Code* Section
28 558, and related Labor Code and wage and hour provisions are unconstitutionally vague and

1 overbroad as applied to the facts and circumstances of this case. Plaintiff's Complaint is further
2 barred because the prosecution of this action by Plaintiff as representatives of other "similar
3 situated employees" would constitute a denial of Defendants' due process rights, both procedural
4 and substantive, in violation of the Fourteenth Amendment of the United States Constitution and
5 the Constitution and laws of the State of California.

6 **SIXTEENTH AFFIRMATIVE DEFENSE**

7 **(Waiver, Release, Res Judicata, or Offset)**

8 16. The Complaint, in whole or in part, is barred with respect to any individual plaintiff
9 who has waived and/or released any claim or cause of action that he or she may otherwise have
10 had against Defendants by virtue of accepting a severance payment upon the termination of their
11 employment with Defendants and/or signing a release agreement in another action which overlaps
12 this action.

13 **SEVENTEENTH AFFIRMATIVE DEFENSE**

14 **(Primary Jurisdiction)**

15 17. The Complaint is barred to the extent that Plaintiff has no standing to pursue
16 unpaid wages pursuant to *Labor Code* Section 558, but instead must pursue such claims through
17 the Division of Labor Standards Enforcement.

18 **EIGHTEENTH AFFIRMATIVE DEFENSE**

19 **(Unlawful Delegation of Executive Authority)**

20 18. The purported cause of action under the PAGA is barred to the extent private
21 actions seeking PAGA penalties manifest an unlawful delegation of executive authority.

22 **NINETEENTH AFFIRMATIVE DEFENSE**

23 **(Duplicative Recovery)**

24 19. Plaintiff, and the individuals on whose behalf Plaintiff seeks relief, is not entitled to
25 recovery of penalties under PAGA to the extent that such penalties are sought in addition to
26 penalties for the same claims and such duplicative recovery is barred and constitutes unjust
27 enrichment.

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1 **TWENTIETH AFFIRMATIVE DEFENSE**

2 **(Not “Similar Situated Employees”)**

3 20. The Complaint is barred to the extent it seeks to recover penalties on behalf of
4 Plaintiff and other individuals who are not “similar situated employees.”

5 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

6 **(No Knowing and Intentional Failure to Furnish Wage Statements)**

7 21. Plaintiff’s request for damages and/or penalties for alleged violations of California
8 *Labor Code* section 226 is barred in whole or in part to the extent that any failure of Defendants to
9 timely furnish accurate itemized wage statements was not “knowing and intentional” within the
10 meaning of California *Labor Code* section 226.

11 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

12 **(All Business Expenses Reimbursed)**

13 22. Defendants is informed and believes that a reasonable opportunity for investigation
14 and discovery will reveal, and on that basis alleges, that Plaintiff’s claim under *Labor Code*
15 section 2802 is barred, in whole or in part, because, at all relevant times, Defendants reimbursed
16 its employees for the reasonable costs of expenses incurred in the discharge of their duties and/or
17 did not otherwise require them to bear such costs.

18 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

19 **(Voluntary Waiver of Meal Periods and Rest Breaks)**

20 23. The Complaint, and the purported causes of action therein related to meal periods
21 and rest breaks, is barred in whole or in part to the extent that meal periods and rest breaks were
22 provided/made available to Plaintiff and/or the purported similar situated employees, and Plaintiff
23 and/or the purported similar situated employees voluntarily waived the opportunity to take such
24 meal periods and rest breaks.

25 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

26 **(Failure to Disclose)**

27 24. The Complaint, and the purported causes of action therein, is barred in whole or in
28 part to the extent that Plaintiff and/or the purported similar situated employees prevented

1 Defendants from complying with applicable wage and hour law by failing to properly report hours
2 worked and meal periods and rest breaks missed.

3 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

4 **(No Liability for Non-Working or Non-Reported Time)**

5 25. The Complaint, and the purported causes of action therein, is barred in whole or in
6 part to the extent that the hours for which Plaintiff claims compensation are not working time
7 under federal or California law, including under the applicable California Industrial Welfare
8 Commission Wage Order, or where Plaintiff or any individual putative similar situated employees
9 prevented Defendants from obtaining knowledge of hours worked or meal/rest periods that were
10 not taken.

11 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

12 **(Consent)**

13 26. Plaintiff's Complaint, and each and every purported cause of action therein, is
14 barred because Plaintiff consented to, or otherwise authorized, all of the conduct about which
15 Plaintiff now complains.

16 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

17 **(Reasonable, Good Faith, and Non-Discriminatory/Non-Retaliatory)**

18 27. The Complaint, and each and every purported cause of action alleged therein, is
19 barred in that at all times mentioned in Plaintiff's Complaint, the purported actions and conduct of
20 her employer were undertaken in a permissible way and in good faith and in the reasonable belief
21 that such actions and conduct were lawful and valid, and not based on discrimination, or
22 retaliation, but instead were based on one or more legitimate non-discriminatory and/or non-
23 retaliatory reasons. Nor were any of the employment actions of defendants taken under pretext.

24 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

25 **(Scope Of The Charge)**

26 28. The Complaint, and the purported causes of action therein, is barred in whole or in
27 part to the extent it arises from events and circumstances, or acts and omissions, that are not the

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1 subject of a complaint filed with the California Department of Fair Employment and Housing or
2 the Equal Employment Opportunity Commission.

3 **TWENTY-NINTH AFFIRMATIVE DEFENSE**

4 **(Failure To Mitigate)**

5 29. The Complaint, and each and every purported cause of action alleged therein, is
6 barred to the extent that Plaintiff failed to exercise reasonable care and diligence to mitigate any
7 alleged injury, damages or loss claimed arising from facts and circumstances alleged in Plaintiff's
8 Complaint. Any recovery against Defendants, therefore, must be reduced in the amount
9 attributable to Plaintiff's failure to mitigate her damages.

10 **THIRTIETH AFFIRMATIVE DEFENSE**

11 **(Appropriate Remedial Action and/or Failure to Utilize Corrective Measures)**

12 30. To the extent that Plaintiff's Complaint asserts or alleges any cause of action for
13 discrimination on any legally protected basis, Plaintiff's employer exercised reasonable care to
14 prevent and correct promptly any unlawful discriminatory behavior during Plaintiff's employment
15 and/or Plaintiff unreasonably failed to take advantage of any preventive or corrective opportunities
16 her employer provided to avoid harm otherwise.

17 **THIRTY-FIRST AFFIRMATIVE DEFENSE**

18 **(Mixed Motive)**

19 31. If it is found that Defendants' actions were motivated by both
20 discriminatory/retaliatory and non-discriminatory/non-retaliatory reasons, the same actions would
21 have been taken absent any purported discriminatory or retaliatory motive.

22 **THIRTY-SECOND AFFIRMATIVE DEFENSE**

23 **(Reasonable Steps)**

24 32. Defendants are informed and believe and based thereon alleges that the Complaint,
25 and each and every purported cause of action alleged therein, is barred in that at all times
26 mentioned in the Complaint, Defendants took all reasonable steps to prevent harassment,
27 retaliation and discrimination.

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1 **THIRTY-THIRD AFFIRMATIVE DEFENSE**

2 **(Reasonable Care)**

3 33. Defendants are informed and believe and based thereon alleges that the Complaint,
4 and each and every purported cause of action alleged therein, is barred in that at all times
5 mentioned in the Complaint, Defendants exercised reasonable care to prevent and correct
6 promptly any unlawful discriminatory behavior during Plaintiff's employment, and Plaintiff
7 unreasonably failed to take advantage of any preventive or corrective opportunities her employer
8 provided to avoid harm otherwise.

9 **THIRTY-FOURTH AFFIRMATIVE DEFENSE**

10 **(No Injury)**

11 34. Plaintiff's Complaint, and each purported action therein, is barred to the extent that
12 Plaintiff was not injured.

13 **THIRTY-FIFTH AFFIRMATIVE DEFENSE**

14 **(Failure to Exhaust Administrative Remedies)**

15 35. Pursuant to *Government Code* section 12900, *et seq.*, and any other applicable law,
16 to the extent that the Complaint, and each and every purported Cause of Action alleged therein, is
17 premised on allegations which extend beyond the one-year time period prior to the filing of a
18 timely administrative Complaint, or to the extent the claims are not substantially identical to the
19 claims in any administrative Complaint timely filed with the appropriate state agency, Plaintiff's
20 claims are barred by her failure to exhaust administrative remedies, and the Court lacks
21 jurisdiction with respect to any such allegations or claims.

22 **THIRTY-SIXTH AFFIRMATIVE DEFENSE**

23 **(Failure to Exhaust)**

24 36. The Complaint is barred because Plaintiff failed to adequately meet the Private
25 Attorneys' General Act ("PAGA") statutory prerequisites, and/or state sufficient facts and legal
26 theories supporting the Complaint, and/or seeks remedies that are not the subject of Plaintiff's
27 letter to the California Labor & Workforce Development Agency.

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1 **THIRTY-SEVENTH AFFIRMATIVE DEFENSE**

2 **(After Acquired Evidence)**

3 37. Plaintiff's right to recover damages is barred to the extent that evidence exists that
4 would have resulted in the termination of Plaintiff's employment had her employer known of said
5 evidence during Plaintiff's employment.

6 **THIRTY-EIGHTH AFFIRMATIVE DEFENSE**

7 **(Impermissible Punitive Damages)**

8 38. Plaintiff is not entitled to recover any punitive or exemplary damages, and any
9 allegations with respect thereto should be stricken because:

- 10 a. Plaintiff failed to plead facts sufficient to support allegations of oppression,
11 fraud and/or malice. (Cal. *Civil Code* section 3294(a)); and/or
12 b. Plaintiff failed to plead facts sufficient to support allegations of gross or
13 reckless disregard for the rights of Plaintiff, or that Defendants were
14 motivated by evil motive or intent; and/or
15 c. Neither Defendants nor any of their agents committed any alleged
16 oppressive, fraudulent or malicious act, authorized or ratified such an act, or
17 had advance knowledge of the unfitness, if any, of any employee or
18 employees who allegedly committed such an act, or employed any such
19 employee or employees with a conscious disregard of the rights or safety of
20 others. (Cal. *Civil Code* section 3294(b)); and/or
21 d. California's laws regarding the alleged conduct in question in this action are
22 too vague to permit the imposition of punitive damages, and because
23 California's laws, rules and procedures regarding punitive damages deny
24 due process, impose criminal penalties without the requisite protections,
25 violate the Fourteenth Amendment of the United States Constitution and
26 place an unreasonable burden on interstate commerce.

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1 **THIRTY-NINTH AFFIRMATIVE DEFENSE**

2 **(Employee Duties)**

3 39. The Complaint, and the purported causes of action therein, is barred in whole or in
4 part by *Labor Code* sections 2854, 2856 and 2858, to the extent Plaintiff failed to use ordinary
5 care and diligence, and reasonable skill, in the performance of her duties, and failed to
6 substantially comply with her employer's reasonable directions while in its employ.

7 **FORTIETH AFFIRMATIVE DEFENSE**

8 **(Preexisting Condition)**

9 40. To the extent Plaintiff suffered any symptoms of mental or emotional distress or
10 injury, they were the result of a preexisting psychological disorder or alternative concurrent cause,
11 and not the result of any act or omission of Defendants.

12 **FORTY-FIRST AFFIRMATIVE DEFENSE**

13 **(No Damages)**

14 41. Plaintiff's Complaint, and each purported action therein, is barred to the extent that
15 Plaintiff was not damaged.

16 **FORTY-SECOND AFFIRMATIVE DEFENSE**

17 **(Failure to Exercise Due Care)**

18 42. Plaintiff did not exercise ordinary care on her own behalf, and her own acts and
19 omissions proximately caused and/or contributed to the loss, injury, damage, or detriment alleged
20 by Plaintiff, and Plaintiff's recovery from Defendants, if any, should be reduced in proportion to
21 the percentage of Plaintiff's negligence or fault.

22 **FORTY-THIRD AFFIRMATIVE DEFENSE**

23 **(Bad Faith)**

24 43. Plaintiff's Complaint, and each purported cause of action alleged therein, is barred
25 to the extent that Plaintiff's claims are unreasonable and/or were filed in bad faith and/or are
26 frivolous so as to justify an award of attorneys' fees and costs in favor of Plaintiff and her
27 attorneys.

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1 **FORTY-FOURTH AFFIRMATIVE DEFENSE**

2 **(Workers' Compensation Preemption)**

3 44. Plaintiff's Complaint, and the purported causes of action therein, including any
4 cause of action based on physical injury or mental or emotional distress, is preempted by the
5 exclusive remedy provisions of the Workers' Compensation Act, Cal. *Labor Code* sections 3600,
6 3602, and 5300.

7 **FORTY-FIFTH AFFIRMATIVE DEFENSE**

8 **(Business Justification)**

9 45. Defendants allege that its activities undertaken with respect to Plaintiff were
10 justified as such activities were proper, fair, and legitimate business activities and/or due to
11 business related reasons, which were not arbitrary, capricious or unlawful.

12 **FORTY-SIXTH AFFIRMATIVE DEFENSE**

13 **(Adequate Legal Remedy)**

14 46. The prayer for injunctive and other equitable relief is barred because Plaintiff has
15 an adequate legal remedy.

16 **FORTY-SEVENTH AFFIRMATIVE DEFENSE**

17 **(No Irreparable Harm)**

18 47. The prayer for injunctive and other equitable relief is barred because Plaintiff has
19 not suffered, and will not suffer, irreparable harm.

20 **FORTY-EIGHTH AFFIRMATIVE DEFENSE**

21 **(No Intentional Failure to Pay All Compensation Due)**

22 48. Defendants alleges that assuming, *arguendo*, that Plaintiff is entitled to additional
23 compensation, Defendants has not willfully or intentionally failed to pay any such compensation
24 to Plaintiff, and there is no justification for an award of penalties or fees against Defendants.

25 **FORTY-NINTH AFFIRMATIVE DEFENSE**

26 **(Acting in Conformity with the Labor Code)**

27 49. Defendants has a reasonable basis to believe that it was acting in conformity with
28 the Labor Code and Business and Professions Code.

1 **FIFTIETH AFFIRMATIVE DEFENSE**

2 **(Avoidance or Refusal of Payment)**

3 50. Plaintiff and/or similar situated employees secreted or absented themselves to avoid
4 payment of final wages, or refused to receive the payment when fully tendered to them.

5 **FIFTY-FIRST AFFIRMATIVE DEFENSE**

6 **(Failure to Disclose and Concealment of Overtime; Noncompliance with Reporting Process)**

7 51. Any overtime work Plaintiff and/or similar situated employees performed was not
8 authorized by Defendants, and Plaintiff failed to notify Defendants, or deliberately prevented
9 Defendants from obtaining knowledge, that such work was performed, or failed to follow
10 Defendants' established reasonable process for reporting overtime.

11 **FIFTY-SECOND AFFIRMATIVE DEFENSE**

12 **(Noncompensable De Minimis Time)**

13 52. Any uncompensated time Plaintiff and/or similar situated employees worked was
14 de minimis.

15 **FIFTY-THIRD AFFIRMATIVE DEFENSE**

16 **(Meal and Rest Breaks Were Made Available)**

17 53. Plaintiff's Complaint, and each purported cause of action alleged therein, is barred
18 to the extent that meal and rest breaks were made available pursuant to applicable California and
19 federal law.

20 **FIFTY-FOURTH AFFIRMATIVE DEFENSE**

21 **(Laches)**

22 54. The Complaint, and the purported causes of action therein, is barred in whole or in
23 part by the doctrine of laches.

24 **FIFTY-FIFTH AFFIRMATIVE DEFENSE**

25 **(Defect and Misjoinder- Non-Employer)**

26 55. Plaintiff's Complaint, and each purported action therein, is barred to the extent that
27 Defendants Dennis Rainey and Craig Voorting are defective and improper parties because they
28 were not Plaintiff's employers.

1 **FIFTY-SIXTH AFFIRMATIVE DEFENSE**

2 **(Additional Affirmative Defenses)**

3 56. Defendants presently has insufficient knowledge and information as to whether it
4 may have additional, yet unstated affirmative defenses. Defendants reserves the right to assert
5 additional affirmative defenses in the event discovery or further investigation indicates that
6 asserting additional affirmative defenses would be warranted.

7 **PRAYER**

8 WHEREFORE, Defendants prays for judgment as follows:

9 WHEREFORE, Defendants prays for judgment as follows:

- 10 1. that Plaintiff take nothing by way of the Complaint;
- 11 2. that the Complaint be dismissed in its entirety, with prejudice, and that
- 12 judgment be entered for Defendants;
- 13 3. that Defendants be awarded their attorneys' fees pursuant to *Labor Code*
- 14 section 218.5 and *Code of Civil Procedure* section 1032;
- 15 4. that Defendants be awarded their costs of suit pursuant to *Labor Code*
- 16 section 218.5 and *Code of Civil Procedure* section 1032; and
- 17 5. for such other and further relief as this court deems just and proper.

18

19 Dated: May 10, 2021

Klatte, Budensiek & Young-Agriesti, LLP

20

21 By: 

22 Summer Young-Agriesti
23 Attorneys for Defendants
24 WFO, Ent. Group, Inc., Dennis Rainey,
25 and Craig Voorting

1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA, COUNTY OF ORANGE**

3 I am employed in the County of Orange, State of California. I am over the age of 18 and
4 not a party to the within action; my business address is Klatte, Budensiek & Young-Agriesti, LLP,
1111A Quail Street, Newport Beach, California 92660.

5 On May 10, 2021, I served the following described as

6 **DEFENDANTS WFO, ENT. GROUP, INC., DENNIS RAINEY, AND CRAIG**
7 **VOORTING'S ANSWER TO PLAINTIFF'S FIRST AMENDED COMPLAINT**

8 on the interested parties in this action as follows:

9 William M. Crosby
10 13522 Newport Avenue, Suite 201
Tustin, CA 92780

Attorneys for Plaintiff
Rebecca Dalton

11 Tel: (714) 544 - 2493
12 e-Mail: wcrosby@wcrosbylaw.com

13 Maurice Mandel II
PO Box 411
Newport Beach, CA 92662-0411

Attorneys for Plaintiff
Rebecca Dalton

14 Tel: (949) 874-2002
15 e-Mail: mmandel2@aol.com

16 ☐ **(BY U.S. MAIL)** I am "readily familiar" with the firm's practice of collection and
processing correspondence for mailing. Under that practice it would be deposited with the U.S.
17 postal service on that same day with postage thereon fully prepaid at Newport Beach, California in
the ordinary course of business. I am aware that on motion of the party served, service is
18 presumed invalid if postal cancellation date or postage meter date is more than one day after date
of deposit for mailing in affidavit.

19 ☐ **(BY PERSONAL DELIVERY)** I caused such envelope to be delivered by hand to the
20 offices of the addressee.

21 ☒ **(E-MAIL)** I transmitted a true copy of the foregoing document(s) to the email address(es)
set forth as stated above.

22 ☐ **(BY FEDEX)** I caused such envelope to be delivered by FedEx to the offices of the
23 addressees.

24 ☒ **(STATE)** I declare under penalty of perjury under the laws of the State of California that
the foregoing is true and correct.

25 EXECUTED on May 10, 2021, at Laguna Niguel, California.

26 

27 Michelle Perciavalle
28

MEMORANDUM OF UNDERSTANDING

Subject to approval by the Orange County Superior Court and with the provision that this Memorandum of Understanding (“MOU”) will be further memorialized in a Joint Stipulation for Settlement (or similar long-form Settlement Agreement), the Parties hereby agree to the following binding settlement of Plaintiff Rebecca Dalton’s (“Plaintiff”) individual and PAGA (Cal. Lab. Code § 2699, *et seq.*) claims designated as *Rebecca Dalton v. Stubrik’s Steakhouse, et al.*, Case No. 30-2021-01177894 (the “Action”).

The Parties attended a mediation on August 30, 2021. With the assistance of mediator Mark Lemke, Esq., the Parties reached the following binding agreement to resolve all the putative representative claims asserted in Plaintiff’s operative complaint in the Action.

NOW, THEREFORE, the Parties hereto agree as follows:

1. Parties. This MOU is entered into on August 30, 2021 by and between Plaintiff, on behalf of herself and “Aggrieved Employees” (defined below), on the one hand, and defendants WFO Ent. Group, Inc. dba Stubrik’s Steakhouse, Dennis Rainey, and Craig Voorting (collectively referred to as “Defendants” or “Stubrik’s”), on the other hand, to memorialize the essential terms of the settlement of Plaintiff’s individual and representative claims asserted in the Action. Plaintiff and Stubrik’s may individually be referred to as a “Party” or collectively referred to as the “Parties” throughout this MOU.
2. Enforceability. This MOU becomes enforceable upon its execution by the signatories set forth below. The Parties agree to enter into a long-form, Joint Stipulation for Settlement (or similar long-form Settlement Agreement) that contains the terms set forth in this MOU and more specific information and procedures as required by law. Nonetheless, the Parties intend that the terms set forth herein in this MOU are fully enforceable by the Orange County Superior Court upon motion of any Party.
3. Duties Upon Execution. The Parties agree to fully cooperate to obtain approval of the settlement, pursuant to the terms set forth herein. The Parties also pledge their good faith effort and fair dealing in providing assistance and assent to a final Joint Stipulation for Settlement (or similar long-form Settlement Agreement), and in effectuating the terms of the settlement of Plaintiff’s representative claims asserted in the Action.
4. PAGA Members. “PAGA Members” consists of the class described at Paragraph 48 of the First Amended Complaint, comprised of “all current and former employees of defendant WFO, similarly situated within the time period of December 20, 2019 to the present date.”
5. PAGA Period. The “PAGA Period” shall be from December 20, 2019 through the date the Court enters the order granting approval of the PAGA settlement.
6. Maximum Settlement Amount. The Maximum Settlement Amount that Stubrik’s will pay in connection with the Settlement is \$85,000. \$1,000 will be allocated to the PAGA claims. The Maximum Settlement Amount is all-inclusive of all payments contemplated in this

resolution. The Maximum Settlement Amount, therefore, is inclusive of all settlement payments to the Plaintiff for her individual wage claims; the PAGA Members eligible for settlement payments; the payment to the California Labor Workforce Development Agency ("LWDA") for its share of the settlement of claims; Plaintiff's Counsel's attorneys' fees and expenses (including all attorneys' fees and expenses incurred to date and to be incurred in documenting the Settlement, securing trial and appellate court approval of the Settlement, attending to the administration of the Settlement, and obtaining a dismissal of the Action) and the Settlement Administrator's fees and expenses. Stubrik's will pay the Maximum Settlement Amount upon expiration of the appeal period after the final Court approval of the Settlement.

7. PAGA Gross Settlement Amount. The Parties agree to settle the Action for the non-reversionary PAGA Gross Settlement Amount ("PGSA") of \$1,000. From the PGSA, Plaintiff will seek, and Stubrik's shall not oppose: (a) attorneys' fees of one-third of the PGSA; (b) attorneys' litigation costs and expenses related to the Action; (c) settlement administration costs; and (d) an enhancement payment to Plaintiff in the amount of \$0. After the amounts for attorneys' fees, costs, administration costs, and enhancement payment are deducted from the PGSA, the remaining amount shall be known as the "PAGA Net Settlement Amount" or "PNSA."

The Net Settlement Amount shall be paid (i) 75% to the California Labor and Workforce Development Agency (LWDA) and (ii) 25% to PAGA Members, pursuant to Labor Code § 2699(i), divided amongst PAGA Members based on each PAGA Member's respective number of pay periods worked for Stubrik's in California during the PAGA Period.

Plaintiff agrees that counsel for Plaintiff will notify the LWDA of the settlement at the same time the settlement is submitted to the Court for approval, seek approval of the settlement, and perform any and all statutory tasks as required by law.

The Parties further agree that should the Court deny approval of the settlement based on the allocation of the PGSA or PNSA, the Parties agree to use good faith to take all reasonable steps, including reallocating additional monies from the Maximum Settlement Amount, to the PGSA, in an effort to obtain approval of the settlement.

8. Release of Claims. Upon Court approval of the Settlement and performance of the payment obligations therein, Plaintiff and PAGA Members will fully and finally release and discharge Stubrik's and its former, present and future owners, parents, and subsidiaries, and all of their current, former and future spouse(s), children, officers, directors, members, managers, employees, consultants, partners, shareholders, joint venturers, agents, successors, assigns, accountants, insurers, or legal representatives ("Released Parties"), from all claims, rights, demands, liabilities and causes of action for civil penalties under the PAGA that arose during the PAGA Period, based on the factual allegations pled in the letter to the exhaustion letters to the Labor Workforce Development Agencies or operative complaint in the Action, with respect to the following claims: (a) failure to pay final wages (*Cal. Labor Code* §§ 202 and 203); (b) false time entries (*Cal. Labor Code* § 206.5); (c) failure to provide meal breaks; (d) failure to provide rest breaks; (e) failure to pay overtime wages; (f) failure to furnish accurate wage statements; and (g) failure to keep payroll records ("Released Claims").

9. Plaintiff's Release of All Claims. Stubrik's shall separately pay \$84,000 to Plaintiff in exchange for a release of Plaintiff's individual claims in the Action ("Net Individual Settlement") including a complete and general release of claims as to Stubrik's, including a Section 1542 release and waiver of all claims known and unknown, without exception, except as may be prohibited by law, such as claims for workers' compensation benefits.

- a. *Wage allocation.* Within the Net Individual Settlement, \$1,500 shall be for wages and an IRS Form W-2 shall be issued pursuant to Plaintiff's Form W-4, to be provided by Plaintiff in 2021.
- b. *Sex Harassment Allocation.* Within the Net Individual Settlement amount, the parties shall allocate a reasonable dollar amount, to be determined by Defendant, which shall be forth in the long-form settlement to be paid towards the settlement of Plaintiff's sexual harassment claim.
- c. *Non-Sex Harassment Allocation.* The remainder of the Net Individual Settlement shall be allocated to retaliation, discrimination, constructive discharge, interest, penalties, attorneys' fees and costs, to be determined in the long-form settlement agreement by Plaintiff.
- d. *Mutual Release.* Defendants shall each provide a general release of claims against Plaintiff and her counsel, including a Section 1542 release and waiver of all claims known and unknown.

10. Obtaining Approval of PAGA Settlement. Plaintiff will prepare and file a motion, if necessary, with the Court requesting Approval of the PAGA Settlement.

11. Settlement Administrator. The parties agree that Plaintiff shall obtain bids and select a settlement administrator for purposes of sending payment to both the LWDA and aggrieved employees ("Settlement Administrator") for all purposes.

12. PAGA Information. Stubrik's will provide PAGA Members' information (names, addresses, phone numbers, social security numbers, and number of pay periods worked for Stubrik's in California during the PAGA Period) to the Settlement Administrator to assist the settlement process within ten (10) business days of the court signing the approval order.

13. Maximum Settlement Amount. The payment of the Maximum Settlement Amount shall be paid within fifteen days after the final Court approval of the Settlement to the Settlement Administrator (for the PGSA and settlement administrator fees), Plaintiff (for wage payment) and Plaintiff's counsel for the remainder of the Maximum Settlement Amount.

14. Court approval of the Settlement. Payments to PAGA Members and the LWDA shall be made within 20 days of receiving the class data by the Settlement Administrator. Payments to Plaintiff and Plaintiff's Counsel shall be made by within 15 days of Final Approval.

15. No Admission. The Parties agree that this MOU is not evidence that the operative complaint filed in the Action by Plaintiff has any merit, nor does it constitute an admission of any wrongdoing by Stubrik's. Stubrik's does not admit to liability or to the suitability of this

case for representative litigation other than for purposes of settlement. This MOU will not be deemed admissible in any other proceeding or in this proceeding other than to effectuate this settlement. If the Court does not grant approval of this settlement, then the Parties revert to their previous positions and Stubrik's will contend that a representative action is not appropriate.

16. Returned or Uncashed Checks. Any Settlement check to any PAGA Members that is not negotiated within one hundred eighty (180) days of mailing to the PAGA Members shall be directed to the State Controller's Office under the Unclaimed Property Statutes.

17. Advice of Counsel. The Parties to this MOU are represented by competent counsel, and they have had an opportunity to consult with counsel. The Parties to this MOU agree that it reflects their good faith compromise of the claims raised in the Action, based upon their assessment of the mutual risks and costs of further litigation and the assessments of their respective counsel.

18. Confidential. The Parties agree that this MOU is confidential (except for purposes of enforcement or approval of the PAGA action) and that no Party will issue any press release nor other public or non-public representation regarding the settlement other than as necessary to obtain Court approval and effectuate the terms of the settlement. The Parties and their counsel agree that they will not initiate or have any contact with the press, post any communication to the internet or any social media platform, respond to any press inquiry, or have any communication with the press about this case.

19. Counterparts. This MOU may be signed in counterparts.

20. Disclosure. The Parties intend that this MOU shall be fully enforceable and binding upon all Parties, and that it shall be admissible and subject to disclosure in any proceeding to enforce its terms under Code of Civil Procedure section 664.6 and any other applicable statute or law, notwithstanding the mediation confidentiality provisions that otherwise might apply under local, federal and state law.

21. Contact With the Court. The Parties agree that mediator Mark Lemke, Esq. may, at his discretion, execute a Declaration supporting the settlement and the Court may, in its discretion, contact Mark Lemke, Esq. to discuss the settlement.

22. Settlement Purposes Only. The Parties agree that the subsequent filing of a Joint Stipulation of Settlement (or similar Settlement Agreement) is for settlement purposes only and if, for any reason, the settlement is not approved, the Joint Stipulation of Settlement and this MOU will be of no force or effect.

23. Integration Clause. The Parties to this Memorandum agree that the long-form Settlement Agreement will contain an integration clause.

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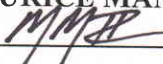
24. Neutral Reference. All reference requests shall be directed to Craig Voorting, who will respond only with a written reference, containing dates of employment and position, and no other information.

Dated: August 30, 2021

REBECCA DALTON By: _____	WFO ENT. GROUP, INC. By: <u>[Signature]</u> <u>President</u> CRAIG VOORTING By: <u>[Signature]</u> DENNIS RAINEY By: <u>[Signature]</u>
APPROVED AS TO CONTENT: WILLIAM M. CROSBY MAURICE MANDEL II By: _____ By: _____	KLATTE, BUDENSIEK & YOUNG-AGRIESTI, LLP By: <u>[Signature]</u> <u>Summer Young - Agriesti</u>

24. Neutral Reference. All reference requests shall be directed to Craig Voorting, who will respond only with a written reference, containing dates of employment and position and no other information.

Dated: August 30, 2021

REBECCA DALTON By: _____	WFO ENT. GROUP, INC. By: _____ CRAIG VOORTING By: _____ DENNIS RAINEY By: _____
APPROVED AS TO CONTENT: WILLIAM M. CROSBY MAURICE MANDEL II By: <u></u> By: <u>William M. Crosby by</u> <u>Maurice Mandel II</u>	KLATTE, BUDENSIEK & YOUNG-AGRIESTI, LLP By: _____

24. Neutral Reference. All reference requests shall be directed to Craig Voorting, who will respond only with a written reference, containing dates of employment and position and no other information.

Dated: August 30, 2021

REBECCA DALTON By: <u>Rebecca Dalton</u>	WFO ENT. GROUP, INC. By: _____ CRAIG VOORTING By: _____ DENNIS RAINEY By: _____
APPROVED AS TO CONTENT: WILLIAM M. CROSBY MAURICE MANDEL II By: _____ By: _____	KLATTE, BUDENSIEK & YOUNG-AGRIESTI, LLP By: _____

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIAPAYAL PATEL,
Plaintiff,

v.

NIKE RETAIL SERVICES, INC.,
Defendant.

Case No. 14-cv-04781-RS

**ORDER GRANTING APPROVAL OF
SETTLEMENT OF PAYAL PATEL'S
PAGA CLAIM****I. INTRODUCTION**

This suit involves a dispute over the labor practices of Defendant Nike Retail Services, Inc. (“Nike”) with regard to its employment of “assistant head coaches” (“AHC”). In November 2013, Plaintiff Payal Patel filed suit against Nike in Alameda County Superior Court for violating various provisions of California’s wage and hour statutes, including a claim for civil penalties under the Private Attorneys General Act (“PAGA”). Nike then removed the action to federal court in October 2014. Patel’s motion for class certification was subsequently denied in 2016. Patel and Nike now jointly seek approval of a settlement agreement resolving her individual claims and her representative PAGA claim. (Dkt. 138.) This proposed settlement can be evaluated without oral argument pursuant to Local Rule 7-1(b). For the reasons explained below, approval is granted.

II. BACKGROUND

The full facts of this case have been set forth in this Court’s prior orders and need not be repeated here. For roughly three years, Patel was employed as an “assistant head coach” (“AHC”)

of a clearance store operated by Nike. Nike classified Patel as exempt from overtime pay and other benefits, a move Patel contends violates various provisions of California's wage and hour statutes. 40 aggrieved employees are covered by the PAGA action. (Dkt. 138, Ex. A.) Patel originally brought suit in Alameda County Superior Court in November 2013, which was subsequently removed to federal court by Nike in October 2014. Patel's motion for class certification was denied in March of 2016 because she failed to show how any of her misclassification theories could be established with common proof. Subsequently, Nike twice unsuccessfully moved to strike Patel's allegation in support of her representative PAGA claim, or alternatively, for judgment on the pleadings.

On January 10, 2019, the parties participated in a settlement conference with a Magistrate Judge, at which they reached an agreement to settle the claims in this suit. On April 11, 2019, the parties submitted a joint stipulation requesting approval of the PAGA settlement and dismissal of Patel's individual and PAGA claims. (Dkt. 138.) In the settlement, Nike agrees to pay a total of \$185,000 (the "Gross Settlement Amount"). Of this amount, \$80,000 would be paid to Patel's counsel as attorneys' fees with \$60,000 in litigation costs. Additionally, \$20,000 would be paid to Patel to resolve her individual claims. Further, \$19,739 would be allocated to settlement of the PAGA claim, with 75% (\$14,804.25) to be paid as a Labor Code section 558 payment to the aggrieved employees as part of their individual PAGA payments, and 25% (\$4,934.75) to be paid as a Labor Code section 2699 payment, with 75% (\$3,701.06) of this amount being paid to the Labor Workforce Development Agency ("LWDA") and 25% (\$1,233.69) being paid to the aggrieved employees as part of their individual PAGA payments. Each individual PAGA payment is to be based on the number of pay periods attributed and apportioned to each aggrieved employee during the PAGA period (as determined by Patel's expert, Eric Lietzow) as a percentage of the total pay periods attributed to all aggrieved employees during that period. Finally, \$5,261 is to be paid to Simpluris, Inc. for administering the settlement. In the event the actual cost to administer the settlement is less, the difference will be added to the PAGA payment. If the actual expenses exceed the allocation, those expenses are to be paid from the Gross Settlement Amount.

The parties were ordered to submit a joint supplemental brief explaining why their PAGA settlement comports with the current case law rubric analyzing the fairness, reasonableness, and adequacy of PAGA settlements. (Dkt. 139.)

III. LEGAL STANDARD

A plaintiff suing under PAGA “does so as the proxy or agent of the state’s labor law enforcement agencies.” *Arias v. Superior Court*, 46 Cal. 4th 969, 986 (2009). Accordingly, a judgment in a PAGA action binds not only the plaintiff, but also the government and nonparty aggrieved employees. *Id.* at 985; see also *Iskanian v. CLS Transp. L.A., LLC*, 59 Cal. 4th 348, 380 (2014). Under PAGA, a trial court must review and approve any settlement of PAGA claims. Cal. Lab. Code § 2699(l)(2).¹ Additionally, the proposed settlement must be submitted simultaneously to the California Labor and Workforce Development Agency. *Id.* However, PAGA does not establish a clear standard for evaluating PAGA settlements. *Ramirez v. Benito Valley Farms, LLC*, No. 16-CV-04708-LHK, 2017 WL 3670794, at *3 (N.D. Cal. Aug. 25, 2017). Despite the lack of guidance, courts have been appropriately wary of plaintiffs using a PAGA claim as a “bargaining chip” without due consideration of the public interest and the rights of other aggrieved individuals. *O’Connor v. Uber Techs. Inc.*, 201 F. Supp. 3d 1110, 1134 (N.D. Cal. 2016).

Accordingly, certain courts have been willing to approve PAGA settlements only if (1) the statutory requirements set forth by PAGA have been satisfied, and (2) the settlement agreement is fair, reasonable, and adequate in view of PAGA’s public policy goals. See *Rincon v. West Coast Tomato Growers, LLC*, No. 13-CV-2473-JLS, 2018 WL 828104, at *2 (S.D. Cal. Feb. 12, 2018); *Gutilla v. Aerotek, Inc.*, No. 15-CV-00191-DAD-BAM, 2017 WL 2729864, at *3 (E.D. Cal.

¹ Although the current subsection appears only to apply to cases filed on or after July 1, 2016, the prior version of § 2699(l) called for court approval of penalties sought as part of a proposed settlement. See 2004 Cal. Legis. Serv. Ch. 221 (S.B. 1809) (WEST) § 3. While PAGA requires court approval of any settlement of PAGA claims, court approval is not required to settle Patel’s individual non-PAGA claims. Accordingly, only settlement provisions related to Patel’s PAGA claim or her request for attorneys’ fees will be discussed in this order.

March 22, 2017). As part of this analysis, these courts have evaluated proposed PAGA settlements under the relevant factors from *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). *Rincon*, 2018 WL 828104, at *2. As a district court in the Southern District of California noted, the Hanlon factors are designed to determine the fairness of a settlement and consequently are useful in evaluating PAGA settlements. *Rincon*, 2018 WL 828104, at *2. As these cases prove persuasive, the PAGA settlement agreement between Patel and Nike will be evaluated accordingly.

Of the Hanlon factors, the following are relevant to evaluating the PAGA settlement: (1) the strength of the plaintiff's case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the amount offered in settlement; (4) the extent of discovery completed and the stage of the proceedings; (5) the presence of government participation; and (6) the expertise and views of counsel. These factors will be evaluated in light of PAGA's public policy goals of "benefit[ing] the public by augmenting the state's enforcement capabilities, encouraging compliance with Labor Code provisions, and deterring noncompliance." *O'Connor*, 201 F. Supp. 3d at 1132-33.

IV. DISCUSSION

A. Statutory Requirements

Patel satisfied the initial notice requirement prior to filing the PAGA claim. As alleged in the Complaint, Patel gave the required statutory notice on September 24, 2013 to the LWDA and Nike before filing the PAGA action. (See Compl. ¶ 97 & Ex. 1 (Dkt. 2-1).)² Further, Patel waited longer than the then-statutory waiting period of 33 days of the postmark date of the written notice if the LWDA did not provide a response.³ (Id.) Finally, although the current PAGA statute does not appear to require any written notice to the LWDA regarding proposed settlements of PAGA

² At the time, the statute required only written notice by certified mail to both the LWDA and the employer. See 2004 Cal. Legis. Serv. Ch. 221 (S.B. 1809) (WEST) § 4.

³ The letter to the LWDA was postmarked September 20, 2013; Nike's was postmarked September 26, 2013. The Complaint was dated November 21, 2013.

claims filed before July 2016,⁴ the parties served the LWDA with the Joint Stipulation which included the settlement agreement via the LWDA’s online process. (Dkt. 141.) Patel’s counsel represents the LWDA has not indicated any response or opposition to the proposed PAGA settlement. (Nordrehaug Decl. ¶ 2.) Therefore, the analysis can proceed to consider whether the settlement agreement is fair, reasonable, and adequate in view of PAGA’s public policy goals.

B. Fairness, Reasonableness, and Adequacy of PAGA Settlement

The balance of the Hanlon factors favors approving the PAGA settlement because the agreement is fair, reasonable, and adequate in light of PAGA’s public policy objectives.

1. Strength of Patel’s Case

In general, legal uncertainty favors approval of a settlement. *Browning v. Yahoo! Inc.*, No. C04-01463 HRL, 2007 WL 4105971, at *10 (N.D. Cal. Nov. 16, 2007). Here, Patel would be required to prove at trial each of the underlying Labor Code violations as to each of the 40 allegedly aggrieved employees in order to seek penalties under PAGA. See *Cardenas v. McLane Foodservice, Inc.*, No. SACV 10-473 DOC (FFMx), 2011 WL 379413, at *3 (C.D. Cal. Jan. 31, 2011) (“Given the statutory language [of PAGA], a plaintiff cannot recover on behalf of individuals whom the plaintiff has not proven suffered a violation of the Labor Code by the defendant.”). The strength of each aggrieved employees’ PAGA claim may vary. Moreover, even if Patel prevailed, Patel may not recover all of the civil penalties sought. A court may reduce the penalty when “to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.” Cal. Lab. Code. § 2699(e)(2); see also *Fleming v. Covidien, Inc.*, No. ED CV 10-01487 RGK (OPx), 2011 WL 7563047, at *4 (C.D. Cal. Aug. 12, 2011) (finding the maximum PAGA penalties “unjust” because the employees had suffered no injuries and reducing the penalties by over 80%). Therefore, this factor favors approving the settlement.

⁴ California Labor Code section 2699(l)(2) states that, for cases filed on or after July 1, 2016, “[t]he superior court shall review and approve any settlement of any civil action filed pursuant to this part. The proposed settlement shall be submitted to the [LWDA] at the same time that it is submitted to the court.”

2. Risk, Expense, Complexity, and Likely Duration of Further Litigation

For similar reasons, the need to demonstrate all 40 aggrieved employees' entitlement to a PAGA award threatens a risky, expensive, and complex trial that would extend the duration of the lawsuit. Additionally, Patel risks an adverse judgment which could result in either a diminished recovery or no recovery at all. Finally, Nike risks the potential for a judgment levying a significantly higher fine and attorneys' fee award than that proposed in the settlement agreement. Thus, this factor also favors approving the settlement.

3. Amount Offered in Settlement

Overall, the amount offered in settlement weighs towards approval of the settlement. First, the parties contend the proposed PAGA payment represents 22.8% of the \$86,554 that Patel's trial expert valued the PAGA claims.⁵ (Nordrehaug Decl. ¶ 6.) Second, over 80% of the PAGA payment is to be paid to the aggrieved employees, with the remaining approximately 19% (\$3,701.06) to be paid to the LWDA. This appears to be an adequate amount to advance PAGA's purpose of deterring noncompliance with California's labor law. Moreover, only the aggrieved employees' PAGA claims are being released. No individual claims of the aggrieved employees (besides Patel) are being released that are not tied to PAGA. As the Settlement Agreement states, "in no event shall the PAGA Released Claims in this Settlement Agreement release any claim of any individual other than the Plaintiff, including any class claim, which does not arise under PAGA." (Dkt. 138, Ex. 1 at ¶ III(5).)

As for Patel's individual settlement amount, although \$20,000 appears to be quite generous on its face, the parties assert this is less than half of what Patel's trial expert valued her individual claims (\$49,224). (Nordrehaug Decl. ¶ 3.) Moreover, Patel is the only named plaintiff, and she has borne the risk alone in pursuing litigation against a former employer for several years. In light of the circumstances, her individual settlement amount appears to be reasonable.

⁵ The parties state in their joint brief that there are approximately 783 alleged violations of the California Labor Code. (Dkt. 142 at 5.)

The amount set aside for the settlement administrator, Simpluris, (\$5,261) does not appear to be excessive. Moreover, any surplus is to be added to the PAGA payment.

Finally, as for the attorneys' fees and costs, PAGA provides for reasonable awards but does not provide a specific standard for evaluating attorneys' fees in a settlement of PAGA claims. Cal. Lab. Code § 2699(g)(1). In the Ninth Circuit, district courts generally may award attorneys' fees under a fee-shifting statute using either the lodestar method or the percentage-of-the-fund method. *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002); see also *Rincon*, 2018 WL 828104, at *5 (approving attorneys' fees in a PAGA case using both the lodestar and the percentage methods); *Ramirez*, 2017 WL 3670794, at *6-7 (approving attorneys' fees in a PAGA case using the lodestar method).

The proposed attorneys' fees (\$80,000) and costs (\$60,000) constitute the largest single awards in the Gross Settlement Amount (combined they are almost 76% of the total settlement). Patel's counsel estimate that they have collectively spent 909.45 hours litigating this case for over five years and calculate a lodestar fee of \$437,549.75. (Nordrehaug Decl. ¶ 4 & Ex. 1 at 45.) The total fee is based on hourly rates of \$175-795. Thus, their requested fee award is approximately 18% of the lodestar. This appears to be reasonable in light of over five years of work involving substantial discovery, motion practice, and mediation efforts. The request for \$60,000 in costs also seems appropriate, particularly since it constitutes only 61% of counsel's estimated \$99,118.54 of costs. (Nordrehaug Decl. ¶ 5 & Ex. 1 at 51.) Therefore, this factor favors approving the settlement.

4. Extent of Discovery Completed and Stage of the Proceedings

This case has been litigated for several years: originally filed in 2013 and removed to federal court in 2014. At the time the proposed PAGA settlement was reached, the parties had completed both percipient and expert discovery and the parties were preparing for trial. Because the parties have engaged in extensive discovery and worked on this case for several years, this factor weighs in favor of finding the settlement fair, reasonable, and adequate.

1 5. Experience and Views of Counsel

2 Patel's counsel represents they have extensive experience in employment litigation,
3 including both wage and hour class actions and representative PAGA actions. (Nordrehaug Decl.
4 ¶ 8; see also Ex. 2.) Based upon this experience, Patel's counsel believes the PAGA settlement is
5 fair, reasonable, and adequate. Furthermore, Patel's counsel notes that Nike's counsel have been
6 successful in defeating class actions and PAGA actions at the trial court level and on appeal.
7 Based on the conduct observed during the approximately five years of litigation of this case
8 (including losing a motion for class certification), Patel's counsel reasonably believe that Nike
9 would continue to defend the claims aggressively through trial and through appeal, if necessary.
10 This factor favors approving the PAGA settlement.

11 6. The Presence of a Government Participant

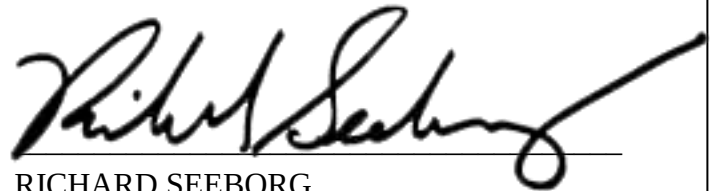
12 As discussed above, the LWDA has not directly intervened in this case or spoken on the
13 proposed PAGA settlement. Therefore, this factor is neutral.

14 **V. CONCLUSION**

15 For the foregoing reasons, the settlement agreement between Patel and Nike is approved
16 and the case is terminated. Jurisdiction is retained to resolve disputes under the settlement
17 agreement.

18
19 **IT IS SO ORDERED.**

20
21 Dated: May 8, 2019



RICHARD SEEBORG
United States District Judge

Subject: RE: Dalton v Stubrik's - settlement agreement?
Date: 9/10/2021 10:06:24 AM Pacific Standard Time
From: syoung@kbylaw.com
To: mmandel2@aol.com, wcrosby@wcrosbylaw.com, mperciavalle@kbylaw.com

Maurice,
I've been unexpectedly out of the office. I will get you a draft early next week. I apologize.
Summer

From: Maurice Mandel <mmandel2@aol.com>
Sent: Thursday, September 9, 2021 5:10 PM
To: wcrosby@wcrosbylaw.com; Summer Young-Agriesti <syoung@kbylaw.com>; Michelle Perciavalle <mperciavalle@kbylaw.com>; Summer Young-Agriesti <syoung@kbylaw.com>
Subject: Dalton v Stubrik's - settlement agreement?

Dear Ms. Young:

Is is my recollection that after our settlement you wanted to have a more formal written settlement agreement to replace the MOU, and that you would be sending it to me last week. I haven't received anything, and my email has been acting up, so I wanted to be sure you hadn't sent something I missed.

Please advise when we could expect the proposed agreement?

Thank you in anticipation of your cooperation on this matter.

Sincerely,

MMII
Maurice Mandel II
PO Box 411
Newport Beach, CA 92662
USA
1949-646-7799
1949-874-2002 mobile

The fine print.

The information contained in this message is confidential and intended only for the use of the individual or entity named above, and may be privileged. Any unauthorized review, use, disclosure, or distribution is prohibited. If you are not the intended recipient, please reply to the sender immediately, stating that you have received the message in error, then please delete this e-mail. Thank you.

Legal matters are very complex, and anything contained herein is not intended to be either a statement of law or an statement about any potential result you will obtain on your particular matter. Do not rely on any legal opinions offered herein and always obtain a second opinion on important legal matter.

NO CLIENT RELATIONSHIP: Communication with Mr. Mandel by email, phone or correspondence does not by itself create an attorney-client relationship or constitute the provision or receipt of legal advice. Any communication from this office should be considered informational only and should not be relied or acted upon until a formal attorney-client relationship is established via a signed written agreement.

MEAL BREAK WAIVER AGREEMENT

Employee Name (Please print) Rebecca Dalton

I agree to waive meal periods as follows:

I understand that I am entitled to an unpaid meal break of not less than 30 minutes for every five (5) hour period of time worked. However, I understand that I can waive the meal period when my total day's work will be completed within a work period of not more than six (6) hours.

Accordingly, I agree to waive the meal period whenever my total day's work will be completed within a work period of not more than six (6) hours.

Second Meal Period

I understand that I am entitled to a second unpaid meal break of not less than 30 minutes if I work more than ten (10) hours during a workday. However, I understand that I can waive the second meal period when my total day's work will be completed within a work period of not more than twelve (12) hours, as long as I did not waive the first meal period.

Accordingly, I agree to waive the second meal period whenever my total day's work will be completed within a work period of not more than twelve (12) hours, as long as I did not waive the first meal period.

I enter into this agreement freely and voluntarily. I understand that this agreement can be revoked in writing by either me or my employer at any time.

Employee's Signature: Rebecca Dalton Date: 11/13/2015

Supervisor Name (Please print): DENNIS RANEY

Supervisor's Signature: D. Raney Date: 11/13/15

**Acknowledgment of Receipt of
California Meal Period and Rest Break Policy**

I acknowledge that I have been provided with and understand the Company's California Meal Period and Rest Break Policy and understand that it is effective immediately. I agree to comply with this policy.

I acknowledge, understand and agree that I must notify my supervisor immediately if I am required to work through some or all of a my required 30-minute meal period or a 10-minute rest break, and that I should complete a Premium Authorization Form and submit it to my manager to ensure that I am properly compensated.

I understand that I may be subject to disciplinary action, up to and including termination of employment, if I violate this Policy.

Rebecca Dalton
Employee Name (Please Print)

Rebecca Dalton
Employee Signature

11/13/2015
Date

Re: NOTICE OF SETTLEMENT

Rebecca Dalton v. Stubrik's Steakhouse, et al.,

Superior Court of California for the County of Orange

Case No. 30-2021-01177894-CU-OE-CX

Date: __/__/2021

SIMID

Name

Address

Dear Name:

A settlement was reached between Plaintiff and Defendants in *Rebecca Dalton v. Stubrik's Steakhouse, et al.*, filed in the Superior Court of California for the County of Orange (Case Number: 30-2021-01177894-CU-OE-CX) (the "Action"). On _____, 2021, Judge Peter J. Wilson of the Superior Court of California, for the County of Orange issued an Order approving the Settlement, which was brought pursuant to the Private Attorneys General Act of 2004 ("PAGA"). In reaching this settlement, Stubrik's Steakhouse ("Stubrik's") made no admission of liability and denied the truth of the allegations in the Complaint. However, to avoid additional expense, inconvenience, and interference with Stubrik's business operations, the parties have concluded that it is in the best interests of the parties to settle.

This settlement affects certain employees and former employees of Stubrik's. You are receiving this Notice of Settlement because you worked for Stubrik's and at some point between December 20, 2019 to March 29, 2021 ("Claims Period"). Pursuant to the Settlement, enclosed is a check for your share of a portion of the civil penalties. The total PAGA settlement was \$1000.00; pursuant to law, \$750.00 of this went to an agency of the State of California and \$250.00 was distributed to the employees. Your check will remain valid for 180 days from the date of issuance. If you do not cash your check within 180 days of issuance, the funds will be deposited by the Settlement Administrator with the California State Controller to be deposited in the Unclaimed Property Fund in your name. If you are still employed by Stubrik's, your decision to cash the check will not affect your employment.

Payment of this settlement includes a release, by you, of any and all claims pursuant to the California Labor Code § 2698, which were alleged based on the facts in the operative Complaint or notice for the California Labor Workforce Development Agency ("LWDA") on behalf of Plaintiff and all aggrieved employees during the Claims Period. The release includes all claims, rights, demands, liabilities and causes of action that arose during the PAGA Period for civil penalties under the PAGA, based on the allegations pled by Plaintiffs in the Action: a. Alleged violations of Labor Code (LC) § 202- failure to pay all wages owed at the time or within 72 hours of termination or quitting. ¶54 FAC; b. Alleged violations of LC § 206.5- requiring employees to create false time records by punching the time clock while continuing to work. ¶ 55 FAC; c. Alleged violations of LC § 226 (a)- failing to provide accurate statements of earnings with each paycheck, penalty proscribed in LC § 226.3; d. Alleged violations of LC § 510- failing to pay overtime premium pay; e. Alleged violations of LC § 558 and 558.1- failing to pay overtime premium pay; f. Alleged violations of LC § 1174- failing to keep accurate records, with a penalty proscribed by LC § 1174.5; g. Alleged violations of LC § 1198- working overtime hours without being paid overtime premium pay; h. Alleged violations of LC § 1199- working more than 8 hours a day or 40 hours a week without being paid overtime premium pay; i. Alleged violations of LC § 221 and 223- by requiring wait staff to "cover" refused or disputed credit card charges by a customer from the earnings of the wait staff, and/or requiring wait staff to pay for refused meals if there was an error by the wait staff, including any related claims for attorneys' fees, costs, or interest resulting therefrom. ("PAGA Released Claims").

If you have any questions, you can contact Phoenix Settlement Administrators, the Settlement Administrator, at 1.888.250.6810.