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14
15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
16 **FOR THE COUNTY OF ORANGE**

17 MARIA CAPETILLO, on behalf of herself
and all others similarly situated, and as an
18 Aggrieved Employee and Private Attorney
General pursuant to Labor Code § 2698 et
19 seq.,

20 Plaintiff,

21 v.

22 LOVE THOSE WINGS, INC., a California
corporation, and DOES 1 through 10,
23 inclusive,

24 Defendants.

CASE NO: 30-2021-01183363-CU-OE-CXC

CLASS ACTION

**SETTLEMENT AGREEMENT AND
RELEASE OF CLAIMS**

Complaint Filed: February 9, 2021

1 **SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS**

2 This Settlement Agreement and Release of Claims ("Settlement Agreement" or
3 "Stipulation of Settlement") is made and entered into by and between Plaintiff Maria Capetillo
4 ("Capetillo" or "Plaintiff" or "Class Representative"), individually and on behalf of the
5 Settlement Class and all others similarly situated and similarly aggrieved, and Defendant Love
6 Those Wings, Inc. ("Defendant"), subject to the terms and conditions herein and the Court's
7 approval.

8 **A. Definitions.**

9 1. Plaintiff and the Settlement Class (as defined below) and Defendant are
10 collectively referred to herein as "the Parties."

11 2. Daniel F. Gaines and Alex P. Katofsky of Gaines & Gaines, APLC are counsel of
12 record for Plaintiff. For purposes of this settlement only, the firm of Gaines & Gaines, APLC
13 shall be designated as "Class Counsel."

14 3. The "Action" means the case entitled *Maria Capetillo, Plaintiff, v. Love Those*
15 *Wings, Inc., and Does 1 Through 10, Inclusive, Defendants*, "Case No. 30-2021-01183363-CU-
16 OE-CXC, pending before the Superior Court of the State of California for the County of Orange.

17 4. The "Settlement Class" shall be defined as "all individuals who worked for Love
18 Those Wings, Inc. as hourly and/or non-exempt employees in California at any time between
19 February 9, 2017 and the earlier of (a) the date of preliminary approval of this Settlement or (b)
20 February 28, 2022" (the "Class Period End Date") (the "Class Period"). Defendant represents
21 that as of November 1, 2021, this Class contains no more than approximately 751 members who
22 worked no more than 22,000 workweeks during the Class Period.

23 5. Members of the Settlement Class shall collectively be referred to as a "Class
24 Member" or "Class Members." Any Class Member who files a timely Request for Exclusion, as
25 detailed below, will be excluded from the final Settlement Class.

26 6. The "PAGA Group" or "PAGA Members" mean all individuals who worked for
27 Love Those Wings, Inc. as hourly and/or non-exempt employees in California at any time
28 between December 4, 2019 and the Class Period End Date (the "PAGA Period").

1 **B. General.**

2 1. On December 4, 2020, Plaintiff exhausted the pre-filing requirements of the Labor
3 Code Private Attorneys General Act of 2004 ("PAGA").

4 2. On or about February 9, 2021, Plaintiff initiated the Action by filing a
5 Representative Action Complaint for Penalties, pursuant to PAGA, on behalf of herself and all
6 other aggrieved employees (the "Complaint"). The First Amended Complaint, attached hereto as
7 Exhibit 3 and which will be filed as part of the settlement approval process, asserts direct class
8 and PAGA representative action claims against Defendant for (1) failure to pay all wages due,
9 including minimum and overtime wages (Labor Code §§ 510, 558 and 1194); (2) failure to
10 provide compliant rest periods or compensation in lieu thereof (Labor Code §§ 226.7 and 558;
11 IWC Wage Order 5-2001); (3) failure to provide compliant meal periods or compensation in lieu
12 thereof (Labor Code §§ 226.7, 512, 558, and 1194; IWC Wage Order 5-2001); (4) failure to
13 comply with itemized employee wage statement provisions (Labor Code §§ 226 and 226.3); (5)
14 failure to timely pay wages due at separation of employment (Labor Code §§ 201-203); (6)
15 violation of Business and Professions Code §§ 17200, *et seq.*; and (7) civil penalties pursuant to
16 Labor Code §§ 2698, *et seq.* for violations of Labor Code §§ 201, 202, 203, 226, 226.3, 226.7,
17 510, 512, 558, 1174 and 1194 (the "First Amended Complaint").

18 3. Defendant denies any liability or wrongdoing of any kind associated with the
19 claims alleged in the Action, and further denies that the Action is appropriate for class treatment
20 for any purpose other than this settlement. Defendant contends that it has complied at all times
21 with the California Labor Code, Industrial Welfare Commission Wage Orders, and all other
22 applicable federal, state, and local laws and regulations. It is Defendant's position that, if this
23 case were to be litigated, class certification would be inappropriate because, among other things,
24 Plaintiff is not an adequate class representative, Plaintiff's claims are not typical of putative class
25 members, and individual issues predominate over class issues. The Action, the negotiation and
26 execution of this Settlement Agreement, and all acts performed or documents executed pursuant
27 to or in furtherance of the Settlement Agreement (i) shall not be used as an admission or evidence
28 of wrongdoing on behalf of Defendant; (ii) shall not be an admission or evidence of fault on

1 behalf of Defendant in any action before a civil, criminal, or administrative agency; and (iii) shall
2 not be deemed to be, and may not be used as, an admission or evidence of the appropriateness of
3 these or similar claims for class certification in the Action or with respect to any other
4 proceeding.

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

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

14 6. On December 14, 2021, following their exchange of information and documents
15 regarding the Settlement Class and the claims and defenses asserted by the Parties, the Parties
16 engaged in arm's-length negotiations with the assistance of mediator Hon. Steven R. Denton
17 (Ret.), through which they were able to reach the resolution of the Action set forth herein.

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

25 8. The Parties agree that the Settlement Class described herein may be certified for
26 settlement purposes only and that any motion for approval seeking, *inter alia*, certification of the
27 Settlement Class is for purposes of the settlement only. If for any reason the settlement is not
28 approved, the certification will have no force or effect and will immediately be revoked. The

1 Parties further agree that certification for purposes of the settlement is in no way an admission
2 that class certification is proper under the more stringent standard applied for litigation and that
3 evidence of this limited stipulation for settlement purposes only will not be admissible for any
4 purpose in this or any other proceeding.

5 **C. Terms of Settlement.**

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

7 (a) **Maximum Settlement Amount:** The Parties agree to settle this Action for
8 the Maximum Settlement Amount of Three Hundred Thousand Dollars (\$300,000.00) ("the
9 Maximum Settlement Amount"). The Maximum Settlement Amount includes the attorneys' fees
10 of Class Counsel; litigation costs and expenses (which includes, without limitation, all such fees
11 and costs incurred to date, as well as such fees and costs to be incurred in documenting the
12 settlement, providing any notices required as part of the settlement, securing Court approval of
13 the settlement, and obtaining judgment in the Action); the service payment to the Class
14 Representative, as approved by the Court; the payments to the California Labor and Workforce
15 Development Agency ("LWDA") and PAGA Members pursuant to the PAGA claims in the
16 Action; and all costs of administration, including, without limitation, settlement administration
17 fees and expenses. The only exception to the above, all-in settlement, is that Defendant shall pay
18 all employer payroll tax obligations due on the wage payments made from the Net Settlement
19 Proceeds in addition to, and separate and apart from, the Maximum Settlement Amount.

20 (b) **Net Settlement Proceeds:** "Net Settlement Proceeds" is defined as the
21 Maximum Settlement Amount less the amounts approved and awarded by the Court for:
22 attorneys' fees and documented litigation costs and expenses incurred or advanced by Class
23 Counsel; the service payment to the Class Representative; the payments to the LWDA and PAGA
24 Members pursuant to PAGA; and the costs of administering the settlement.

25 (c) **Individual Payment Amounts:** "Individual Payment Amount" means the
26 portion of the Net Settlement Proceeds distributable to each Class Member who participates in the
27 Settlement (i.e., who does not submit a valid request for exclusion form) and the portion of the
28 PAGA Payment distributable to each PAGA Member, regardless if they request exclusion from

1 the class settlement of not. The Individual Payment Amounts will be calculated by dividing the
2 Net Settlement Proceeds by the total weeks worked by all participating Class Members in
3 California in a non-exempt position during the Class Period, which will yield the applicable
4 weekly rate ("Workweek Value"). The Workweek Value shall be multiplied by the number of
5 weeks each individual participating Class Member worked for Defendant in California in a non-
6 exempt position during the Class Period to yield their Individual Payment Amount. Each
7 Participating Settlement Class Member who does not opt out will receive an Individual Payment
8 Amount equal to their individual weeks worked in California in a non-exempt position during the
9 Class Period multiplied by the Workweek Value, and the Individual Payment Amounts to be paid
10 to each PAGA Member will also include their Individual PAGA Payment Amount, as detailed
11 below.

12 i. For tax purposes, each Individual Payment Amount will be
13 apportioned (a) 25% as wages (reported on an IRS Form W-2 and subject to applicable
14 withholdings); and (b) 75%, equally as non-wage statutory damages and interest (reported on an
15 IRS Form 1099, if required). All Individual Payment Amounts paid to Class Members will be
16 subject to any applicable wage garnishments, liens, or other legally mandated treatment as
17 required by law.

18 (d) **PAGA Payments:** The Parties agree that Twenty Thousand Dollars
19 (\$20,000.00) shall be allocated to settle Plaintiff's claims brought pursuant to PAGA. Of this
20 amount, Seventy-Five percent (75%), or Fifteen Thousand Dollars (\$15,000.00), shall be paid to
21 the LWDA, and the remaining Twenty-Five percent (25%), or Five Thousand Dollars
22 (\$5,000.00), shall be distributed to PAGA Members on a pro rata basis based on the number of
23 workweeks worked by each PAGA Member during the PAGA Period. "Individual PAGA
24 Payment Amount" means the portion of the PAGA Payment distributable to each PAGA
25 Member. The Individual PAGA Payment Amounts will be calculated by dividing the employee
26 portion of the PAGA Payment (\$5,000.00) by the total weeks worked by all PAGA Members in
27 California in a non-exempt position during the PAGA Period, which will yield the applicable
28 weekly rate. The weekly rate shall be multiplied by the number of weeks each individual PAGA

1 Member worked for Defendant in California in a non-exempt position during the PAGA Period to
2 yield their Individual PAGA Payment Amount. PAGA Members will receive their portion of the
3 Individual PAGA Payment Amounts regardless of their decision to opt out of the class settlement
4 (i.e., Class Members who opt out will nevertheless receive their Individual PAGA Payment
5 Amount).

6 (e) **Service Payment to Class Representative:** The amount awarded to the
7 Class Representative as a service payment will be set by the Court in its discretion, not to exceed
8 Two Thousand Five Hundred Dollars (\$2,500.00). This amount will be deducted from the
9 Maximum Settlement Amount. An IRS Form 1099 will be issued to the Class Representative for
10 her service payment. Defendant agrees not to dispute or otherwise object to the service payment
11 if Plaintiff requests \$2,500.00 or less.

12 (f) **Attorneys' Fees:** An award to Class Counsel of attorneys' fees will be
13 deducted from the Maximum Settlement Amount in an amount to be set by the Court taking into
14 account the settlement award that has been made available for the Settlement Class by the efforts
15 of Class Counsel. The amount awarded shall not exceed one-third (33-1/3%) of the Maximum
16 Settlement Amount (i.e., One Hundred Thousand Dollars (\$100,000.00)). An IRS Form 1099
17 will be issued to Class Counsel with respect to its award of attorneys' fees. Defendant agrees not
18 to dispute or otherwise object to the attorneys' fee award requested by Class Counsel so long as
19 the request does not exceed one-third of the Maximum Settlement Amount.

20 (g) **Attorneys' Costs and Expenses:** Class Counsel will be reimbursed from
21 the Maximum Settlement Amount in an amount to be set by the Court for documented out-of-
22 pocket litigation costs and expenses, not to exceed Twelve Thousand Dollars (\$12,000.00). An
23 IRS Form 1099 will be issued to Class Counsel with respect to its award of costs and expenses.
24 Defendant agrees not to dispute or otherwise object to the attorneys' cost award requested by
25 Class Counsel so long as the request does not exceed \$12,000.

26 (h) **Settlement Administration Costs:** The fees and other charges of the
27 Settlement Administrator to administer the Settlement are expected to total no more than Fifteen
28 Thousand Dollars (\$15,000.00), and will be paid from the Maximum Settlement Amount. These

1 fees shall include any costs associated with the required tax reporting on any Individual Payment
2 Amounts, and the issuing of any and all W-2 and 1099 forms. Subject to approval of the Court,
3 the Parties have agreed that ILYM Group, Inc. will serve as a neutral third-party claims'
4 administrator ("Settlement Administrator") to perform all acts related to providing notice to the
5 Settlement Class. Settlement Administrator shall be responsible for (a) printing and distributing
6 the Court-approved Notice of Class Action Settlement ("Class Notice") to all Class Members; (b)
7 administering the settlement; (c) processing exclusions, objections, and field inquiries from Class
8 Members; (d) resolving disputes; (e) calculating the Individual Payment Amount each
9 Participating Class Members is eligible to receive, and the Individual PAGA Payment Amount
10 each PAGA Member shall receive; (f) distributing the Maximum Settlement Amount as directed
11 by the Court and set forth herein; (g) tax reporting; (h) providing necessary weekly status reports;
12 and (i) other duties and responsibilities set forth herein.

13 (i) **No Representations or Warranties by Defendant:** Plaintiff understands
14 and agrees that Defendant is not providing Plaintiff or Class Members with tax or legal advice
15 and that Defendant makes no representations or warranties regarding tax obligations or
16 consequences, if any, related to this Settlement Agreement and Plaintiff, the Class Members, and
17 PAGA Members are not relying on any statement, representation, or calculation by Defendant or
18 by the Settlement Administrator in this regard. Additionally, Plaintiff, the Class Members, and
19 PAGA Members understand and agree that except for Defendant's payment of the employer's
20 portion of any payroll taxes, Plaintiff and Class Members will be solely responsible for the
21 payment of any taxes and penalties assessed on the payments described herein. Defendant's share
22 of any employer-side payroll taxes and other required employer withholdings due on the
23 Individual Settlement Payments, including, but not limited to, Defendant's FICA and FUTA
24 contributions, shall be made separate and apart from the Maximum Settlement Amount.

25 **D. Release of Claims.**

26 1. Upon the Effective Date, and subject to Defendant's full payment of the
27 Maximum Settlement Amount, Plaintiff and all Settlement Class Members who do not timely
28 opt-out will be deemed to have fully released and discharged Defendant and all of its current and

1 former owners, officers, directors, managers, members, employees, agents, representatives,
2 subsidiaries, parents, affiliates, predecessors, successors, joint venturers, co-owners, co-
3 employers, joint employers, payroll providers, attorneys, insurers, and reinsurers ("Released
4 Parties") from any and all Released Claims which arose during their employment in a non-
5 exempt position in California during the Class Period. PAGA Members who opt-out of the
6 Class Settlement shall not be bound by any class-related judgment or release, but will
7 nevertheless release all Released Claims that arise under PAGA.

8 2. The "Released Claims" include all claims, rights, demands, liabilities and causes
9 of actions that are alleged or reasonably could have been alleged based on the facts and claims
10 asserted in the Action, including the following claims: (i) failure to pay all regular wages,
11 minimum wages, and overtime wages due; (ii) failure to provide meal periods or premium
12 compensation in lieu thereof; (iii) failure to provide rest periods or compensation in lieu thereof;
13 (iv) failure to reimburse necessary business expenses; (v) failure to provide complete and
14 accurate itemized wage statements; (vi) failure to pay wages timely upon separation of
15 employment; (vii) failure to timely pay wages during employment (including a claim under the
16 Industrial Welfare Commission Wage Orders, and common law including conversion); (viii)
17 unfair business practices that could have been premised on the claims, causes of action, or legal
18 theories of relief described above or any of the claims, causes of action, or legal theories of relief
19 pleaded in the Action; (ix) failure to maintain required payroll records; and (x) all claims under
20 PAGA that could have been premised on the claims, causes of action or legal theories described
21 above or any of the claims, causes of action or legal theories of relief pleaded in the Action. The
22 Released Claims are expressly limited to claims arising during the Class Period during
23 employment in a non-exempt position. All PAGA Members will be deemed to have fully,
24 finally and forever released, settled, compromised, relinquished, and discharged any and all
25 Released Claims arising under PAGA with respect to the Released Parties, irrespective of
26 whether a Class Member submits a request for exclusion.

1 **E. Notice and Exclusion Process.**

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

14 2. A notice of pendency of class action, proposed settlement, and hearing date for
15 Court approval ("Class Notice") in the form attached hereto as Exhibit 1, and as approved by the
16 Court, shall be sent by the Settlement Administrator to the Class Members, by first class mail,
17 within twenty-one (21) calendar days after entry of the order granting preliminary approval.
18 Attached to the Class Notice will be a request for exclusion form ("Request for Exclusion Form")
19 in the form attached hereto as Exhibit 2.

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

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

1 for Exclusion Form. The Request for Exclusion shall not be effective as to the release of claims
2 arising under PAGA. PAGA Members who opt-out of the Settlement shall not be bound by any
3 Judgment or class release, but will nevertheless release Released Claims that arise under PAGA.

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

12 6. All Class Members who do not submit a Request for Exclusion Form will be
13 eligible to receive an Individual Payment Amount—and PAGA Members will receive their
14 portion of the PAGA Payment, if eligible, regardless of their decision to opt out of the class
15 settlement—which shall be mailed to them if and when the Effective Date occurs.

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

24 8. The deadline for submission of Exclusion Forms shall be extended once by 30
25 days for those Class Members whose Class Notice and Exclusion Form are returned as
26 "undeliverable." If the 30th day falls on a Sunday or federal holiday, this deadline will be
27 extended to the next day on which the U.S. Postal Service is open.
28

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

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

14 11. In order to submit a written objection to the settlement, a Class Member must mail
15 his or her objection to the Settlement Administrator no later than forty-five (45) calendar days
16 after the mailing of the Class Notice and Request for Exclusion Form to Class Members, unless
17 the Court requires a longer period, in which case the Court ordered objection period will apply. If
18 the 45th day falls on a Sunday or federal holiday, the time to object to the settlement will be
19 extended to the next day on which the U.S. Postal Service is open. Any Class Member may
20 appear at the final approval hearing to argue their objections, regardless if they have submitted a
21 written objection.

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

- 12 -

SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

1 13. Defendant shall deposit the Maximum Settlement Amount with the Settlement
2 Administrator no later than ten (10) calendar days after the Effective Date. The effective date of
3 this Settlement Agreement ("Effective Date") is the date the Court signs an order granting final
4 approval of the settlement and entering judgment thereon. If objections to the settlement are
5 filed, the Effective Date of the settlement is the sixty-fifth (65th) day after notice of the final
6 approval order is mailed, unless an appeal is filed, in which case the Effective Date is the day
7 after (a) the settlement is upheld by the Court of Appeals, or (b) all appeals are dismissed.

8 14. The Settlement Administrator shall disburse the Gross Settlement Amount within
9 fifteen (15) calendar days after its receipt thereof. Class Members and PAGA Members must
10 cash each of their Individual Payment Amount checks within one hundred eighty (180) calendar
11 days after they are mailed by the Settlement Administrator. The value of any checks uncashed
12 more than one hundred eighty (180) days after mailing shall be paid to the State of California
13 State Controller's Office, to be held in the name of the respective Class Member or PAGA
14 Member.

15 **F. Duties of the Parties Prior to Court Approval.**

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

19 (a) scheduling a fairness hearing on the question of whether the proposed
20 settlement should be finally approved as fair, reasonable and adequate as to the Class
21 Members;

22 (b) approving as to form and content the proposed Class Notice;

23 (c) approving as to form and content the proposed Request for Exclusion
24 Form;

25 (d) preliminarily certifying the Settlement Class for purposes of settlement;

26 (e) preliminarily approving the PAGA payments of \$15,000 to the LWDA
27 and \$5,000 to PAGA Members, based on the formulas specified herein;

28 (f) preliminarily setting attorneys' fees and costs payable to Class Counsel;

- 1 (g) preliminarily setting the service payment to the Class Representative;
2 (h) preliminarily approving ILYM Group, Inc. as the Settlement
3 Administrator and its estimated fees and costs of \$15,000; and
4 (i) permitting Plaintiff to file the First Amended Complaint.

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

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

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

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

14 (b) approving Class Counsel's application for an award of attorneys' fees
15 and reimbursement of documented litigation costs and expenses, the service payment to the
16 Class Representative, the PAGA Payments to the LWDA and PAGA Members, and the costs of
17 administering the settlement; and

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

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

23 **H. Miscellaneous Provisions:**

24 1. **Voiding the Agreement.**

25 A failure of the Court to approve any material condition of this Settlement Agreement
26 which effects "a fundamental change of the Parties' settlement," or if the settlement is reversed or
27 materially modified on appellate review, shall render the entire Stipulation of Settlement voidable
28 and unenforceable as to all Parties herein at the option of any Party. Defendant retains the right,

1 in the exercise of its sole discretion, to nullify the settlement within thirty (30) days after
2 expiration of the opt out period, if ten percent (10%) or more of the Class Members opt out of this
3 Settlement.

4 **2. Parties' Authority.**

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

7 **3. Mutual Full Cooperation.**

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

17 **4. No Prior Assignments.**

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

22 **5. No Admission.**

23 Nothing contained herein, nor the consummation of this Stipulation of Settlement, is to be
24 construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part
25 of Defendant or any of the other Released Parties. Each of the Parties hereto has entered into this
26 Settlement Agreement with the intention of avoiding further disputes and litigation with the
27 attendant inconvenience and expenses. This Settlement Agreement is a settlement document and
28 shall, pursuant to California Evidence Code section 1152 and/or Federal Rule of Evidence 408

1 and/or any other similar law, be inadmissible in evidence in any proceeding, except an action or
2 proceeding to approve the settlement, and/or interpret or enforce this Settlement Agreement,
3 including but not limited to use as an affirmative defense or bar to claims, in total or in part.

4 **6. Construction.**

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

10 **7. Captions and Interpretations.**

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

15 **8. Modification.**

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

20 **9. Integration Clause.**

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

26 **10. Binding on Assigns.**

27 This Settlement Agreement shall be binding upon and inure to the benefit of the Parties
28

1 hereto and their respective heirs, trustees, executors, administrators, successors, and assigns.

2 **11. Governing Law.**

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

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

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

12 **13. Counterparts.**

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

17 **14. Confidentiality**

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

22 **15. No Publicity**

23 Plaintiff and her Counsel will not contact the media about the settlement or respond to any
24 inquiries by the media regarding the Settlement, other than to state that the matter was amicably
25 resolved, and the Court did not find Defendant liable. Plaintiff and her Counsel also will not
26 publish, market, or post any information about the parties and their settlement, including but not
27 limited to on social media and their firms' or third parties' websites.

16. Representation Regarding Class Size.

Defendant has represented that there are no more than approximately 751 Class Members who worked no more than 22,000 workweeks during the Class Period through November 1, 2021. Should either of these numbers increase by more than 10% (i.e. if the number of employees exceeds 826 or the number of workweeks exceeds 24,200 as of November 1, 2021), Plaintiff may terminate the Settlement Agreement, in which case the Parties will revert to their respective positions in the litigation just prior to December 14, 2021.

Dated: January 11, 2022

DocuSigned by:
Maria Capetillo
331E3C2987E84BE...
By: MARIA CAPETILLO
Plaintiff and Class Representative

Dated: 1/31, 2022

DocuSigned by:
Undray Baker
98DD5187A130437...
By: LOVE THOSE WINGS, INC.
Its:

APPROVED AS TO FORM AND CONTENT:

Dated: January 11, 2022

GAINES & GAINES, APLC
By: Daniel F. Gaines
Daniel F. Gaines
Alex P. Katofsky
Evan S. Gaines
Counsel for Plaintiff and Class
Representative Maria Capetillo

Dated: 1/31, 2022

ATKINSON, ANDELSON, LOYA, RUUD
& ROMO
By: Michael J. O'Connor, Jr.
Sarkis Atayan
Counsel for Defendant Love Those
Wings, Inc.

EXHIBIT 1

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

MARIA CAPETILLO, on behalf of herself and all others similarly situated, and as an Aggrieved Employee and Private Attorney General pursuant to Labor Code § 2698 et seq.,

Plaintiff,

v.

LOVE THOSE WINGS, INC., a California corporation, and DOES 1 through 10, inclusive,

Defendants.

CASE NO: 30-2021-01183363-CU-OE-CXC

*Assigned For All Purposes to the Honorable
Judge William Claster, Dept. CX104*

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

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

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

- A settlement will provide \$300,000 to pay claims to and on behalf of all individuals who worked for Love Those Wings, Inc. ("Defendant") as hourly and/or non-exempt employees in California at any time between February 9, 2017 and [Class Period End Date] (the "Class Period") and all hourly and/or non-exempt employees in California at any time between December 4, 2019 and [Class Period End Date] (the "PAGA Period").
- The settlement resolves a lawsuit alleging that Defendant failed to pay all wages due, including minimum and overtime wages; provide compliant meal and rest periods or premium compensation in lieu thereof; timely issue final wages upon separation of employment; and issue accurate and complete itemized wage statements. The Settlement avoids costs and risks of continuing the lawsuit; pays money to employees; and, in exchange, releases Defendant from liability from the claims asserted in this lawsuit.
- Lawyers for the employees will ask the Court to award them up to \$100,000 as attorneys' fees and \$12,000 as expenses for investigating the facts, litigating the case, and negotiating the settlement. The above amounts will be paid from the total settlement amount.
- Defendants believe they have complied with the law in all respects and deny any liability for the claims asserted by Plaintiff. Defendants are not admitting liability of any of the factual and legal allegations asserted in the lawsuit, and deny that the lawsuit should proceed as a class action for any purpose other than this Settlement. After investigating the claims at issue, and the possible defenses to those claims, the Parties have agreed to settle this case in order to avoid the cost and risk of further litigation. In view of the costs and risks that continued litigation would entail, Plaintiff and her counsel believe the Settlement is in the best interests of all non-exempt hourly employees who worked for Defendant in California during the Class Period ("Class Members") and the PAGA Period ("PAGA Members").

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

WHY DID YOU RECEIVE THIS NOTICE?

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

WHAT IS THIS LAWSUIT ABOUT?

On February 9, 2021, Plaintiff Maria Capetillo ("Plaintiff"), a former employee of Love Those Wings, Inc., filed this lawsuit in Orange County Superior Court. The lawsuit, as amended, alleges violations of the California Labor Code and California Business and Professions Code. The lawsuit seeks to certify a class of all current and former hourly and/or non-exempt California employees of Defendant employed from February 9, 2017 through [Class Period End Date]. Specifically, the lawsuit alleges that Class Members and PAGA Members were not paid all wages due, including minimum and overtime wages; were not provided all compliant meal and rest periods or premium compensation in lieu thereof; were not timely issued final wages upon separation of employment; and were not issued accurate and complete itemized wage statements. The Settlement seeks recovery of wages, damages, interest, statutory and civil penalties, restitution, attorneys' fees and costs. Defendant denies all of the material allegations in the lawsuit and denies that it owes Class Members any remedies. The Court has not made a ruling on the merits of the case.

The lawyers for the parties are:

Plaintiff's Attorneys

Daniel F. Gaines, Esq.
Alex P. Katofsky, Esq.
Gaines & Gaines, APLC
27200 Agoura Road, Suite 101
Calabasas, CA 91301
Phone: (866) 550-0855

Defendant's Attorneys

Michael J. O'Connor, Jr., Esq.
Sarkis A. Atoyan, Esq.
Atkinson, Andelson, Loya, Ruud & Romo
4275 Executive Square, Suite 700
La Jolla, CA 92037-9526

SUMMARY OF THE SETTLEMENT

A. Why is there a Settlement?

The Court did not decide in favor of Plaintiff or Defendant. Plaintiff believes she would prevail on one or more of her claims at a trial, if she elected to and/or were forced to move forward formally. Defendant does not believe Plaintiff would win anything from a trial, if Defendant elected to and/or was forced to move forward formally, and if Plaintiff were to make it that far on one or more of her claims. There has been no trial. Instead, both sides agreed to a settlement, which is memorialized in the Settlement Agreement and Release of Claims ("Settlement Agreement" or "Stipulation of Settlement"), in order to avoid the further costs, risks, and uncertainty of a trial. Plaintiff and Plaintiff's Attorneys believe the settlement is fair, reasonable, adequate, and in the best interests of all Class Members and PAGA Members.

B. Who is in the Settlement Class?

The Settlement encompasses a class composed of all individuals who worked for Love Those Wings, Inc. as hourly and/or non-exempt employees in California at any time between February 9, 2017 and [Class Period End Date], and, with regard to the PAGA Claims, all PAGA Members who worked between December 4, 2019 and [Class Period End Date].

C. What does the Settlement provide?

1. Maximum Settlement Amount.

The Settlement provides that Defendant will pay Three Hundred Thousand Dollars (\$300,000.00) (the "Maximum Settlement Amount") to settle the lawsuit.

2. Net Settlement Proceeds.

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

(a) **Class Counsel's Attorneys' Fees** in an amount set by the Court, not to exceed One Hundred Thousand Dollars (\$100,000.00);

(b) **Class Counsel's Documented Litigation Costs/Expenses** in an amount set by the Court, not to exceed Twelve Thousand Dollars (\$12,000.00);

(c) **Service Payment to the Class Representative** in an amount set by the Court, not to exceed Twenty-Five Hundred Dollars (\$2,500.00), for her service in the lawsuit;

(d) **Settlement Administration Costs** which are currently estimated to not exceed Fifteen Thousand Dollars (\$15,000.00), for administering the settlement; and

(e) **PAGA Payments** in the total amount of Twenty Thousand Dollars (\$20,000.00) for the settlement of claims arising under the California Private Attorneys General Act ("PAGA"). Seventy-Five percent (75%), or Fifteen Thousand Dollars (\$15,000.00), shall be paid to the California Labor and Workforce Development Agency ("LWDA"). The remaining Twenty-Five percent (25%), or Five Thousand Dollars (\$5,000.00), will be distributed to hourly-paid, non-exempt employees who worked for Defendant from December 4, 2019 to [Class Period End Date] ("PAGA Members"), for the release of their claims arising under PAGA.

3. Individual Payment Amount.

Your share of the Net Settlement Proceeds will be determined by the formula detailed in section E below. Your Individual Payment Amount includes both your estimated share of the Net Settlement Proceeds and, if eligible, your share of the PAGA Payment ("Individual PAGA Payment Amount").

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

Upon the "Effective Date" as defined below, and subject to Defendant's full payment of the Maximum Settlement Amount, Plaintiff and all Settlement Class Members who do not timely opt-out will be deemed to have fully released and discharged Defendant and all of its current and former owners, officers, directors, managers, members, employees, agents, representatives, subsidiaries, parents, affiliates, predecessors, successors, joint venturers, co-owners, co-employers, joint employers, payroll providers, attorneys, insurers, and reinsurers ("Released Parties") from any and all Released Claims which arose during their employment as hourly and/or non-exempt employees in California during the Class Period. PAGA Members who opt-out of the Settlement shall not be bound by any Judgment or release, but will nevertheless release Released Claims that arise under PAGA.

The Effective Date is the date the Court signs an order granting final approval of the settlement and entering judgment thereon. If objections to the settlement are filed, the Effective Date of the settlement is the sixty-fifth (65th) day after notice of the final approval order is mailed, unless an appeal is filed, in which case the Effective Date is the day after (a) the settlement is upheld by the Court of Appeals, or (b) all appeals are dismissed.

The "Released Claims" include all claims, rights, demands, liabilities and causes of actions that are alleged or reasonably could have been alleged based on the facts and claims asserted in the Action, including the following claims: (i) failure to pay all regular wages, minimum wages, and overtime wages due; (ii) failure to provide meal periods or premium compensation in lieu thereof; (iii) failure to provide rest periods or compensation in lieu thereof; (iv) failure to reimburse necessary business expenses; (v) failure to provide complete and accurate itemized wage statements; (vi) failure to pay wages timely upon separation of employment; (vii) failure to timely pay wages during employment (including a claim under the Industrial Welfare Commission Wage Orders, and common law including conversion); (viii) unfair business practices that could have been premised on the claims, causes of

action, or legal theories of relief described above or any of the claims, causes of action, or legal theories of relief pleaded in the Action; (ix) failure to maintain required payroll records; and (x) all claims under PAGA that could have been premised on the claims, causes of action or legal theories described above or any of the claims, causes of action or legal theories of relief pleaded in the Action. The Released Claims are expressly limited to claims arising during the Class Period during employment in a non-exempt position.

All PAGA Members will be deemed to have fully, finally and forever released, settled, compromised, relinquished, and discharged any and all Released Claims arising under PAGA with respect to the Released Parties, irrespective of whether a Class Member submits a request for exclusion.

E. How Is My Share Of The Settlement Calculated?

Each participating Class Member (those who do not opt out of the Settlement) and all PAGA Members shall receive an "Individual Payment Amount," which is distributable to each Class Member who participates in the Settlement (i.e., who does not submit a valid request for exclusion form) and is a portion of the PAGA Payment distributable to each PAGA Member, regardless if they request exclusion from the class settlement or not.

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

As to PAGA Members, individual PAGA Payment Amounts will be calculated by dividing the employee portion of the PAGA Payment (\$5,000.00) by the total weeks worked by all PAGA Members in California in a non-exempt position during the PAGA Period (December 4, 2019 to the Class Period End Date), which will yield the applicable weekly rate. The weekly rate shall be multiplied by the number of weeks each individual PAGA Member worked for Defendant in California in a non-exempt position during the PAGA Period to yield their Individual PAGA Payment Amount. PAGA Members will receive their portion of the PAGA Payment regardless of their decision to opt out of the class settlement (i.e., Class Members who opt out will nevertheless receive their Individual PAGA Payment).

For tax purposes, each Individual Payment Amount will be apportioned (a) 25% as wages (reported on an IRS Form W-2 and subject to applicable withholdings); and (b) 75% as non-wage statutory damages and interest (reported on an IRS Form 1099, if required). All Individual Payment Amounts paid to Class Members will be subject to any applicable wage garnishments, liens, or other legally mandated treatment as required by law.

According to the records of Defendant, you worked [] weeks while employed in a non-exempt position in California from February 9, 2017 through [Class Period End Date] and you worked [] weeks while employed in a non-exempt position in California from December 4, 2019 to [Class Period End Date]. Based on these weeks worked, you are entitled to an

Individual Payment Amount of approximately \$[_____]. This amount is subject to change based on the final ruling of the Court.

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

THE SETTLEMENT HEARING

The Court will conduct a final fairness hearing regarding the proposed settlement (the "Final Settlement Hearing") on _____, at 8:30 a.m., in the Courtroom of Judge Claster of the Orange County Superior Court, Department CX104, located at 751 West Santa Ana Blvd, Santa Ana, CA 92701. The Court will determine: (i) whether the lawsuit should finally be certified as a class action for settlement purposes; (ii) whether the settlement should be given the Court's final approval as fair, reasonable, adequate and in the best interests of the Settlement Class Members; (iii) whether the Settlement Class Members should be bound by the terms of the settlement; (iv) the amount of the attorneys' fees and costs to be awarded to Plaintiff's Attorneys; and (v) the amount that should be awarded to Plaintiff as a service payment. At the Final Settlement Hearing, the Court will hear all properly filed objections, as well as arguments for and against the proposed settlement. You have a right to attend this hearing, but you are not required to do so. You also have the right to hire an attorney to represent you, or to enter an appearance and represent yourself.

WHAT ARE YOUR OPTIONS?

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

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

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

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

- **OPTION 3 – EXCLUDE YOURSELF FROM THE SETTLEMENT AND RELEASE OF NON-PAGA CLAIMS**

You have a right to exclude yourself (“opt out”) from the Settlement Class and release of non-PAGA claims, but if you choose to do so, you will not receive any benefits from the proposed settlement. However, if eligible, you will still receive a payment in an amount equal to your estimated *pro rata* share of the PAGA Payment because the Request for Exclusion does not apply to this claim. You will not be bound by a judgment in this case, and you will have the right to file your own lawsuit against the Defendant and pursue your own claims in a separate suit. You can opt out of the Class by completely filling out and mailing the enclosed Request for Exclusion Form to the Settlement Administrator at the above-stated address, such that it is postmarked no later than _____. The Request for Exclusion shall not be effective as to the release of claims arising under PAGA. Class Members who opt-out of the Settlement will nevertheless release Released Claims that arise under PAGA.

ARE THERE MORE DETAILS ABOUT THE SETTLEMENT?

The above is a summary of the basic terms of the settlement. For the precise terms and conditions of the settlement, you should review the detailed “Settlement Agreement and Release of Claims” which is on file with the Clerk of the Court. The pleadings and other records in the Lawsuit may be examined at any time during regular business hours at the Office of the Clerk of the Orange County Superior Court, located at 751 West Santa Ana Blvd, Santa Ana, CA 92701

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

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

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

EXHIBIT 2

REQUEST FOR EXCLUSION

ONLY COMPLETE THIS REQUEST FOR EXCLUSION FORM IF YOU WANT TO OPT OUT OF (NOT PARTICIPATE IN) THE SETTLEMENT OF THE CLASS ACTION KNOWN AS *Maria Capetillo, Plaintiff, v. Love Those Wings, Inc., and Does 1 Through 10, Inclusive, Defendants, Orange County Superior Court*, Case No. 30-2021-0118336-CU-OE-CXC. IF YOU OPT OUT OF THE CLASS ACTION SETTLEMENT, YOU WILL NOT RECEIVE ANY PORTION OF THE CLASS SETTLEMENT AMOUNT.

I confirm that I was employed by Defendant Love Those Wings, Inc. as an hourly and/or non-exempt employee in California between February 9, 2017 and [Class Period End Date] (the "Class Period").

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

Date: _____

Signature: _____

Print Name: _____

Residence Street Address: _____

City, State and Zip Code: _____

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

Love Those Wings, Inc. Claims Administrator
c/o ILYM Group, Inc.

EXHIBIT 3

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

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

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE

MARIA CAPETILLO, on behalf of herself
and all others similarly situated, and as an
Aggrieved Employee and Private Attorney
pursuant to Labor Code § 2698 *et seq.*,

Plaintiff,

v.

LOVE THOSE WINGS, INC., a California
corporation, and DOES 1 through 10,
inclusive,

Defendants.

Case No.: 30-2021-0118336-CU-OE-CXC

*Assigned For All Purposes to the Honorable
Judge William Claster, Dept. CX104*

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

- 1. FAILURE TO PAY ALL WAGES DUE,
INCLUDING MINIMUM AND
OVERTIME WAGES (LABOR CODE §§
510, 558 AND 1194)**
- 2. FAILURE TO PROVIDE COMPLIANT
REST PERIODS OR COMPENSATION
IN LIEU THEREOF (LABOR CODE §§
226.7 AND 558; IWC WAGE ORDER 5-
2001)**
- 3. FAILURE TO PROVIDE COMPLIANT
MEAL PERIODS OR COMPENSATION
IN LIEU THEREOF (LABOR CODE §§
226.7, 512, 558 AND 1194; IWC WAGE
ORDER 5-2001)**
- 4. FAILURE TO COMPLY WITH
ITEMIZED EMPLOYEE WAGE
STATEMENT PROVISIONS (LABOR
CODE §§ 226 AND 226.3)**
- 5. FAILURE TO TIMELY PAY WAGES
DUE AT SEPARATION OF
EMPLOYMENT (LABOR CODE §§ 201-
203)**

1 6. VIOLATION OF BUSINESS AND
2 PROFESSIONS CODE § 17200 ET SEQ.

3 7. CIVIL PENALTIES PURSUANT TO
4 LABOR CODE § 2698 ET SEQ. FOR
5 VIOLATIONS OF LABOR CODE §§ 201,
6 202, 226(a), 226.7, 510, 512, 1174, AND 1194
7 AND PURSUANT TO LABOR
8 CODE § 2699(a) FOR VIOLATIONS OF
9 LABOR CODE §§ 226.3 AND 558

10 **DEMAND FOR JURY TRIAL**

11 *Complaint Filed: February 9, 2021*

12 Plaintiff MARIA CAPETILLO ("Plaintiff"), individually and on behalf of all similarly
13 situated individuals (the "Class" or "Plaintiff Class"), on behalf of the general public, and as an
14 "aggrieved employee" under the Labor Code Private Attorneys General Act of 2004, complains of
15 Defendants, and each of them, as follows:

16 **I.**

17 **INTRODUCTION AND FACTUAL BACKGROUND**

18 1. This is a Class Action and Representative Action, pursuant to Code of Civil
19 Procedure § 382 and Labor Code § 2698 *et seq.*, on behalf of Plaintiff and all other non-exempt
20 employees who work or formerly worked for LOVE THOSE WINGS, INC., a California
21 corporation, and any subsidiaries or affiliated companies (hereinafter collectively referred to as
22 "Defendants") within the State of California.

23 2. For at least four (4) years prior to the filing of this action and continuing to the
24 present (the "liability period") Defendants have had a consistent policy of failing to pay all wages
25 due to Class Members (as defined below), including all minimum and overtime wages due; provide
26 legally compliant meal and rest periods or compensation in lieu thereof to Class Members; provide
27 accurately itemized wage statements to Class Members; and to timely pay wages upon separation of
28 employment to Class Members (as defined below).

3. Plaintiff, on behalf of herself and the members of the Class, brings this action
pursuant to Labor Code §§ 201, 202, 203, 226, 226.3, 226.7, 510, 512, 558, 1174, and 1194,

1 seeking compensation for all unpaid wages, unpaid premium meal and rest period wages, statutory
2 penalties, injunctive and other equitable relief, and reasonable attorneys' fees and costs.

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

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

8 6. Plaintiff, on behalf of herself and all aggrieved employees pursuant to Labor Code
9 §§ 2698 *et seq.*, seeks penalties for Defendants' various violations of the California Labor Code.

10 II.

11 PARTIES

12 A. Plaintiff

13 7. Plaintiff MARIA CAPETILLO was employed by Defendants from February 2017 to
14 December 2019 as a non-exempt employee in Orange County, California.

15 8. During her work with Defendants, Plaintiff was:

- 16 a. Willfully denied the payment of all wages due, including all minimum and
17 overtime wages;
- 18 b. Willfully denied compliant rest periods or compensation in lieu thereof;
- 19 c. Willfully denied compliant meal periods or compensation in lieu thereof;
- 20 d. Willfully denied accurately itemized wage statements; and
- 21 e. Denied the timely payment of wages upon separation of her employment.

22 B. Defendants

23 9. Defendant LOVE THOSE WINGS, INC., is a California corporation. Defendant
24 LOVE THOSE WINGS, INC. employed Plaintiff and Class Members throughout the State of
25 California, including Orange County, California.

26 10. The true names and capacities, whether individual, corporate, associate, or
27 otherwise, of Defendants sued herein as DOES 1 to 10, inclusive, are currently unknown to
28 Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure §

1 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants
2 designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to
3 herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and
4 capacities of the Defendants designated hereinafter as DOES when such identities become known.

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

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

12 III.

13 CLASS ACTION ALLEGATIONS

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

17 THE CLASS

18 All individuals who worked for Defendant LOVE THOSE WINGS,
19 INC. as hourly and/or non-exempt employees in California at any
20 time between February 9, 2017 and the earlier of (a) the date of
21 preliminary approval of the Settlement Agreement or (b) February 28,
22 2022.

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

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

1 **A. Numerosity**

2 16. The potential members of the Class as defined are so numerous that joinder of all
3 Class Members is impracticable. While the precise number of members of the Class has not been
4 ascertained at this time, Plaintiff is informed and believes, and based thereon alleges, that
5 Defendants currently employ, and during the relevant time periods employed, over 75 persons in the
6 State of California who fall within the Class definition.

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

10 **B. Commonality**

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

- 14 a. Whether Defendants failed to pay Plaintiff and Class Members all wages due,
15 including all minimum and overtime wages, in violation of Labor Code §§
16 510, 558, and 1194;
- 17 b. Whether Defendants failed to properly provide compliant rest periods or
18 compensation in lieu thereof to Plaintiff and Class Members, in violation of
19 Labor Code §§ 226.7 and 558, and IWC Wage Order 5-2001;
- 20 c. Whether Defendants failed to properly provide compliant meal periods or
21 compensation in lieu thereof to Plaintiff and Class Members, in violation of
22 Labor Code §§ 226.7, 512, 558, and 1194 and IWC Wage Order 5-2001;
- 23 d. Whether Defendants failed to provide Plaintiff and Class Members with
24 accurately itemized wage statements, in accordance with Labor Code §
25 226(a);
- 26 e. Whether Defendants failed to timely pay Plaintiff and Class Members all
27 wages due and owing at the separation of their employment, in violation of
28 Labor Code §§ 201-203; and

1 f. Whether Plaintiff and Class Members are entitled to equitable relief pursuant
2 to Business & Professions Code § 17200 *et seq.*

3 **C. Typicality**

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

8 **D. Adequacy of Representation**

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

12 **E. Superiority of Class Action**

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

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

23 **CAUSES OF ACTION**

24 **FIRST CAUSE OF ACTION**

25 **PLAINTIFF AND CLASS AGAINST ALL DEFENDANTS**

26 **FAILURE TO PAY ALL WAGES DUE, INCLUDING MINIMUM AND OVERTIME**

27 **WAGES (LABOR CODE §§ 510, 558, AND 1194)**

28 \\\

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

24. Labor Code § 510 provides that, “any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee.” Labor Code § 1194 provides that “any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.”

25. During the liability period, Defendants failed to pay Plaintiff and Class Members all wages due, in violation of Labor Code §§ 510, 558, and 1194. Plaintiff and Class Members worked off-the-clock: Defendant required them to clock out at their scheduled time and continue working, without any compensation, partly as an attempt to avoid paying overtime wages for shifts worked in excess of eight (8) hours in a day. This deprived Plaintiff and Class Members of significant hours worked and wages due. These failures to pay all minimum and overtime wages due constitute violations of Labor Code §§ 510, 558 and 1194.

26. As a result of the unlawful acts of Defendants in willfully failing to pay all wages, Plaintiff and Class Members have been deprived of wages in amounts to be determined at trial, and are entitled to restitution and recovery of such amounts, plus interest thereon, attorneys' fees, and costs pursuant to Labor Code § 1194.

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

V.

SECOND CAUSE OF ACTION

PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS

**FAILURE TO PROVIDE COMPLIANT REST PERIODS OR COMPENSATION IN LIEU
THEREOF (LABOR CODE §§ 226.7 AND 558 AND IWC WAGE ORDER 5-2001)**

11

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

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

29. Defendants failed to pay premium wages to Plaintiff and Class Members who were denied rest periods, in violation of Labor Code § 226.7 and IWC Wage Order 5-2001. Plaintiff and Class Members were routinely not authorized and unable to take an off-duty, 10-minute rest period for every four (4) hours of work or major fraction thereof, but were not paid premium wages of one hour's pay for each missed rest period. During their employment with Defendants, Plaintiff and Class Members rarely, if ever, received or were authorized to take a rest period. This violates Labor Code §§ 226.7 and 558 and IWC Wage Order 5-2001. This violates Labor Code § 226.7, 558 and IWC Wage Order 5-2001.

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

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

below.VI.

THIRD CAUSE OF ACTION

PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS

**FAILURE TO PROVIDE COMPLIANT MEAL PERIODS OR COMPENSATION IN LIEU
THEREOF (LABOR CODE §§ 226.7, 512, 558, AND 1194 AND IWC WAGE ORDER 5-
2001)**

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

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

1 33. Defendants failed to pay premium wages to Plaintiff and Class Members who were
2 denied meal periods, in violation of Labor Code §§ 226.7 and 512 and IWC Wage Order 5-2001.
3 Plaintiff and Class Members were routinely denied, and not authorized to take, an uninterrupted, 30-
4 minute meal period for every shift worked that exceeded five hours in duration, and a second meal
5 period when they worked shifts greater than ten hours, but were not paid premium wages of one
6 hour's pay for each missed meal period. When Plaintiff and Class Members did receive meal
7 periods, they would frequently be interrupted and they would be required to continue working,
8 without compensation, in violation of Labor Code §§ 226.7, 510, 512, 558, 1194 and IWC Wage
9 Order 5-2001.

10 34. Pursuant to Labor Code §§ 226.7, 512, 558, and 1194 and IWC Wage Order 5-2001,
11 Plaintiff seeks the payment of all unpaid meal period compensation which she and Class Members
12 are owed, according to proof.

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

15 **FOURTH CAUSE OF ACTION**

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

17 **FAILURE TO COMPLY WITH ITEMIZED EMPLOYEE WAGE STATEMENT**

18 **PROVISIONS (LABOR CODE § 226(a), (e), AND (h))**

19 35. Plaintiff incorporates paragraphs 1 through 34 of this Complaint as though fully set
20 forth herein.

21 36. Section 226(a) of the California Labor Code requires Defendants to provide wage
22 statements to employees. In those wage statements, Defendants must provide an accurate itemized
23 statement in writing showing (1) gross wages earned, (2) total hours worked by the employee..., (3)
24 the number of piece-rate units earned and any applicable piece rate if the employee is paid on a
25 piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the
26 employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates
27 of the period for which the employee is paid, (7) the name of the employee and only the last four
28 digits of his or her social security number or an employee identification number other than a social

1 security number, (8) the name and address of the legal entity that is the employer..., and (9) all
2 applicable hourly rates in effect during the pay period and the corresponding number of hours
3 worked at each hourly rate by the employee. Defendants have failed to comply with Labor Code §
4 226(a).

5 37. Defendants failed to issue Plaintiff and Class Members wage statements that fully
6 and accurately itemized the requirements set forth in Labor Code § 226(a). Plaintiff and Class
7 Members were not paid all wages due, including minimum and overtime wages, and all premium
8 wages for unauthorized meal and rest periods, as stated above. As such, the wage statements
9 provided by Defendants failed to accurately state all gross wages earned, in violation of Labor Code
10 § 226(a)(1), total hours worked, in violation of Labor Code § 226(a)(2), net wages earned, in
11 violation of Labor Code § 226(a)(5), and all applicable hourly rates in effect during the pay period
12 and the corresponding number of hours worked at each hourly rate, in violation of Labor Code §
13 226(a)(9).

14 38. As a consequence of Defendants' willful conduct in failing to provide Class
15 Members with accurate itemized wage statements, Plaintiff and Class Members have been injured
16 because they have not been paid all wages due and were issued wage statements which do not
17 reflect, and fail to accurately state, all information required by Labor Code § 226(a). The missing
18 information cannot be discerned at all from the face of the wage statements themselves. As a result,
19 Plaintiff and Class Members are entitled to penalties pursuant to Labor Code § 226(e) to recover the
20 greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100
21 per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of
22 \$4,000 per employee, and are entitled to an award of costs and reasonable attorneys' fees pursuant
23 to Labor Code § 226(h).

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

25 **VIII.**

26 **FIFTH CAUSE OF ACTION**

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

28 **FAILURE TO TIMELY PAY WAGES DUE AT**

1 **SEPARATION OF EMPLOYMENT (LABOR CODE §§ 201-203)**

2 39. Plaintiff incorporates paragraphs 1 through 38 of this Complaint as though fully set
3 forth herein.

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

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

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

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

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

23 **IX.**

24 **SIXTH CAUSE OF ACTION**

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

26 **UNFAIR COMPETITION PURSUANT TO**

27 **BUSINESS & PROFESSIONS CODE § 17200 ET SEQ.**

28 \

1 44. Plaintiff incorporates paragraphs 1 through 43 of this Complaint as though fully set
2 forth herein.

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

9 46. Plaintiff is a “person” within the meaning of Business & Professions Code § 17204,
10 and therefore has standing to bring this cause of action for injunctive relief, restitution, and other
11 appropriate equitable relief.

12 47. Business & Professions Code § 17200 *et seq.* prohibits unlawful and unfair business
13 practices.

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

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

26 50. Defendants’ conduct, as alleged herein, constitutes unfair competition in violation of
27 §17200 *et seq.* of the Business & Professions Code.

28 \\\

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

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

53. Unless restrained by this Court, Defendants will continue to engage in the unlawful conduct, as alleged above. Pursuant to Business & Professions Code § 17200 *et seq.*, this Court should make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment, by Defendants, its agents, or employees, of any unlawful or deceptive practice prohibited by the Business & Professions Code, and/or, including but not limited to, disgorgement of profits which may be necessary to restore Plaintiff and Class Members to the money Defendants have unlawfully failed to pay.

X.

SEVENTH CAUSE OF ACTION

**PLAINTIFF AND ALL AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS
CIVIL PENALTIES PURSUANT TO LABOR CODE § 2698 ET SEQ. FOR VIOLATIONS
OF LABOR CODE §§ 201, 202, 226(a), 226.7, 510, 512, 1174, AND 1194 AND PURSUANT
TO LABOR CODE § 2699(a) FOR VIOLATIONS OF LABOR CODE §§ 226.3 AND 558**

54. Plaintiff incorporates paragraphs 1 through 53 of this Complaint as though fully set forth herein.

55. As a result of the acts alleged above, including the Labor Code violations set forth herein, Plaintiff seeks penalties pursuant to Labor Code § 2698 *et seq.*

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

a. Pursuant to Labor Code § 2699(f), \$100 for each initial violation and \$200 for each subsequent violation of Labor Code §§ 201, 202, 203, 226, 226.7, 510, 512, 1174, and 1194; and

11

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

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

58. On December 4, 2020, Plaintiff sent a letter, by online submission to the LWDA and by certified mail, return receipt requested, to Defendants setting forth the facts and theories of the violations alleged against Defendant, as prescribed by Labor Code § 2698 *et seq.* Pursuant to Labor Code § 2699.3(a)(2)(A), no notice was received by Plaintiff from the LWDA within sixty-five (65) calendar days of December 4, 2020. Plaintiff may therefore commence this action to seek civil penalties pursuant to Labor Code § 2698 *et seq.*

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

XI.

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

1. For compensatory damages pursuant to Labor Code § 1194 in the amount of all unpaid wages due to Plaintiff and Class Members;
2. For compensatory damages in the amount of one hour of wages for each day on which a meal and/or rest period was not properly provided to Plaintiff and Class Members pursuant to Labor Code §§ 226.7 and 512;
3. For penalties pursuant to Labor Code § 226(e) for Plaintiff and Class Members;
4. For penalties pursuant to Labor Code § 203 for Plaintiff and Class Members;
5. For restitution for unfair competition pursuant to Business & Professions Code § 17200 *et seq.* for Plaintiff and Class Members;
6. For civil penalties pursuant to Labor Code § 2698 *et seq.* for Plaintiff and all other Aggrieved Employees;
7. An award of prejudgment and post-judgment interest;
8. An award providing for payment of costs of suit;

1 9. An award of attorneys' fees; and

2 10. Such other and further relief as this Court may deem just and proper.

3 Dated: January 28, 2022

Respectfully submitted,

4 GAINES & GAINES
5 A Professional Law Corporation

6 By: _____
7 DANIEL F. GAINES
8 EVAN S. GAINES
9 Attorney for Plaintiff

10 **DEMAND FOR JURY TRIAL**

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

12 Dated: January 28, 2022

Respectfully submitted,

13 GAINES & GAINES
14 A Professional Law Corporation

15 By: _____
16 DANIEL F. GAINES
17 EVAN S. GAINES
18 Attorney for Plaintiff