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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

GRACIELA DE CABANAS GONZALEZ, as
an individual and on behalf of all others
similarly situated,

Plaintiff,

vs.

MICHAEL STARS, INC., a California
Corporation; and DOES 1 through 100,

Defendants.

CASE NO. 21STCV02784

*[Case assigned for all purposes to the Hon.
Michael P. Linfield, Dept. 34]*

**DECLARATION OF PAUL K.
HAINES IN SUPPORT OF
PLAINTIFF'S MOTION FOR
APPROVAL OF SETTLEMENT OF
CLAIMS BROUGHT UNDER THE
PRIVATE ATTORNEYS'
GENERAL ACT AND
REASONABLE ATTORNEYS'
FEES, COSTS, AND
ENHANCEMENT PAYMENT**

Date: March 18, 2022

Time: 8:30 a.m.

Dept.: 34

Reservation ID: 118517237158

Complaint Filed: January 22, 2021

Trial Date: None Set

1 I, PAUL K. HAINES, declare as follows:

2 1. I am a shareholder and principal of Haines Law Group, APC, and counsel for the
3 named Plaintiff Graciela De Cabanas Gonzalez (“Plaintiff”) and the Aggrieved Employees in the
4 above-captioned matter. I am a member in good standing of the bar of the State of California and
5 am admitted to practice in this Court. I have personal knowledge of the facts stated in this
6 declaration and could testify competently to them if called upon to do so.

7 2. I am a 2006 graduate of Pepperdine University School of Law, where I graduated
8 *cum laude*. During law school, I worked as a law clerk for the appellate firm of Horvitz & Levy,
9 located in Encino, California. I also spent a semester in law school working as an extern for the
10 Honorable Edward Rafeedie, District Judge for the United States District Court for the Central
11 District of California.

12 3. Since graduating from law school, my practice has focused almost exclusively on
13 employment litigation. In September 2007, I began working as an associate attorney at the
14 international law firm of Littler Mendelson P.C., at its Los Angeles office, which according to
15 its website is the “largest U.S.-based law firm exclusively devoted to representing management
16 in every aspect of labor and employment law.” While at Littler Mendelson, I was primarily
17 staffed on wage and hour class actions venued in both state and federal courts, and I also worked
18 on a number of single and multi-plaintiff wage and hour matters as well.

19 4. During my employment at Littler Mendelson, I played a significant role in the
20 class actions that I was staffed on, as I was often the only associate staffed on such cases. In
21 particular, I received a wide-array of wage and hour class action experience performing the
22 following types of tasks: drafting demurrers, motions to strike and/or dismiss; removing actions
23 from state court to federal court; drafting and responding to written discovery; drafting and
24 opposing discovery related motions; arguing discovery related motions; drafting motions to
25 consolidate related matters; interviewing putative class members and obtaining declarations in
26 connection with class certification; drafting oppositions to motions for class certification;
27 drafting motions for decertification following class certification; conducting exposure analyses
28 to assess the strengths and weaknesses of asserted claims, the likelihood of prevailing at class

1 certification and potential damages resulting from such claims; drafting mediation briefs; serving
2 as the primary contact to in-house counsel; deposing named plaintiffs and putative class
3 members; deposing retained expert witnesses; and defending the depositions of corporate
4 witnesses. In short, I played an integral role in all aspects of litigation from the inception of a
5 matter through and beyond class certification. I also supervised the work of several junior
6 attorneys who were staffed on the same wage and hour class actions.

7 5. In June 2011, I voluntarily resigned from Littler Mendelson in order to accept an
8 associate attorney position with the international law firm of Morgan, Lewis & Bockius LLP, at
9 its Los Angeles office, where I began working in July 2011. During my employment at Morgan,
10 Lewis & Bockius LLP, I worked exclusively on the defense of wage and hour class and collective
11 actions. For the vast majority of these cases, I was the only associate staffed on the matter, and I
12 performed the same job duties as described in the immediately preceding paragraph. In addition
13 to working on wage and hour class actions, at Morgan, Lewis & Bockius I also worked on a
14 number of “hybrid” actions asserting nationwide wage and hour claims under the Fair Labor
15 Standards Act (“FLSA”), as well as California-specific claims under Rule 23 of the Rules of
16 Civil Procedure.

17 6. In July 2012, I transitioned into litigating wage and hour class actions from the
18 Plaintiff’s side, first as a Partner with the law firm of Boren, Osher & Luftman, LLP, and since
19 February 2016, as a Shareholder of the Haines Law Group, APC. Currently, over ninety percent
20 (90%) of my practice is dedicated exclusively to the prosecution of wage and hour class actions,
21 and my law firm is currently responsible for prosecuting over fifty (50) wage and hour class
22 actions filed in both State and Federal courts throughout California. I have been appointed as
23 Class Counsel in over seventy-five (75) wage and hour class action settlements in state and federal
24 courts within California. A few examples of the matters in which I have been appointed as Class
25 Counsel, all of which have been granted final approval, include the following: *Sanchez v. Res-*
26 *Care, Inc.*, Case No. BC526175, California Superior Court, County of Los Angeles, Honorable
27 John S. Wiley, presiding; *Prado v. Warehouse Demo Services, Inc.*, Case No. CV14-3170 JFW
28 (Ex), United States District Court, Central District of California, Honorable Judge John F. Walter,

1 presiding; *Tesla Motors Wage and Hour Litigation*, JCCP 4792, California Superior Court, Santa
2 Clara County, Judge Peter H. Kirwan presiding; *Bower v. Cycle Gear, Inc.*, Case No. CV14-2712
3 HSG, United States District Court, Northern District of California, Honorable Judge Haywood S.
4 Gilliam, Jr. presiding; *Longstreth v. PAQ, Inc., dba Food 4 Less*, Case No. 15CV-0206, California
5 Superior Court, County of San Luis Obispo, Honorable Judge Charles S. Crandall, presiding;
6 *Nunez v. CompuCom Systems, Inc.*, Case No. BC618385, California Superior Court, County of
7 Los Angeles, Honorable Judge John Shepard Wiley, Jr. presiding; *Mansilla v. Haeco Americas*
8 *Line Services, LLC, et al*, Case No. BC615310, Superior Court of California, County of Los
9 Angeles, Honorable Judge Elihu M. Berle presiding. *Morales v. Caremeridian, LLC, et al.*, Case
10 No. BC593191, California Superior Court, County of Los Angeles, Judge William F. Highberger
11 presiding; *Rodrigues v. CP Kelco U.S., Inc.*, Case No. 37-2017-00004339-CU-OE-CTL,
12 California Superior Court, County of San Diego, Honorable Judge Joel R. Wohlfeil, presiding;
13 *Sandoval v. Rotational Molding, Inc.*, Case No. BC640678, Superior Court of California, County
14 of Los Angeles, Honorable Judge William F. Highberger presiding; *Gooding v. Vita-Mix Corp.,*
15 *et al*, Case No. 2:16-cv-03898-ODW (JEMx), United States District Court for the Central District
16 of California, Honorable Judge Otis D. Wright II presiding.

17 7. I have also moved to certify and have received an order certifying a class action
18 and/or conditionally certifying a collective action, in the following cases: *Medeiros v. Vortex*
19 *Financial Management Inc.*, Case No. 30-2013-00644741-CU-OE-CXC, California Superior
20 Court, County of Orange, Honorable Judge Gail A. Andler, presiding (certifying a class of
21 employees who were misclassified as independent contractors); *Javine v. San Luis Ambulance*
22 *Service, Inc.*, Case No. CV13-07480 BRO (SSx), United States District Court, Central District
23 of California, Honorable Judge Beverly Reid O'Connell, presiding (conditionally certifying an
24 unpaid FLSA overtime wage class); *Prado v. Warehouse Demo Services, Inc.*, Case No. CV14-
25 3170 JFW (Ex), United States District Court, Central District of California, Honorable Judge
26 John F. Walter, presiding (certifying a rest period violation class and conditionally certifying an
27 FLSA unpaid overtime wage class); *Bower v. Cycle Gear, Inc.*, Case No. CV14-2712 HSG,
28 United States District Court, Northern District of California, Honorable Judge Haywood S.

Gilliam, Jr., presiding (conditionally certifying an unpaid FLSA overtime wage class); *Vega v. Weatherford U.S., Limited Partnership*, Case No. CV14-1790-JLT, United States District Court, Eastern District of California, Honorable Jennifer L. Thurston, presiding (conditionally certifying an unpaid FLSA overtime wage class); *Galvan v. AMVAC Chemical Corporation*, Case No. 30-2014-00716103-CU-OE-CXC, California Superior Court, County of Orange, Honorable Judge William Claster, presiding (certifying unpaid overtime wage class and waiting time penalty class); *Camacho v. Residential Fire Systems, Inc.*, Case No. 30-2015-775372-CU-OE-CXC, California Superior Court, County of Orange, Honorable Glenda Sanders, presiding (certifying piece rate pay plan classes, expense reimbursement class, wage statement class, and waiting time penalties class); *Ontiveros v. Safelite Fulfillment, Inc.*, et al, Case No. CV 15-7118-DMG (RAOx), United States District Court, Central District of California, Honorable Dolly M. Gee presiding (certifying six classes of employees for rest period violations, wage statement violations, meal period violations, and overtime and double-time violations); *Vazquez, et al v. Kraft Heinz Foods Company*, Case No. 16-cv-2749-WQH-BLM, United States District Court, Southern District of California, Honorable William Q. Hayes presiding (certifying six classes of employees for unpaid wages, meal period violations, wage statement violations, and waiting time penalties); *Caudle, et al. v. Sprint/United Management Company, et al.* Case No. C 17-06874-WHA, United States District Court, Northern District of California, Honorable William H. Alsup presiding (certifying three classes of employees for unlawful wage deductions, wage statement violations, and waiting time violations); *Perez v. Sunbelt Rentals, Inc.* Case No. 37-2018-00026405-CU-OE-CTL, California Superior Court, County of San Diego, Honorable Eddie C. Sturgeon presiding (certifying class of employees for wage statement violations); *Staublein v. Wells Fargo Bank, N.A.*, Case No. CIV DS1712267, San Bernardino Superior Court, Hon. David S. Cohn presiding (certifying wage statement class); and *Bowlin-Burdick, et al v. Life Care Centers of America, Inc.*, Case No. BC657139, Los Angeles County Superior Court, Honorable Maren E. Nelson presiding (certifying four classes for meal period violations, rest period violations, wage statement violations, and waiting time penalties).

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1 8. Of particular relevance to this case, I served as lead or co-lead counsel for the
2 plaintiff and aggrieved employees in several PAGA-only settlements, including but not limited
3 to:

- 4 • *Pentinio v. Southern Wine and Spirits of America, Inc.*, Case No. BC570234,
5 California Superior Court, County of Los Angeles, Honorable Judge Maureen
6 Duffy-Lewis, presiding, approved by the Court on January 19, 2016;
- 7 • *Resendez v. Bridgestone Retail Operations, LLC*, Case No. BC596892, California
8 Superior Court, County of Los Angeles, Honorable Judge Marc Marmaro
9 presiding, approved by the Court on June 13, 2016;
- 10 • *Canul v. Basmat, Inc.*, Case No. BC674940, California Superior Court, County of
11 Los Angeles, Honorable Judge Teresa A. Beaudet presiding, approved by the
12 Court on August 22, 2018;
- 13 • *Silva v. CitiStaff Solutions, Inc.*, Case No. BC620115, California Superior Court,
14 County of Los Angeles, Honorable Judge David S. Cunningham III presiding,
15 approved by the Court on November 19, 2018;
- 16 • *Cruz v. Fleetwash, Inc.*, Case No. 19STCV03033, California Superior Court,
17 County of Los Angeles, Honorable Judge Stuart M. Rice presiding, approved by
18 the Court on October 7, 2019; and
- 19 • *Ibarra v. Baker Commodities, Inc.*, Case No. 19STCV06148, California Superior
20 Court, County of Los Angeles, Honorable Yolanda Orozco presiding, approved
21 by the Court on September 30, 2020.

22 9. In 2015, 2016, and 2017, Thomson Reuters recognized me as a Top Young
23 Attorney in Southern California in the annual Rising Star Edition of Super Lawyer. This is an
24 honor awarded to no more than two and a half percent of attorneys under the age of forty in
25 Southern California each year. In 2018, 2019, and 2020, Thomson Reuters recognized me as a
26 “Super Lawyer,” an honor awarded to no more than five percent of attorneys in Southern
27 California each year.

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1 10. As counsel for Plaintiff and Aggrieved Employees in this case, I have been
2 intimately involved in every aspect of this case from its inception through the present, and I
3 believe the proposed Settlement is far and adequate for the Aggrieved Employees and the State
4 of California.

5 11. Defendant Michael Stars, Inc. (“Michael Stars”) is a Los Angeles-based apparel
6 and lifestyle retail company that offers a full collection of women’s and men’s fashion. Starting
7 from a single location in 1986, Michael Stars has since expanded to at least seven locations across
8 the United States, including five retail stores and at least one warehouse within California.
9 Plaintiff worked for Michael Stars for approximately 15-years from 2006 to August 7, 2020 in its
10 warehouse located in Hawthorne, California.

11 12. On January 22, 2021, Plaintiff filed the instant action, alleging class-wide
12 violations of the California Labor Code for: (1) minimum wage violations; (2) failure to pay all
13 overtime wages; (3) meal period violations; (4) waiting time penalties; (5) wage statement
14 violations; and (6) unfair competition. That same day, Plaintiff also submitted her notification
15 letter to Michael Stars and to the LWDA regarding Michael Stars’ alleged Labor Code violations,
16 as required by Labor Code § 2699.3. Attached hereto as **Exhibit 2** is a true and correct copy of
17 Plaintiff’s January 22, 2021 PAGA letter.

18 13. On March 29, 2021, after exhausting her pre-filing PAGA requirements, Plaintiff
19 filed a First Amended Complaint adding a cause of action for civil penalties under the PAGA
20 based on the same underlying Labor Code violations as those alleged in her original complaint.
21 Shortly thereafter, Michael Stars produced an arbitration agreement that Plaintiff had signed and,
22 as a result, Plaintiff dismissed her class-wide claims without prejudice, leaving Plaintiffs’ PAGA
23 claim as the sole cause of action.

24 14. On October 22, 2021, the parties attended a full-day mediation with mediator Steve
25 G. Pearl, Esq., in an effort to resolve Plaintiff’s PAGA claim. In connection with mediation,
26 Michael Stars informally produced information and documents pertaining to Plaintiff and other
27 Aggrieved Employees, including but not limited to payroll and timekeeping records for Plaintiff
28 and a representative sample of Aggrieved Employees; several data points including the number

1 of Aggrieved Employees and their hire and termination dates (where applicable); and Michael
2 Stars' relevant wage and hour policy documents, in order for Plaintiff's counsel to investigate
3 Plaintiff's allegations and value the claims prior to mediation. During mediation, the parties
4 vigorously debated the legal bases for Plaintiff's claims and Michael Stars' defenses, the
5 manageability of the case as a representative action, the potential amount of penalties, and the
6 parties' data analyses and conclusions based thereon. With the assistance of Mr. Pearl, the parties
7 agreed to fully and finally resolve Plaintiff's PAGA claim. The parties subsequently negotiated
8 and finalized the Settlement now before the Court.

9 15. A true and correct copy of the Settlement Agreement signed by Plaintiff and her
10 counsel is attached hereto as **Exhibit 1**. Michael Stars and its counsel are gathering signatures to
11 the Settlement Agreement and the parties will submit the fully-executed Settlement Agreement
12 prior to the hearing on this Motion. The proposed Explanatory Letter to be mailed to Aggrieved
13 Employees with their settlement payments is attached as **Exhibit A** to the Settlement Agreement.
14 The Settlement provides for Michael Stars to pay a Maximum Settlement Amount ("MSA") of
15 \$245,000.00. After deducting amounts for requested attorneys' fees, attorneys' costs, Plaintiff's
16 Enhancement Payment, and settlement administration costs, the Settlement provides for the Net
17 Settlement Amount ("NSA") to be distributed 75% to the LWDA and 25% to Aggrieved
18 Employees, pursuant to Lab. Code § 2699(i). The 25% portion to Aggrieved Employees shall be
19 distributed based on each Aggrieved Employee's proportional number of pay periods worked for
20 New Horizons in California during the PAGA Period. The settlement is non-reversionary, and
21 does not require Aggrieved Employees to submit claim forms to reap financial benefit from the
22 Settlement. Based on a MSA of \$245,000, the total amount paid to Aggrieved Employees is
23 estimated at \$36,379.00, with approximately \$109,137.02 paid to the LWDA. According to
24 information provided by Michael Stars, the number of Aggrieved Employees is approximately
25 101. Thus, the average payment to Aggrieved Employees is estimated at \$360.19.

26 16. Although she steadfastly maintains her claims are meritorious, Plaintiff
27 acknowledges her position included real risks and uncertainty. For example, with respect to
28 Plaintiff's unpaid wage claims, Michael Stars contends it utilizes an even-handed timekeeping

1 system that, on balance, results in employees being paid for all hours actually worked. Michael
2 Stars further argues that just because an employee is clocked in does not mean they are *working*.
3 For example, much of the alleged unpaid time was pre-shift (i.e., employees clocked in before the
4 scheduled start of the shift), and Michael Stars argues employees engage in personal activities
5 like reading or talking with co-workers before their shift. Moreover, Michael Stars asserts the
6 amount of unpaid time per shift is *de minimis* and thus non-compensable. Michael Stars also
7 contends this claim was not manageable on a representative basis, since its rounding policy is
8 facially neutral and some employees were *overpaid* due to rounding, and individualized inquiries
9 would be necessary as to whether employees were in fact underpaid or overpaid for each workday
10 in question (including whether they were actually working when they were clocked in), resulting
11 in an unmanageable series of mini-trials.

12 17. With respect to Plaintiff's meal period claim, Michael Stars contends that it has
13 always maintained compliant written meal period policies, and that employees are free to take
14 their meal periods whenever they choose as Michael Stars does not police employee meal periods.
15 Michael Stars also maintains that Plaintiff's meal period claim would not be manageable on a
16 representative basis, as individual inquiries would be required to establish which Aggrieved
17 Employees experienced non-compliant meal periods, how many non-compliant meal periods each
18 Aggrieved Employee experienced, and why a particular Aggrieved Employee had a non-
19 compliant meal period during a particular shift.

20 18. As for Plaintiff's claims that Michael Stars violated its wage statement and final
21 payment obligations in violation of Labor Code §§ 226 and 203, respectively, Michael Stars
22 asserts it has strong, good-faith defenses to Plaintiff's underlying claims, precluding a finding of
23 a failure to pay all final wages that would otherwise result in waiting time penalties. Michael Stars
24 further contends Plaintiff's meal period claims cannot support a claim for violations of Labor
25 Code §§ 226 or 203.

26 19. Michael Stars further maintains that even if the Court awarded PAGA penalties
27 for any of the alleged violations, it would substantially reduce the penalties based on the
28 discretionary factors in Labor Code § 2699(e)(2) (authorizing reduction in penalties "if, based on

1 the facts and circumstances of the particular case, to do otherwise would result in an award that
2 is unjust, arbitrary and oppressive, or confiscatory.”). Indeed, Michael Stars argues, many courts
3 have reduced PAGA penalties drastically where, as here, the employer presented good-faith
4 defenses and attempted to comply with the law.

5 20. Plaintiff asserts that she would be able to seek PAGA penalties for each Aggrieved
6 Employee for each pay period in the PAGA limitations period. Based on data provided by
7 Michael Stars, there were approximately 3,300 pay periods during the PAGA limitations period.
8 Assuming an initial violation rate of \$100 per pay period under Labor Code § 2699(f), Plaintiff
9 estimated a **maximum** potential PAGA exposure of \$330,000. The proposed \$245,000 MSA thus
10 represents approximately 74% of Plaintiff’s **maximum** potential recovery, while avoiding the
11 risks of proceeding through trial.

12 21. My office is requesting attorneys’ fees of one-third of the Maximum Settlement
13 Amount (i.e., \$81,666.67). Based on my experience in similar wage and hour class and
14 representative actions in California state courts, fee awards in matters such as this one generally
15 equal about one-third of the gross recovery. In addition, and as explained below and in the
16 accompanying Motion, the requested fee is fair compensation for undertaking complex, risky,
17 expensive, and time-consuming litigation on a purely contingent basis. This case also involved
18 nuanced legal issues, including the legality of Michael Stars’ rounding practice and obligations
19 to “provide” meal periods, as well as the availability and amount of PAGA civil penalties for the
20 alleged Labor Code violations. Michael Stars was also represented by experienced wage-and-
21 hour litigation counsel.

22 22. My office has expended significant time and effort in this case, including but not
23 limited to: conducting extensive research regarding the merits of Plaintiff’s claims, her ability to
24 recover PAGA civil penalties, and Michael Stars’ potential defenses; conducting significant
25 analysis of data and information produced by Michael Stars, and using this data and analysis to
26 draft a comprehensive mediation brief and exposure analysis; attending a full-day mediation; and
27 preparing and negotiating the Settlement, this Motion and supporting declarations. My office will
28 also oversee the settlement administration process and work with the administrator to prepare a

1 post-disbursement declaration. Given the considerable potential for adverse outcomes in this case,
2 the contingent risk borne by Plaintiff's counsel was great.

3 23. Since undertaking representation of Plaintiff, my firm has dedicated substantial
4 resources to this litigation without receiving any compensation to date. My office is requesting
5 reimbursement of \$9,867.31 in total costs, which includes \$74.52 of anticipated costs for filing
6 and serving the instant Motion. A summary of the costs incurred by my office to date in
7 connection with this case is attached hereto as **Exhibit 3**. These costs include filing fees, copying
8 costs, mediation fees, and other expenses that were all reasonably incurred in the prosecution of
9 this litigation on behalf of Plaintiff and the Aggrieved Employees.

10 24. I believe the requested \$5,000 enhancement payment to Plaintiff is reasonable
11 given Plaintiff's efforts in this case and the risks she undertook on behalf of Aggrieved
12 Employees. Plaintiff provided substantial factual information and documents to my office,
13 assisted in identifying potential witnesses, and otherwise assisted in the prosecution of this case,
14 and also undertook significant risk in the event this case were lost as well as the reputational risk
15 inherent in suing a former employer on a representative basis. Accordingly, I believe Plaintiff's
16 requested enhancement payment is reasonable.

17 I declare under penalty of perjury under the laws of the State of California that the
18 foregoing is true and correct. Executed on February 24, 2022, at El Segundo, California.

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21 Paul K. Haines
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Exhibit 1

SETTLEMENT AGREEMENT

This Settlement Agreement (“Settlement Agreement” or “Settlement”) is made and entered into between Plaintiff Graciela de Cabanas Gonzalez (“Plaintiff”), acting in a private attorney general capacity, and Defendant Michael Stars, Inc. (“Defendant” or “Michael Stars”) (collectively, the “Parties”).

I. DEFINITIONS

The following terms, when used in this Settlement Agreement, shall have the following meanings:

1. “Action” means the matter titled *Graciela de Cabanas Gonzalez v. Michael Stars, Inc., et al.*, Los Angeles Superior Court, Case No. 21STCV02784, and as set forth in Plaintiff’s correspondence to the California Labor and Workforce Development Agency (“LWDA Letter”) dated January 22, 2021.

2. “Aggrieved Employees” consist of all current and former non-exempt employees who worked for Michael Stars in California at any time during the PAGA Period. The number of Aggrieved Employees, including Plaintiff, is estimated to be 101 individuals.

3. “Michael Stars” or “Defendant” means Michael Stars, Inc.

4. “Settlement Administrator” means Phoenix Settlement Administrators.

5. “Complaint” means the operative complaint in the Action, which is the First Amended Complaint filed on March 29, 2021.

6. “Court” means the Superior Court of California for the County of Los Angeles.

7. “Effective Date” means the date the Court enters an Order granting Court approval to the settlement.

8. “Individual PAGA Payment” means the amount to be paid to each Aggrieved Employee based on the formula described herein.

9. “LWDA” means the California Labor and Workforce Development Agency.

10. “Maximum Settlement Amount” is the non-reversionary sum of Two Hundred Forty-Five Thousand Dollars and Zero Cents (\$245,000.00), which represents the total amount payable under this Settlement Agreement by Michael Stars (subject to the Escalator Clause described below), including, without limitation, payments to all Aggrieved Employees, payment to the LWDA, payment of Plaintiff’s attorneys’ fees and costs, payment of Plaintiff’s enhancement payment, and payment to the Settlement Administrator for administration costs.

11. “Net Settlement Amount” is the amount remaining to distribute to the LWDA and Aggrieved Employees after the following amounts, if approved by the Court, are subtracted from the Maximum Settlement Amount: (a) Plaintiff’s attorneys’ fees up to one third of the Maximum

Settlement Amount; (b) Plaintiff's litigation costs up to \$15,000.00; (c) Plaintiff's enhancement payment up to \$5,000.00; and (d) administration costs up to \$5,000.00.

12. "PAGA" means the California Labor Code Private Attorneys General Act, California Labor Code § 2698, *et seq.*

13. "PAGA Period" means the time period from January 22, 2020 through October 31, 2021.

14. "PAGA Released Claims" mean all PAGA claims that were pled in the Action, or which could have been pled in the Action, or which could have been pled under the PAGA based on the factual allegations in the Action, that arose during the PAGA Period. The release of the PAGA Released Claims shall extend for the duration of the PAGA Period.

15. "Parties" means, collectively, Plaintiff and Michael Stars.

16. "Plaintiff's Counsel" means Paul K. Haines, Sean M. Blakely, and Alexandra R. McIntosh of Haines Law Group, APC.

II. RECITALS

1. Plaintiff performed work for Michael Stars as a non-exempt employee in California during the PAGA Period and is therefore an Aggrieved Employee.

2. On January 22, 2021, Plaintiff provided written notice to the LWDA and Michael Stars asserting claims for civil penalties pursuant to PAGA stemming from alleged violations of various Labor Code sections and her intent to file a civil lawsuit under the PAGA.

3. On January 22, 2021, Plaintiff filed a class action complaint titled *Graciela de Cabanas Gonzalez v. Michael Stars, Inc., et al.*, Los Angeles Superior Court, Case No. 21STCV02784, asserting multiple claims against Michael Stars for violations of the Labor Code on a class-wide basis. On March 29, 2021, after exhausting her administrative requirements for bringing a claim under the PAGA, Plaintiff filed a First Amended Complaint, which added a claim for PAGA civil penalties.

4. On May 3, 2021, after the Parties met and conferred regarding the arbitration agreement and class action waiver previously signed by Plaintiff, the Court issued an Order dismissing Plaintiff's individual and class claims without prejudice.

5. In connection with mediation, Michael Stars provided Plaintiff's Counsel with information and documents pertaining to Plaintiff and other Aggrieved Employees in order for Plaintiff's Counsel to investigate Plaintiff's allegations and value the claims prior to mediation.

6. On October 22, 2021 the Parties participated in mediation before mediator Steve G. Pearl, Esq. With the assistance of Mr. Pearl, the Parties agreed to fully and finally resolve the PAGA Released Claims as to Plaintiff and Aggrieved Employees.

III. OPERATIVE TERMS OF SETTLEMENT AGREEMENT

The Parties agree as follows:

1. **Non-Admission.** Nothing in this Settlement Agreement shall be construed to be an admission by Plaintiff that her claims do not have merit, or an admission by Michael Stars of any liability or wrongdoing as to Plaintiff, the Aggrieved Employees or any other person. Michael Stars specifically disclaims and denies any such liability or wrongdoing. The Parties have entered into this Settlement Agreement with the intention to avoid further disputes and litigation with the attendant inconvenience, expenses and risks. This Settlement Agreement and any related court documents or orders are not and may not be cited or admitted as evidence of liability.

2. **Maximum Settlement Amount.** The Parties agree to settle the Action for the non-reversionary Maximum Settlement Amount ("MSA") of \$245,000.00 (subject to the Escalator Provision below). From the MSA, Plaintiff will seek, and Michael Stars shall not oppose: (a) attorneys' fees of one-third of the MSA; (b) attorneys' litigation costs and expenses related to the Action of up to \$15,000.00; (c) settlement administration costs of approximately \$2,950.00; and (d) an enhancement payment to Plaintiff in the amount of \$5,000. After the amounts for attorneys' fees, costs, administration costs, and enhancement payment are deducted from the MSA, the remaining amount shall be known as the "Net Settlement Amount" or "NSA." Michael Stars shall deposit the full amount of the MSA into an account to be established by the Settlement Administrator, within thirty (30) days of Court approval of the Settlement.

3. **Escalator Clause.** Michael Stars represents that there are approximately 3,300 pay periods worked by Aggrieved Employees during the PAGA Period. If the number of pay periods as reported to the Settlement Administrator following the Effective Date is more than 10% greater than this figure (i.e., if there are 3,630 or more pay periods worked during the PAGA Period), Michael Stars shall increase the MSA on a proportional basis (i.e., if there was a 15% increase in the number of pay periods, Defendant shall increase the MSA by 15%).

4. **Net Settlement Amount.** The Parties agree that the following amounts should be subtracted from the Maximum Settlement Amount, if approved by the Court, resulting in a Net Settlement Amount to distribute to the LWDA and Aggrieved Employees:

a. **Plaintiff's Attorneys' Fees and Costs.** Michael Stars will not oppose Plaintiff's request for attorneys' fees in the amount up to one third of the Maximum Settlement Amount (currently estimated to be \$81,666.67) and costs up to \$15,000.00 incurred in prosecuting this Action. In the event the Court approves less than these amounts, the difference will be added to the Net Settlement Amount (although Plaintiff may appeal an order granting less than the full amount sought for attorneys' fees and costs). Michael Stars, via the Settlement Administrator, will report these payments on IRS Form 1099 issued to Plaintiff's Counsel.

b. **Plaintiff's Enhancement Payment.** Michael Stars will not oppose Plaintiff's request for an enhancement payment of up to \$5,000.00 for serving as the representative plaintiff in this Action. In the event the Court approves a payment of less than the requested amount, the difference will be added to the Net Settlement Amount (although Plaintiff may appeal an order granting less than the full amount sought for Plaintiff's enhancement payment). Michael Stars, via the Settlement Administrator, will report this payment on IRS Form 1099 issued to Plaintiff.

c. Administration Costs. Michael Stars will not oppose the Settlement Administrator's costs in the amount up to \$5,000.00 for administering the settlement. In the event the Court approves a payment of less than this amount, the difference will be added to the Net Settlement Amount. Michael Stars, via the Settlement Administrator, will report this payment on IRS Form 1099 issued to the Settlement Administrator.

5. Allocation of Net Settlement Amount. One hundred percent (100%) of the Net Settlement Amount shall be designated as "civil penalties" and shall be distributed 75% to the LWDA and 25% to Aggrieved Employees, pursuant to Labor Code § 2699(i). The 25% portion to be paid to Aggrieved Employees shall be paid to all Aggrieved Employees pro rata, based on the number of pay periods worked by each Aggrieved Employee during the PAGA Period.

a. The parties agree that should the Court deny approval of the Settlement based on the allocation of the Maximum Settlement Amount or the Net Settlement Amount, the parties agree to re-negotiate in good faith in an effort to obtain approval of the Settlement.

6. PAGA Released Claims. Plaintiff agrees that upon entry of an Order approving the Settlement and judgment entered thereon, and upon the Settlement being fully funded, Plaintiff and all Aggrieved Employees will release the PAGA Released Claims against Michael Stars that arose during the PAGA Period. Upon entry of the Order approving the settlement and judgment entered thereon and the Settlement being fully funded, Plaintiff and all Aggrieved Employees will be forever barred from pursuing any and all of the PAGA Released Claims that arose during the PAGA Period against Michael Stars.

7. Covenants and Representations by Plaintiff and Plaintiff's Counsel.

a. Plaintiff represents and warrants that she has not assigned or transferred or purported to assign or transfer to any person or entity, any claim or portion thereof, or interest therein, which is or may be subject to this Settlement Agreement.

b. Plaintiff acknowledges that she has read this Settlement Agreement, that she fully understands her rights, privileges and duties under the Settlement Agreement, and enters into this Settlement Agreement freely and voluntarily. Plaintiff further acknowledges that she has had the opportunity to consult with her attorneys to explain the terms of this Settlement Agreement and the consequences of signing this Settlement Agreement.

8. Confidentiality. Except as provided below to the extent necessary to effectuate the settlement or as required by court or legal process, Plaintiff and Plaintiff's Counsel will keep the terms of this Settlement Agreement confidential. Neither Plaintiff nor Plaintiff's Counsel shall issue a press release, hold a press conference, publish information about the settlement on any website or through any social media or otherwise publicize the settlement or communicate its terms in public or in private, unless ordered by the Court. However, for the limited purpose of establishing adequacy of counsel in future actions, Plaintiff's counsel may reference the Action by name and case number in a declaration establishing adequacy as class or representative counsel.

To permit judicial review and approval of the Settlement, as required by Labor Code section 2698, *et seq.*, Plaintiff's Counsel will file the Settlement Agreement with the Court and

submit the Settlement to the LWDA as part of the parties' seeking Court approval of the Settlement, per Labor Code § 2699(1)(2).

9. **Motion for Approval of PAGA Settlement by Plaintiff's Counsel.** Plaintiff's Counsel shall be responsible for promptly preparing and filing the Motion for Approval of the PAGA Settlement.

10. **Termination of Settlement Agreement.** If the Court does not approve the settlement, if the Court does not enter judgment as provided for in this Settlement Agreement, or if appellate review is sought and, on such review, the Court's decision is materially modified or reversed, or if one or more of the material terms of the Settlement Agreement is not approved or is materially modified or reversed or found to be invalid, then either of the Parties shall have the right within 10 days of written notice thereof to elect to terminate the Settlement Agreement, in which case the Settlement Agreement shall have no force or effect, and the Parties shall be deemed to have reverted to their respective status as of the date and time immediately prior to the execution of this Settlement Agreement.

11. **Judgment.** As part of the Motion to approve the Settlement, Plaintiff shall submit a proposed judgment which enters judgment in the Action in accordance with the terms of the Settlement, retains jurisdiction over the Action under Cal. Code Civ. Proc. § 664.6 for the purpose of enforcing the terms of the Settlement following approval of the Settlement, and enjoins the prosecution of any of the PAGA Released Claims against any of the Released Parties upon the judgment being entered and the Settlement being fully funded. This Settlement Agreement is expressly conditioned upon the Court entering judgment as set forth herein. The judgment will not release or bar any claims other than the PAGA Released Claims as to Plaintiff and the Aggrieved Employees.

IV. ADMINISTRATION OF SETTLEMENT

1. **Settlement Administrator.** The Parties agree to engage Phoenix Settlement Administrators to handle the administration of this settlement.

2. **Provision of Information for Aggrieved Employees.** Within ten (10) business days after entry of an order approving the settlement, Michael Stars shall provide the Settlement Administrator with information for Aggrieved Employees. Michael Stars will in good faith compile from its records a list of Aggrieved Employees that will be in a computer-readable format, such as a Microsoft Excel spreadsheet, and shall include each Aggrieved Employee's full name, last known mailing address, last known telephone number, number of pay periods worked during the PAGA Period, and Social Security numbers to the extent available from Michael Stars' records. Because Social Security numbers are included in the list, the Settlement Administrator will maintain the list in confidence, and access shall be limited to those with a need to use the list as part of the administration of the Settlement. Within 7 calendar days of receiving the Aggrieved Employees' information from Michael Stars, the Settlement Administrator will circulate to counsel for both Parties an anonymized spreadsheet containing the Individual PAGA Payments to each Aggrieved Employee and the data used to calculate said payments. The Settlement Administrator shall obtain approval from all counsel of the calculations before mailing Individual PAGA Payments.

3. **Explanatory Letter and Individual PAGA Payments.** Upon receipt of the information for Aggrieved Employees, the Settlement Administrator will perform a search on the National Change of Address database to update the Aggrieved Employees' addresses. Within ten (10) business days after the Settlement has been fully funded and after receiving approval from Plaintiff's Counsel and Defendant's counsel of the payment calculations as provided above, the Settlement Administrator shall mail copies of the explanatory letter, which has been mutually approved by the Parties and is attached hereto as **Exhibit A**, in English and Spanish, along with Individual PAGA Payments to all Aggrieved Employees via regular First-Class U.S. Mail.

The Settlement Administrator will calculate the amount to be received by each Aggrieved Employee, which will be based on the formula set forth in Section III.5., *supra*. The Settlement Administrator will send each Aggrieved Employee a check for his or her Individual PAGA Payment along with the explanatory letter. Checks will remain negotiable for 180 days. Each Individual PAGA Payment shall be deemed penalties and reported using IRS Form 1099, with no withholdings taken.

4. **Undeliverable Notices.** The Settlement Administrator shall exercise its best judgment to determine the current mailing address for each Aggrieved Employee. The address identified by the Settlement Administrator as the current mailing address shall be presumed to be the best mailing address for each Aggrieved Employee.

Any checks returned as non-deliverable on or before the check cashing deadline will be sent promptly via regular First-Class U.S. Mail to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator will promptly attempt to determine the correct address using a skip-trace or other reputable search method using the name, address or Social Security number of the Aggrieved Employee involved, and will perform up to a single re-mailing if a new address is located.

Funds represented by checks returned as undeliverable after a re-mailing, checks for whom the Settlement Administrator could not locate an updated address after performing a skip trace, and funds represented by checks remaining un-cashed more than 180 days after issuance (collectively, "Uncashed Checks"), shall escheat to *cy pres* recipient, Central American Resource Center – CARECEN – of California, a 501(c)(3) organization dedicated to providing legal services to children and the indigent.

5. **Distribution of Payments.** Within ten (10) business days of the Settlement being fully funded, the Settlement Administrator shall issue payments to (1) Aggrieved Employees; (2) the LWDA; (3) Plaintiff's Counsel for Plaintiff's Counsel's Court-approved attorneys' fees and litigation costs and expenses; (4) Plaintiff for the Court-approved enhancement payment and (5) the Settlement Administrator for Court-approved Settlement administration costs incurred in connection with the Settlement. Payments made by Michael Stars pursuant to this Settlement shall be held by the Settlement Administrator in an interest-bearing account until they are disbursed, with any accrued interest inuring to the benefit of the Aggrieved Employees in the form of pro rata increases to Aggrieved Employees' Individual PAGA Payments.

6. **Accounting.** Within 45 days after all payments have been made under the Settlement, the Settlement Administrator will provide an accounting under oath to the Parties of the amounts paid from the settlement.

7. **Tax Consequences.** Neither Plaintiff nor Michael Stars, nor counsel for either of the Parties, makes any representations or warranties with respect to tax consequences of any payment under this Settlement Agreement.

V. MISCELLANEOUS PROVISIONS

1. **Drafting.** The Parties agree that the terms and conditions of this Settlement Agreement are the result of lengthy, intensive, arm's-length negotiations between the Parties and that neither Party shall be considered the "drafter" of this Settlement Agreement for purposes of having terms construed against that Party.

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

3. **Costs and Fees.** The Parties shall each bear their own costs and attorneys' fees incurred in connection with this Settlement Agreement, the Action and Plaintiff's claims, except as otherwise set forth specifically herein.

4. **Governing Law.** This Settlement Agreement shall be construed under and governed by the laws of the State of California. This Settlement Agreement shall be deemed to have been entered into in Los Angeles, California, and all questions of validity, interpretation or performance of any of its terms or of any rights or obligations of the Parties to this Settlement Agreement shall be governed by California law. If any legal or equitable action is necessary to enforce the terms of this Settlement Agreement, it shall be brought in the State of California, County of Los Angeles.

5. **Complete Agreement.** The Parties each acknowledge and represent that no promise or representation not contained in this Settlement Agreement has been made to them with respect to the subject matter of this Settlement Agreement, and acknowledge and represent that this Settlement Agreement contains the entire understanding between them and contains all terms and conditions pertaining to the compromise and settlement of the PAGA claim in the Action.

6. **Nullification of Settlement Agreement.** In the event that: (i) the Court does not approve the settlement as provided herein; or (ii) the settlement does not become final for any other reason, then this Settlement Agreement and any documents generated to bring it into effect, will be null and void, and the Parties will be returned to their respective positions before the Settlement was executed.

7. **Judgment and Continued Jurisdiction.** As noted above, after approval of this settlement, the Court will have continuing jurisdiction under Cal. Code Civ. Proc. § 664.6 for purposes of addressing: (i) the interpretation and enforcement of the terms of the settlement, (ii) settlement administration matters, and (iii) such post-Judgment matters as may be appropriate under court rules or as set forth in this Settlement Agreement.

8. **Amendment or Modification.** This Settlement Agreement may be amended or modified only by a written instrument, signed by either the Parties or their successors-in-interest, or by counsel for all Parties.

9. **Authorization to Enter into Settlement Agreement.** Counsel for all Parties warrant and represent that they are expressly authorized by the Parties whom they represent to negotiate this Settlement Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant to this Settlement Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Settlement Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the settlement. If the Parties are unable to reach agreement on the form or content of any document needed to implement the settlement, or on any supplemental provisions that may become necessary to effectuate the terms of this settlement, the Parties may seek the assistance of the mediator (Steven G. Pearl, Esq.) or the Court to resolve such disagreement.

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

11. **Acknowledgement that the Settlement is Fair and Reasonable.** The Parties believe this Settlement Agreement is a fair, adequate and reasonable settlement of the Action, and have arrived at this settlement after arm's-length negotiations by experienced counsel. The Parties further acknowledge that they are each represented by competent counsel and that they have had an opportunity to consult with their counsel regarding the fairness and reasonableness of this settlement.

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

13. **Severability.** If any term or provision of this Settlement Agreement is held to be invalid or unenforceable, the remaining portions of this Settlement Agreement will continue to be valid and will be performed, construed and enforced to the fullest extent permitted by law, and the invalid or unenforceable term will be deemed amended and limited in accordance with the intent of the Parties, as determined from the face of the Agreement, to the extent necessary to permit the maximum enforceability or validation of the term or provision.

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

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

16. **Mutual Preparation.** The Parties have had a full opportunity to negotiate the terms and conditions of this Settlement Agreement. Accordingly, this Settlement Agreement will not be construed more strictly against one Party merely by virtue of the fact that it may have been prepared by counsel for one of the Parties, it being recognized that, because of the arm's-length negotiations between the Parties, all Parties have contributed to the preparation of this Settlement Agreement.

17. **Representation by Counsel.** The Parties acknowledge that they have been represented by counsel throughout all negotiations that preceded the execution of this Settlement Agreement, and this Settlement Agreement has been executed with the consent and advice of counsel, and reviewed in full.

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

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

[SIGNATURES ON FOLLOWING PAGE]

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS THEREOF, the Parties each acknowledge that she/it has read the foregoing Settlement Agreement, accepts and agrees to the provisions contained in this Settlement Agreement and hereby executes it voluntarily and with full understanding of its consequences.

Dated: 02/22, 2022

Signature: Graciela C Gonzalez
Graciela C Gonzalez (Feb 22, 2022 15:47 PST)

Email: reynaflares1826@gmail.com

Graciela de Cabanas Gonzalez, Plaintiff

MICHAEL STARS, INC.

Dated: _____, 2022

By: _____

Its: _____

APPROVED AS TO FORM:

Dated: February 24, 2022

HAINES LAW GROUP, APC

By: Sean Blakely

Sean M. Blakely

Attorneys for Plaintiff,

Graciela de Cabanas Gonzalez

Dated: _____, 2022

HIRSCHFELD KRAMER LLP

By: _____

Daniel H. Handman

Attorneys for Defendant, Michael Stars, Inc.

EXHIBIT A

Re: **Payment from Graciela de Cabanas Gonzalez v. Michael Stars, Inc.**
Superior Court of California Los Angeles County; Case No. 21STCV02784

Date: [REDACTED]/[REDACTED]/2022

SIMID
Name
Address

Dear Name:

Enclosed, please find a check made payable to you. This is your payment from the settlement of a lawsuit titled *Graciela de Cabanas Gonzalez v. Michael Stars, Inc.*, Los Angeles Superior Court, Case No. 21STCV02784, pending in the Superior Court of the State of California for the County of Los Angeles (the “Action”).

The Action was filed against Michael Stars, Inc. (“Michael Stars”) and includes a claim pursuant to the California Labor Code Private Attorneys General Act of 2004, California Labor Code § 2698, *et seq.* (“PAGA”). The Action was brought by Plaintiff Graciela de Cabanas Gonzalez (“Ms. de Cabanas Gonzalez”), a former employee of Michael Stars, on behalf of the State of California and other alleged aggrieved employees. You have been identified as one of the employees on whose behalf the case was brought.

In the lawsuit, Ms. de Cabanas Gonzalez claimed that Michael Stars violated the California Labor Code by failing to pay all minimum wages, failing to pay all overtime wages, failing to provide meal breaks, failing to provide employees with itemized wage statements, and failing to timely pay final wages. Michael Stars vehemently disputes all of Ms. de Cabanas Gonzalez’s allegations and denies that it engaged in any of the alleged misconduct. The parties have reached a settlement of Ms. de Cabanas Gonzalez’s representative PAGA claims, and on [DATE], the Court approved the settlement, including the amount of civil penalties to be paid under the settlement. A portion of the civil penalty settlement amount goes to the State of California’s Labor and Workforce Development Agency. Another portion of the civil penalty settlement amount goes to employees of Michael Stars who were allegedly affected by the alleged violations of the Labor Code. In agreeing to enter into this settlement, Michael Stars does not admit that it is liable in any way to current or former employees for any violations of the California Labor Code, or any penalties, and has denied and disputed all of Ms. de Cabanas Gonzalez’s contentions. The Court has not decided the merits of Ms. de Cabanas Gonzalez’s claims or Michael Stars’ defenses.

Pursuant to the settlement, enclosed is a check for your share of a portion of the civil penalties. This check will remain valid for 180 days from the date of issuance. Please note that no deductions/withholdings have been made from your settlement payment, and you will be responsible for any tax consequences arising from your receipt of the same (for which an IRS Form 1099 will issue). If you do not cash your check within 180 days of issuance, the funds shall escheat to *cy pres* recipient Central American Resource Center – CARECEN – of California. If you are still employed by Michael Stars, your decision to cash the check will not affect your employment in any way.

While you were not a party to the Action, you and the State of California have been bound by the settlement entered in this matter and approved by the Court, including the release contained in the settlement. The release pertains to civil penalties under PAGA only. The release includes all claims under the PAGA that were alleged in, or could have been alleged based on the facts alleged in, Ms. de Cabanas Gonzalez’s complaint in the Action, including claims for civil penalties, attorneys’ fees, costs, or interest under the PAGA based on Michael Stars’ alleged failure to pay all minimum wages, alleged failure to pay all overtime wages, alleged failure to provide proper meal periods, alleged failure to furnish accurate wage statements, and alleged failure to timely pay final wages, during the time period January 22, 2020 through October 31, 2021 (the “PAGA Period”).

If you have any questions, you can contact Phoenix Settlement Administrators, the Settlement Administrator, at 1-[REDACTED]-[REDACTED].

Questions? Call toll-free () - [REDACTED]

Exhibit 2

HAINES LAW GROUP
EMPLOYMENT ATTORNEYS

January 22, 2021

VIA LWDA WEBSITE

Labor and Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

Re: *Graciela de Cabanas Gonzalez v. Michael Stars, Inc.*

To Whom It May Concern:

Please be advised that this law firm represents Graciela de Cabanas Gonzalez (“Ms. de Cabanas”) in claims arising from her employment with Michael Stars, Inc., and Does 1 through 100 (collectively “Michael Stars”). Ms. de Cabanas is an “aggrieved employee” as defined by Labor Code Section 2698 *et seq.*, due to Michael Stars’ numerous violations of the Labor Code as set forth below. The purpose of this letter is to comply with Labor Code Section 2699.3, which requires aggrieved employees to notify their employer and the Labor & Workforce Development Agency (“LWDA”) of the specific provisions of the Labor Code allegedly violated. For purposes of this letter, “aggrieved employees” include all of Michael Stars’ non-exempt employees who worked for Michael Stars in California during the one year immediately preceding the date of this letter through the present.

Ms. de Cabanas was employed by Michael Stars as a non-exempt employee from approximately 2006 until approximately August 2020. Ms. de Cabanas’ job duties included inspecting, washing, folding, and ironing clothing.

During a portion of Ms. de Cabanas’ employment with Michael Stars, Michael Stars utilized a timekeeping system which resulted in Ms. de Cabanas and other aggrieved employees not being compensated for all hours actually worked, whether by rounding, time-shaving, or otherwise. Specifically, upon information and belief, Michael Stars rounded Ms. de Cabanas’ timekeeping entries in an uneven manner to a quarter of an hour increment, so that, over a period of time, Ms. de Cabanas was deprived of all earned minimum and overtime wages. Upon information and belief, Michael Stars’ timekeeping system regularly, systematically, and impermissibly rounded the hours worked by Ms. de Cabanas and other aggrieved employees in Michael Stars’ favor, resulting, over a period of time, in the failure to compensate Ms. de Cabanas and other aggrieved employees for all hours worked. As a result, Ms. de Cabanas and other aggrieved employees were not compensated for all required minimum and overtime wages.

Ms. de Cabanas and other aggrieved employees were not provided with all legally compliant meal periods because Michael Stars’ meal period policies/practices failed to

provide Ms. de Cabanas and other aggrieved employees with a timely, duty-free, and uninterrupted 30-minute meal period commencing before the end of the fifth hour of work. Specifically, upon information and belief, Ms. de Cabanas' and other aggrieved employees' meal periods were frequently "late" (i.e., starting after the completion of fifth hour of work) because Michael Stars' work demands prevented them from taking a meal period until after the completion of the fifth hour of work. On the occasions when Ms. de Cabanas and other aggrieved employees were not provided with all legally-compliant meal periods to which they were entitled, Michael Stars failed to compensate Ms. de Cabanas and other aggrieved employees with the required meal period premium for each workday in which they experienced a meal period violation as mandated by Labor Code § 226.7. Upon information and belief, during at least a portion of the relevant time period, Michael Stars maintained no payroll code or other mechanism for the payment of meal period premiums under Labor Code § 226.7 in the event a legally compliant meal period was not provided to its non-exempt employees.

As a result of Michael Stars' failure to compensate Ms. de Cabanas and other aggrieved employees for all minimum wages, overtime wages, and meal period premium wages earned, Michael Stars maintained inaccurate payroll records and failed to issue accurate, compliant, itemized wage statements. As a further result of Michael Stars' failure to compensate Ms. de Cabanas and other aggrieved employees for all minimum wages, overtime wages, and meal period premium wages earned, Michael Stars failed to pay all wages to Ms. de Cabanas and other formerly employed aggrieved employees at the separation of their employment.

As described above, Michael Stars committed the following violations of the Labor Code, and Industrial Welfare Commission Wage Order 1 ("Wage Order 1"):

Minimum Wage Violations

Michael Stars was required to pay Ms. de Cabanas and other aggrieved employees an hourly rate at least equal to the minimum wage for each hour actually worked. *See* Labor Code §§ 1182.12, 1194, 1194.2, 1197; Wage Order 1, § 4. As alleged above, Michael Stars failed to conform its pay practices to the requirements of the law by failing to pay Ms. de Cabanas and other aggrieved employees for all hours worked including, but not limited to, all hours they were subject to the control of Michael Stars and/or suffered or permitted to work under the California Labor Code and Wage Order 1. As a result of these policies/practices, which fail to compensate for all hours worked, Ms. de Cabanas and other aggrieved employees were deprived of all required minimum wages.

Overtime Wage Violations

Michael Stars was required to pay Ms. de Cabanas and other aggrieved employees overtime wages for all hours worked in excess of eight hours per workday and/or forty hours per workweek. *See* Labor Code §§ 1194(a) and 1198; Wage Order 1, § 3. According to Labor Code § 510(a), "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.” This Section further provides, “Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.” As alleged above, Michael Stars caused Ms. de Cabanas and other aggrieved employees to work overtime hours, but did not compensate Ms. de Cabanas and other aggrieved employees with one and one-half times their regular rate of pay for such hours. As a result of these policies/practices, Ms. de Cabanas and other aggrieved employees were not compensated for all overtime and double-time wages.

Meal Period Violations

As alleged above, Michael Stars failed to provide Ms. de Cabanas and other aggrieved employees with all required and compliant meal periods. *See* Labor Code §§ 226.7 and 512; Wage Order 1, § 11. As a result, Ms. de Cabanas and other aggrieved employees are owed an additional hour of wages at their regular rate of compensation for each workday they experienced a meal period violation. *See* Labor Code § 226.7 (“If an employer fails to provide an employee a meal or rest or recovery period in accordance with ... [an] order of the Industrial Welfare Commission ... the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the meal or rest or recovery period is not provided.”).

Wage Statement Violations

Michael Stars was required to furnish Ms. de Cabanas and other aggrieved employees with complete and accurate itemized wage statements that showed, among other things, their rates of pay, corresponding number of hours worked at each rate of pay, total gross wages earned, total net wages earned, and the name of the legal entity that is the employer. *See* Labor Code §§ 226(a) and 1174(d); Wage Order 1, § 7. As a result of Michael Stars’ failure to pay all overtime and minimum wages and failure to pay all required meal period premium wages, Michael Stars maintained inaccurate payroll records and issued inaccurate wage statements to Ms. de Cabanas and other aggrieved employees in violation of Labor Code § 226. Michael Stars’ failure to comply with its wage statement obligations was knowing and intentional, and Ms. de Cabanas and other aggrieved employees have suffered injury as a result.

Waiting Time Penalties

Labor Code §§ 201 and 202 require that employees receive all of their final wages at the time of their separation of employment. Michael Stars failed to timely pay Ms. de Cabanas and other aggrieved employees all of their final wages at the time of separation, which included all overtime, double-time, and minimum wages as well as all meal period premium wages. Pursuant to Labor Code § 203, Michael Stars’ failure to pay all final

wages due to Ms. de Cabanas and other aggrieved employees was willful and, consequently, entitles Ms. de Cabanas and other aggrieved employees to waiting time penalties equal to one day of wages at their standard hourly rate for each day Michael Stars failed to pay their final wages after their separation, up to a maximum of thirty days.

As an “aggrieved employee,” Ms. de Cabanas will initiate a civil action on behalf of herself and other aggrieved employees to recover civil penalties resulting from the wage and hour violations alleged herein. Based on Ms. de Cabanas’ own investigation, and on information and belief, Michael Stars committed and continues to commit the following Labor Code violations:

- a. Michael Stars violated Labor Code §§ 558, 1182.12, 1194, 1194.2, and 1197 by failing to pay Ms. de Cabanas and other aggrieved employees the statutory minimum wage for all hours worked;
- b. Michael Stars violated Labor Code §§ 204, 510, 558, 1194, and 1198 by failing to pay Ms. de Cabanas and other aggrieved employees all overtime compensation earned;
- c. Michael Stars violated Labor Code §§ 226.7, 512, 558, and 1198 by failing to provide meal periods as required by law and failing to pay meal period premiums to Ms. de Cabanas and other aggrieved employees at these employees’ respective regular rates of compensation for meal period violations;
- d. Michael Stars violated Labor Code § 226 by failing to furnish Ms. de Cabanas and other aggrieved employees with accurate and compliant itemized wage statements;
- e. Michael Stars violated Labor Code §§ 201, 202, and 203 by failing to timely pay all final wages due to Ms. de Cabanas and other aggrieved employees;
- f. Michael Stars violated Labor Code § 204 by failing to pay Ms. de Cabanas and other aggrieved employees all wages earned at least twice during each calendar month; and
- g. Michael Stars violated Labor Code §§ 1174 and 1198 by failing to maintain accurate records on behalf of Ms. de Cabanas and other aggrieved employees.

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LWDA
January 22, 2021
Page 5 of 5

Pursuant to Labor Code Section § 2699.3(a)(2)(A), please notify us and Michael Stars if the LWDA intends to investigate these alleged violations of the Labor Code. Please contact me should you require additional information.

Very truly yours,
HAINES LAW GROUP, APC



Paul K. Haines

cc: Michael Stars, Inc. (via certified mail)

Date Produced: 02/01/2021

ConnectSuite Inc.:

The following is the delivery information for Certified Mail™/RRE item number 9214 8901 9403 8330 4331 12. Our records indicate that this item was delivered on 01/25/2021 at 10:01 a.m. in LOS ANGELES, CA 90017. The scanned image of the recipient information is provided below.

Signature of Recipient :
(Authorized Agent)

CS 19
CS 19

Address of Recipient :

CS

Thank you for selecting the Postal Service for your mailing needs. If you require additional assistance, please contact your local post office or Postal Service representative.

Sincerely,
United States Postal Service

The customer reference number shown below is not validated or endorsed by the United States Postal Service. It is solely for customer use.

Customer Reference Number: C2480684.14261224

Exhibit 3

Haines Law Group, APC

Expense Summary

Graciela De Cabanas Gonzalez v. Michael Stars, Inc.

EXPENSE	AMOUNT
Mediation Costs	\$7,500.00
Filing, Service, and Messenger Fees	\$2,165.64
Copying and Postage Costs	\$127.15
TOTAL:	\$9,792.79