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8 *Attorneys for Plaintiff Gricelda Lopez, in her capacity as Private Attorney General Representative*

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **FOR THE COUNTY OF LOS ANGELES**

11 GRICELDA LOPEZ, individual, on behalf
12 of the State of California, as private
13 attorney general, and on behalf of all
14 aggrieved employees

15 Plaintiff,

16 vs.

17 KAAB, INC., a California corporation;
18 SOPHIE'S RB LLC d/b/a RIVEA HOUSE,
19 a California limited liability company; and
20 610 AVENIDA VICTORIA
21 RESTAURANT, LLC d/b/a PIERSIDE
22 KITCHEN + BAR, a California limited
23 liability company; and DOES 1 through
24 100, inclusive,

25 Defendants.

Case No.: 21STCV28238

**DECLARATION OF ELAN (LONNY)
OSTERMAN ESQ., IN SUPPORT OF
PLAINTIFF'S MOTION TO APPROVE
PAGA SETTLEMENT**

Hearing

Date: September 20, 2022

Time: 8:30 a.m.

Courtroom: Dept. 37

Judge: Honorable Gail Killefer.

26 I, Lonny Osterman, declare as follows:

27 1. I am an attorney at law duly authorized to practice law in the State of
28 California. I am a litigation attorney for the law firm of Lawyers For Employee and Consumer
Rights and if called upon as a witness I could and would competently testify to the matters
stated herein.

2. This declaration is made in support of Plaintiff's motion to approve PAGA
settlement pursuant to Private Attorneys General Act of 2004 ("PAGA"), for an order granting
final approval of the settlement of this case ("Motion").

1 **PROCEDURAL HISTORY AND SETTLEMENT NEGOTIATIONS**

2 3. On or about November 9, 2020, Plaintiff sent a Demand Letter to Defendants,
3 detailing claims of (1) meal period violations; (2) rest period violations; (3) overtime
4 violations; (4) reporting time pay violations; (5) written notice of available sick leave
5 violations; (6) wage statement violations, and (7) timing of final payment upon termination.
6 The Parties subsequently began settlement negotiations on or around December 1, 2020.

7 4. During these discussions Defendants supplied Plaintiff's Counsel with
8 extensive information regarding Defendants' policies including their employee handbook, the
9 number of employees at issue, the number of pay periods at issue, and other relevant
10 information regarding the alleged claims such as the fact that Defendants had issued the
11 payment of numerous meal period premiums.

12 5. On or about April 23, 2021, after extensive settlement discussions, the Parties
13 executed a Memorandum of Understanding of Settlement of the PAGA Claim ("MOU"), with
14 the intent to resolve Plaintiff's claims against Defendants, including both PAGA and
15 individual claims.

16 4. On or about April 27, 2021, Plaintiff filed a PAGA notice with the Labor and
17 Workforce Development Agency ("LWDA") and provided copies to Defendants via certified
18 mail, asserting claims of (1) minimum wage violations, (2) overtime violations; (3) meal
19 period violations; (4) rest period violations; (5) reporting time pay violations; (6) wage
20 statement violations; (7) timing of final payment upon termination; (8) unreimbursed business
21 expenses violations; and (9) accurate payroll violations.

22 5. Thereafter, on or about August 2, 2021, Plaintiff filed a Complaint on behalf of
23 Plaintiff individually, and on behalf of others similarly situated alleging the following causes
24 of action: (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime); (2)
25 Violation of California Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums); (3)
26 Violation of California Labor Code § 226. 7 (Unpaid Rest Period Premiums); (4) Violation of
27 California Labor Code §§ 1194, 1197, and 1197.1 (Unpaid Minimum Wages); (5) Violation of
28

1 California Labor Code §§ 201, 202, and 203 (Final Wages Not Timely Paid); (6) Violation of
2 California Labor Code § 226(a) (Failure to Provide Accurate Wage Statements); (7) Violation
3 of California Labor Code § 1174(d) (Failure to Keep Accurate Payroll Records); and (8)
4 Violation of California Business and Professions Code § 17200, Et Seq.

5 6. Following the filing of the Complaint, the Parties continued negotiations
6 regarding the form of the long-form settlement and thereafter entered into a long-form Joint
7 Stipulation of PAGA Action Settlement and Release of Claims (“Settlement Agreement” or
8 “Settlement”) on November 12, 2021. Attached hereto as **Exhibit I** is a true and correct copy
9 of the Settlement Agreement.

10 7. On February 11, 2022, the Parties amended the Settlement Agreement to reflect
11 a PAGA period end date on August 2, 2021 (“First Amendment to Settlement Agreement” or
12 “First Amendment to Settlement”). Attached hereto as **Exhibit II** is a true and correct copy of
13 the First Amendment to Settlement Agreement. Under the Settlement, Plaintiff’s
14 representative claims under PAGA defined “PAGA Employees” as all current and former non-
15 exempt employees, employed by Defendants in California During the Covered Period. There
16 are approximately 152 employees within the Covered Period. The Covered Period means
17 April 23, 2020 through August 2, 2021 (the “PAGA period”). *Id.* According to the Settlement
18 Agreement, PAGA Representative Claims means Plaintiffs PAGA claims under California
19 Labor Code Section 2698 et. seq. arising from, or related to, the same set of operative facts
20 alleged in the Action asserted, or could have been asserted based on the facts alleged in the
21 Action, including based on: (1) failure to pay wages and overtime compensation; (2) failure to
22 pay minimum wage; (3) rest break liability under Labor Code Sec 226.7; (4) meal period
23 liability under Labor Code Sec 226.7; (4) failure to pay reporting time pay; (5) failure to
24 timely pay wages due at termination or resignation; (6) failure to provide wage statements
25 compliant with Labor Code Sec 226.7(a) or any other similar provision; (7) failure to pay
26 wages timely pursuant to Labor Code Secs. 204(a), 210, and 1199; and (8) penalties pursuant
27 to California’s Private Attorney General Act (Labor Code Sec 2698, et seq.) arising out of the
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1 same (Collectively, “Released Claims”). Nothing under the Settlement Agreement shall be
2 construed to release anything other than the claims for penalties under Labor Code §2699, et
3 seq, with the exception of the named Plaintiff’s individual release set forth in the Settlement
4 Agreement.

5 **TERMS OF THE PROPOSED SETTLEMENT**

6 8. The proposed Settlement involves the formation of a non-reversionary fund
7 totaling \$15,000.00 (“Gross Settlement Fund”). The \$15,000.00 settlement that is created will
8 be used to pay attorney fees and litigation costs (not to exceed \$6,000.00 in fees plus costs
9 subject to Court approval), Plaintiff’s service award (not to exceed \$1,500.00), and settlement
10 administration costs (\$1,000.00 subject to Court approval). The Net Settlement Fund is thus
11 \$6,500.00. Seventy-five percent (75%) of the remaining Net Settlement Fund (i.e. (\$4,875.00)
12 will be distributed to the LWDA as required by the PAGA and the remaining twenty-five
13 percent (25%) (i.e. approx. \$1,625.00) will be distributed in equal shares to all Aggrieved
14 Employees.

15 9. The total settlement of \$15,000.00 for 1,372 pay periods equates to an
16 approximate \$11.00 per pay period or \$99.00 net per aggrieved employee. After payment of
17 administration, requested fees and costs and a service award totaling \$8,500.00, the proposed
18 settlement will provide approximately \$6,500.00, \$4,875.00 to the LWDA and \$1,625.00 to
19 the PAGA Group Settlement Members. The Settlement Agreement provides a fair and
20 equitable means of allocating this fund based on the number of pay periods each Aggrieved
21 Employee worked during the PAGA Period. The Parties agreed upon this method of
22 distribution in part because the Defendants’ restaurant was shut down for an extended period
23 as a result of the COVID-19 pandemic. Distribution by the pay periods each employee
24 actually worked during this period ensures that there is a fair and equitable to distribution
25 based on the length of time employees were actually working for Defendants. Because the
26 settlement covers a number of people who worked only a short period, the average payment
27 per PAGA Member, after the 75% distribution to the State required by law, is approximately
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1 \$10.69.

2 10. Upon the funding of the Gross Settlement Amount, PAGA Members, PAGA
3 Members and the LWDA will fully and finally release and discharge Defendants and the
4 Released Parties from any and all claims for the recovery of civil penalties, attorneys' fees and
5 costs permissible under PAGA which Plaintiff and/or the Aggrieved Employees had, or may
6 claim to have, against Released Parties, arising out of the violations alleged in the Complaint
7 or the PAGA Notice that arose between April 23, 2020, through August 2, 2021.

8 11. The Released Claims are limited in nature and cover approximately a 1-year
9 time period including a portion of the PAGA Period when Defendants' restaurants were not
10 operational as the result of the COVID-19 Pandemic.

11 12. The Released Claims expressly exclude all claims made by PAGA Members for
12 individual wage claims, vested benefits, wrongful termination, unemployment insurance,
13 disability, social security, workers' compensation, claims while classified as exempt, and
14 claims outside of the PAGA Period.

15 13. Within 30 days of the Effective Date Defendants will deposit the Gross
16 Settlement Amount into a Qualified Settlement Fund to be established by the Settlement
17 Administrator.

18 14. Within 14 days of the funding of the settlement, the Settlement Administrator
19 shall make payments to Plaintiff's Counsel, Plaintiff, the LWDA, and the PAGA Members,
20 and itself for Court-approved services. The PAGA Members will have 180 days to cash their
21 checks, and if for any reason a check is un-cashed, that share will be forwarded to the
22 California State Controller in the name of the individual who did not cash the check from
23 which that PAGA Member may claim the funds. A Notice informing the PAGA Settlement
24 Group Members of the nature of the payment will be provided with the settlement check and
25 is attached to the Settlement Agreement as **Exhibit A**.

26 15. Pursuant to Labor Code §2699(1)(2), the Settlement and the Motion have been
27 submitted to the LWDA. (Proof of electronic submission is attached as **Exhibit "III"**).
28

1 **REASONABLENESS OF THE PROPOSED SETTLEMENT**

2 16. Plaintiff's entire theory centers around what Plaintiff alleges were numerous
3 violations against Plaintiff and the aggrieved employees starting with the on-duty nature of
4 their meal periods, the on-duty nature of their rest periods, failure to pay overtime premium
5 compensation, failure to pay legal minimum wage for all hours worked, failure to pay all
6 wages owed upon termination, failure to provide itemized wage statements, and failure to
7 keep accurate payroll records, all in violation of California law.

8 17. At the time the settlement was entered, the total number of aggrieved
9 employees was approximately 152 and a total of 1,372 pay periods. Defendants argued that
10 even if a violation could be established for each employee for each pay period, only the initial
11 penalty could be recovered because they had not been provided notice that they were violating
12 the Labor Code. See *Amaral v. Cintas Corp. No. 2.*, 163 Cal.App. 4th 1157, 1209
13 (2008)(holding that "[u]ntil the employer has been notified that it is violating the Labor Code
14 provision (whether or not the Commissioner or court chooses to impose penalties), the
15 employer cannot be presumed to be aware that its continuing underpayment of employees is a
16 "violation" subject to penalties). Thus, the maximum penalty exposure under this analysis is
17 \$137,200

18 18. However, Defendants raised several arguments that impacted the potential
19 recovery. First, Defendants argued that it had implemented compliant policies throughout the
20 class period including compliant meal and rest policies which were a major focus of the
21 litigation. Defendants presented evidence that employees, including Plaintiff, had received
22 meal period premiums in response to missed, late, or short meal periods, and that employees
23 were provided the opportunity to submit requests for and receive rest period premiums. Based
24 on these records Defendants stated that they intended to challenge Plaintiff's status as an
25 aggrieved employee and attempt to bifurcate discovery and trial of this issue. See, e.g.,
26 *Stafford v. Dollar Tree Stores, Inc.*, 2014 WL 6633396 at *4 (E.D. Cal. Nov. 2014)(permitting
27 bifurcated discovery as to employees' aggrieved status).

1 19. Defendants also raised arguments regarding the manageability of this matter. In
2 *Wesson v. Staples the Office Superstore, LLC*, 68 Cal.App.5th 746 (2021), the Court of
3 Appeals recently affirmed that the Court has inherent authority to ensure the manageability of
4 PAGA claims and strike unmanageable claims. Defendants contended that there were
5 numerous individualized issues regarding why meal or rest breaks were missed, why alleged
6 off-the-clock was performed, and other individual questions of liability, and that without a
7 uniform unlawful policy these individualized issues rendered the case unmanageable. This
8 significantly impacted the probability that this matter could proceed on a representative basis.

9 20. Defendants contended they had complied at all times with the law and disputed
10 that the Court would find there to have been bad faith violations in light of their efforts to
11 comply with California law. PAGA provides the Court’s discretion to lower the penalties
12 assessed if, based on the facts and circumstances of the particular case, to do otherwise would
13 result in an award that is “unjust, arbitrary and oppressive, or confiscatory.” See Cal. Labor
14 Code § 2699(e)(2); *Thurman v. Bayshore Transit Management, Inc.*, 203 Cal.App.4th 1112,
15 1136 (2012) (holding that a court may reduce the amount of PAGA penalties awarded to an
16 employee based upon discretionary factors)(disapproved on other grounds); *Carrington v.*
17 *Starbucks Corp.* 30 Cal.App.5th 504, 529 (2018)(approving reduction in penalties from \$50
18 per pay period to \$5 per pay period based on good faith attempt to comply with law)

19 21. Finally, Defendant contended that Plaintiff’s PAGA claims were subject to
20 arbitration and that Defendant has entered into arbitration agreements with each of the
21 Aggrieved Employees. This argument and the fact that Plaintiff and each of the aggrieved
22 employees were subject to arbitration agreements made proceeding with this PAGA claim
23 extremely risky. In *Viking River Cruises, Inc. v. Moriana*, 142 S.Ct. 1906 (2022) the U.S.
24 Supreme Court held that PAGA claims were arbitrable subject to arbitration and that the
25 representative portion of the case could not proceed where the employee was subject to
26 arbitration. While the settlement was reached before the Supreme Court’s decision in *Viking*,
27 the very real, and well-founded, risk posed by these arbitration agreements significantly
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1 impacted Plaintiff's valuation of this case.

2 22. Accordingly, considering the risk of maintaining the case on a representative
3 basis, arguments regarding manageability and challenges to Plaintiff's status as an aggrieved
4 employee, a 50% discount is warranted. In consideration of merits-based risk factors,
5 including prevailing at trial, an additional 50% discount is warranted. Finally, given the
6 discretionary nature of PAGA penalties and Defendants' claim it had acted in good faith, such
7 as by providing evidence of the payment of meal premiums, an additional discount of 50% is
8 warranted. This resulted in an adjusted estimated liability of approximately \$17,150.
9 Accordingly, the settlement is well within the range of reasonable recovery.

10 **ATTORNEYS FEES**

11 23. Where the amount of a settlement is a "certain easily calculable sum of
12 money," California courts may calculate attorneys' fees as a reasonable percentage of the
13 settlement created. *See Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1808 (1996). The
14 California Supreme Court has confirmed the propriety of awarding attorneys' fees based on a
15 percentage of the total value made available by the settlement.

16 24. Here, my office seeks approval of attorneys' fees in the amount of \$5,0000,
17 which is one-third (33.33%) of the Gross Settlement Amount. This percentage award is well
18 within the range regularly approved by State and Federal Court and commensurate with the
19 economic risk my office took in commencing this action on a contingency basis and the time,
20 effort, and expense dedicated to the case.

21 25. In this matter, my office spent substantial time meeting and conferring with
22 Defendants, drafting the PAGA Notice to the LWDA, filing the Complaint, reviewing the
23 discovery provided by Defendants, estimating potential damages, researching Defendants'
24 potential defenses, and negotiating the MOU and Settlement Agreement.

25 26 In total my office spent 42.2 hours on this matter for a total of \$23,373 in fees.
26 The following is a breakdown of all attorney time spent on this matter:
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28

Attorney	Bar Admission Date	Hourly Rate	Hours Billed	Fees Incurred
Edith Alvarez	2006	\$641	6.5	\$4,167.50
Mark Manello	2019	\$290	1.0	\$290.00
Shelley Mack	2000	\$665	2.9	\$1,928.50
Elan (Lonny) Osterman	2010	\$559	27.7	\$15,473.00
Megan Ross	2003	\$665	0.2	\$133.00
Aurelio Sanchez	2017	\$354	3.9	\$1,381.00
TOTALS			42.2	\$23,373.00

Lawyers for Employee and Consumer Rights is a plaintiff's firm dedicated to solely representing employees with claims against their former employers. I have been employed with the firm since its inception in 2015 and have too solely dedicated my practice to representing employees with claims including but not limited to discrimination, violation of the California Labor Code, as well as the numerous claims enumerated under the Private Attorney General Act. I have been a licensed attorney since 2010 and have solely practice employment law since 2015. Pursuant to the retainer agreement with Plaintiff, my hourly rate increases by \$25 each year with a maximum rate of \$665. As I began work on this case on September 28, 2021, I have a blended hourly rate of \$559.

Edith Alvarez, Mark Manello, Shelley Mack, Megan Ross and Aurelio Sanchez also performed work on this matter. The hourly rates for these attorneys were based on their respective years of experience and ranged from \$290 for Mr. Manello (licensed in 2019) to \$665 for Ms. Mack (licensed in 2000) and Ms. Ross (licensed in 2003). With respect to Mr. Sanchez and Ms. Alvarez, and in accordance with the client's retainer agreement, their hourly rate also increases each year by \$25 and the above chart provides the blended hourly rate for each.

ATTORNEYS COSTS

27. Since the filing of this Action, my office incurred approximately \$972.50 in

1 costs and litigation expenses associated with this case.

2 28. Of the \$972.50, our firm incurred \$850 in expenses relating to administrative
3 staff costs, including costs associated with paralegal-related tasks. The remaining \$122.50 is
4 related to costs associated with filing the Complaint with the Court. Attached hereto as
5 **Exhibit IV** is a true and correct copy of my costs to date.

6 **REASONABLENESS OF PLAINTIFF'S REQUESTED ENHANCEMENT**

7 29. The Settlement provides for a Representative payment to Plaintiff of \$1,500,
8 subject to approval by the Court. I believe that this representative payment is warranted in this
9 instance in light of the work Plaintiff has performed in bringing the lawsuit and the fact that
10 unlike any of the other employees, Plaintiff has agreed to a broader general release of any and
11 all claims she may have against Defendants. In light of this broader release, and the efforts
12 Plaintiff has put into this lawsuit, a modest payment of \$1,500.00 is warranted.

13
14 I declare under penalty of perjury under the laws of California that the foregoing is
15 true and correct and this declaration is executed this September 16, 2022 in Denver, Colorado.

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18 Dated: September 16, 2022

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20 By: Lonny Osterman
21 Elan (Lonny) Osterman, Esq.
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Exhibit 1

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

GRICELDA LOPEZ, an individual, on behalf
of herself and others similarly situated,

Plaintiff,

vs.

KAAB, INC., a California corporation;
SOPHIE’S RB LLC d/b/a RIVIERA HOUSE,
a California limited liability company; and 610
AVENIDA VICTORIA RESTAURANT, LLC
d/b/a PIERSIDE KITCHEN + BAR, a
California limited liability company; and
DOES 1 through 100, inclusive,

Defendants.

Case No. 21STCV28238

*Assigned for all purposes to: Hon. Richard J.
Burdge Jr., Dept. 37*

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

1 This Joint Stipulation of PAGA Settlement and Release of Claims (“Settlement” or
2 “Agreement”) is made and entered into by and between Plaintiff GRICELDA LOPEZ (“Plaintiff”
3 or “PAGA Representative”), individually and on behalf of all putative class members, and
4 Defendants KAAB, INC., SOPHIE’S RB LLC d/b/a RIVIERA HOUSE, and 610 AVENIDA
5 VICTORIA RESTAURANT, LLC d/b/a PIERSIDE KITCHEN + BAR (“Defendants”). Plaintiff
6 and Defendants are collectively referred to herein as “the Parties.”

7 **DEFINITIONS**

8 The following definitions are applicable to this Settlement, in addition to other terms defined
9 elsewhere in this Settlement:

10 1. “Superior Court” shall mean the Superior Court of California for the County of Los
11 Angeles.

12 2. The “Action” shall mean the civil action entitled “*Lopez v. KAAB, Inc. et al.*,”
13 pending before the Superior Court of California, County of Los Angeles, Case No. 21STCV28238
14 and the Notice filed by Gricelda Lopez on April 27, 2021, with the Labor Workforce Development
15 Agency (“LWDA”) LWDA Case No. LWDA-CM-830526-21

16 3. “Plaintiff’s Counsel” shall mean the attorneys representing Plaintiff in the Action,
17 Edith Alvarez, Esq. of Lawyers for Employee and Consumer Rights

18 4. “Defense Counsel” shall mean the attorneys representing Defendants in the Action,
19 Heather Davis of Protection Law Group.

20 5. The “PAGA Period” shall mean the period of time commencing on April 23, 2020,
21 and ending on the date of approval of the Settlement by the Court.

22 6. “PAGA Members” shall mean all current and former hourly-paid, non-exempt
23 employees who were employed by Defendants in the state of California at any time during the
24 PAGA Period.

25 7. “Aggrieved Employee List” means a complete list of all PAGA Members that
26 Defendants will diligently and in good faith compile from their records and provide to the
27 Settlement Administrator within fourteen (14) calendar days after approval of this Settlement. The
28 Aggrieved Employee List will be formatted in a readable Microsoft Office Excel spreadsheet

1 containing the following information for each PAGA Member: (1) full name; (2) last known home
2 address; (3) last known telephone number; (4) social security number; (5) start and end dates of
3 active employment as a non-exempt employee of Defendants in the State of California; (6) total pay
4 periods during the PAGA Period; and (8) any other information required by the Settlement
5 Administrator in order to effectuate the terms of the Settlement.

6 8. "Settlement Administrator" shall mean ILYM Group, Inc, a third-party administrator
7 who shall administer the settlement in accordance with this Agreement and who was proposed by
8 the Parties and appointed by the Superior Court to administer the Settlement.

9 9. "Plaintiff's Counsel Fees Payment" shall mean Five Thousand Dollars (\$5,000.00)
10 subject to approval by the Superior Court as Plaintiff's Counsel's attorneys' fees incurred in
11 connection with the Action, including fees incurred in pre-filing investigation, filing of the Action,
12 and all related litigation activities, this Settlement, and all post-Settlement compliance procedures.
13 Defendants have agreed not to oppose Plaintiff's Counsel's request for fees in the amount set forth
14 above.

15 10. "Plaintiff's Counsel Litigation Costs Payment" shall mean the actual litigation
16 expenses and/or costs expended by Plaintiff's Counsel subject to approval by the Superior Court
17 incurred in connection with the Action, including pre-filing investigation, filing of the Action, and
18 all related litigation activities, this Settlement, and all post-Settlement compliance procedures.
19 Plaintiff's Counsel's costs are not to exceed One Thousand Dollars (\$1,000.00). Defendants have
20 agreed not to oppose Plaintiff's Counsel's request for costs and expenses in the amount set forth
21 above.

22 11. "Plaintiff's Representative Payment" shall mean the payment made to Plaintiff in her
23 capacity as the PAGA representative to compensate her for prosecuting the Action, and performing
24 work in support of the Action, in the amount of One Thousand Five Hundred Dollars (\$1,500.00),
25 subject to approval by the Superior Court.

26 12. "Settlement Administrator Payment" shall mean the payment to the Settlement
27 Administrator for its fees and expenses in administering this Settlement in an amount not to exceed
28 One Thousand Dollars (\$1,000.00). Any settlement administration costs in excess of One Thousand

1 Dollars (\$1,000.00) shall be paid separately from and in addition to the Gross Settlement Amount
2 and shall be borne solely by Defendants.

3 13. "Pay Period" shall mean any pay period in which a PAGA Member received
4 payment from Defendants as an hourly-paid, non-exempt employee.

5 14. "Individual Pay Periods" shall mean the number of Pay Periods for an individual
6 PAGA Member.

7 15. "Gross Settlement Amount" shall mean the Gross Settlement Amount of Fifteen
8 Thousand Dollars (\$15,000.00) payable by Defendants as provided by this Settlement Agreement.

9 16. "Net Settlement Amount" shall mean the Gross Settlement Amount, less (i) the
10 Plaintiff's Representative Payment approved by the Superior Court; (ii) the Plaintiff's Counsel Fees
11 Payment approved by the Superior Court; (iii) the Plaintiff's Counsel Litigation Costs Payment
12 approved by the Superior Court; and (iv) the Settlement Administrator Payment approved by the
13 Superior Court.

14 17. "LWDA Payment" shall mean the payment to the California Labor and Workforce
15 Development Agency ("LWDA") constituting seventy-five percent (75%) of the Net Settlement
16 Amount.

17 18. "PAGA Payment" shall mean the remaining twenty-five percent (25%) of the Net
18 Settlement Amount to be distributed on a *pro rata* basis based upon the number of Pay Periods
19 worked by each PAGA Member.

20 19. "PAGA Payment Share" shall mean the value of each PAGA Member's share of the
21 PAGA Payment as provided by this Settlement Agreement.

22 20. "PAGA Notice" shall mean the Notice of Settlement and Approval, a sample of
23 which is attached hereto as **Exhibit A**. The PAGA Notice shall further contain (i) a PAGA
24 Member's first and last name, (ii) last known address, (iii) last the PAGA Member's Individual Pay
25 Periods; and (vi) the PAGA Member's individual share of the PAGA Payment.

26 21. "Effective Date" shall mean the later of the following: (a) if no timely objections are
27 filed or if all objections are withdrawn, the date upon which the Court enters approval of the
28 settlement; (b) if an objection is filed and not withdrawn, the date for filing an appeal and no such

1 appeal being filed; or (c) if any timely appeals are filed, the date of the resolution (or withdrawal) of
2 any such appeal in a way that does not alter the terms of the settlement.

3 22. "Judgment" shall mean the order granting approval of the Settlement, granting
4 approval of the PAGA Notice, and entering judgment by the Superior Court that the Parties
5 anticipate will be entered following a hearing for approval of the Settlement in this Action.

6 23. "Released Parties" or "Defendants" means Defendants KABB, Inc., Sophie's RB,
7 LLC dba Riviera House, and 610 Avenida Victoria Restaurant, LLC dba Pierside Kitchen + Bar, as
8 named by Plaintiff in the operative complaint, and their past, present and/or future, direct and/or
9 indirect, officers, directors, members, managers, employees, agents, representatives, attorneys,
10 insurers, partners, investors, shareholders, administrators, parent companies, subsidiaries, affiliates,
11 divisions, predecessors, successors, assigns, and joint venturers.

12 24. "Released Claims" means any and all claims for the recovery for civil penalties,
13 attorneys' fees and costs permissible under PAGA which Plaintiff and/or the Aggrieved Employees
14 had, or may claim to have, against Released Parties, arising out of the violations alleged in the
15 Complaint or the PAGA Notice, including unpaid straight and overtime wages (including any work
16 off-the-clock), failure to provide reporting time pay, failure to pay employees all minimum wages
17 and overtime wages owed including by failing to pay all overtime and double time at the correct
18 regular rate of pay, failure to provide compliant meal and rest breaks, failure to pay them all
19 premium wages owed for short, late or missed meal and rest periods, failure to pay all wages owed
20 at discharge or resignation; failure to timely pay wages within the times permissible under Labor
21 Code section 204; failure to provide complete and accurate wage statements;; failure to keep
22 complete and accurate payroll records; failure to reimburse necessary business-related expenses;
23 including penalties arising from violations of Labor Code sections 201, 202, 203, 204, 226(a),
24 226.7, 510, 512(a), 551, 552, 1174(d), 1194, 1197, 1197.1, 1198, 2800, 2802. This release shall
25 apply to claims arising during the PAGA period.

26 **RECITALS**

27 25. On April 27, 2021, Plaintiff's Counsel, on behalf of Plaintiff and PAGA Members,
28 gave written notice to the LWDA of the Labor Code violations Defendants are alleged to have

1 violated ("PAGA Letter").

2 26. On August 2, 2021, Plaintiff commenced the Action against Defendants by filing a
3 Complaint in the Superior Court. In the Complaint, Plaintiff, on behalf of herself and all others
4 similarly situated, alleged a cause of action for Civil Penalties pursuant to the Private Attorneys'
5 General Act ("PAGA").

6 27. In connection with the Action, and in order to work toward a resolution without the
7 time and expense of formal discovery, the Parties produced documents and data which were
8 reviewed, investigated, and analyzed by Plaintiff's Counsel.

9 28. Throughout the Action, Defendants have denied, and continue to deny, any
10 wrongdoing in regard to the alleged violations.

11 29. The Settlement described in this Settlement Agreement represents a compromise and
12 settlement of highly disputed claims. Nothing in this Settlement is intended or will be construed as
13 an admission by Defendants that Plaintiff's claims in the Action have any merit or that it has any
14 liability to Plaintiff, PAGA Members, or the State on those claims, or as an admission by Plaintiff
15 that Defendants' defenses in Action have any merit. This Settlement is intended to fully, finally, and
16 forever compromise, release, resolve, discharge, and settle the released claims subject to the terms
17 and conditions set forth in this Settlement.

18 30. Based on their own thorough, independent investigation and evaluation of this case,
19 Plaintiff's Counsel is of the opinion that the Settlement of the Action with Defendants for the
20 consideration and on the terms set forth in this Settlement is fair, reasonable, adequate, and in the
21 best interest of PAGA Members in light of all known facts and circumstances, including the risk of
22 significant costs and delay, the defenses asserted by Defendants including the risks of adverse
23 determinations on the merits, and numerous potential appellate issues. Although Defendants
24 contend that they have no liability in the Action, Defense Counsel shares Plaintiff's Counsel's belief
25 that the Settlement represents a fair and adequate settlement given the respective risks associated
26 with the case.

27 31. Based on the foregoing Recitals, the Parties agree as follows:
28

1 **PROCEDURE FOR APPROVING SETTLEMENT**

2 32. **Motion for Approval of Settlement by the Superior Court.** Plaintiff will move the
3 Superior Court for an order granting approval of the Settlement and approving the PAGA Notice
4 (attached as **Exhibit A** to this Stipulation) (“Motion for Approval”). Plaintiff will provide the
5 Motion for Approval to Defendant’s Counsel for their review and approval at least five (5) business
6 days prior to filing such Motion.

7 33. At the hearing on the Motion for Approval, the Parties anticipate that they will
8 jointly appear, support the granting of the Motion for Approval, and obtain an order granting
9 approval of the Settlement, and granting approval of the PAGA Notice.

10 34. Should the Superior Court require any amendments to this Settlement Agreement or
11 the Motion for Approval, the Parties agree to work jointly to resolve any issues in order to secure
12 the Superior Court’s approval.

13 35. In the event that the Court does not finally approve the Settlement as provided herein
14 then this Settlement Agreement, and any documents generated to bring it into effect, will be null
15 and void, and the Parties will be returned to their original respective positions. If the Court does not
16 approve the payment of the Net Settlement Amount as described in this Agreement, the Parties
17 agree to meet and confer to address the Court’s concerns.

18 36. Upon approval of the Settlement by the Superior Court, the Parties will present for
19 the Superior Court’s approval and entry a Proposed Final Order and Judgment.

20 37. **PAGA Notice.** After the Superior Court enters its order granting approval, every
21 PAGA Member will be provided with the PAGA Notice which will be completed to reflect the
22 order granting approval of the Settlement and the PAGA Member’s information as follows:

23 (a) Within fourteen (14) calendar days after approval of the Settlement,
24 Defendants will provide to the Settlement Administrator the “Aggrieved Employee List” containing
25 the following information for each PAGA Member: (1) full name; (2) last known home address; (3)
26 last known telephone number; (4) social security number; (5) start and end dates of active
27 employment as a non-exempt employee of Defendants in the State of California; (6) total pay
28 periods during the PAGA Period; and (7) any other information required by the Settlement

1 Administrator in order to effectuate the terms of the Settlement. This is a material term of the
2 Settlement, and if Defendants fail to comply, Plaintiff shall have the right to void the Settlement.

3 (b) If a PAGA Notice is returned by the U.S. Postal Service because of an
4 incorrect address, the Settlement Administrator will promptly, and not later than five (5) calendar
5 days from receipt of the returned packet, search for a more current address for the PAGA Member
6 and re-mail the PAGA Notice to the PAGA Member. The Settlement Administrator will use the
7 Aggrieved Employee List and otherwise work with Defense Counsel or utilize its own resources
8 such as skip traces to find a more current address. The Settlement Administrator will be responsible
9 for taking reasonable steps, consistent with its agreed-upon job parameters, court orders, and fee, to
10 trace the mailing address of any PAGA Member for whom a PAGA Notice is returned by the U.S.
11 Postal Service. These reasonable steps shall include the tracking of all undelivered mail; performing
12 address searches for all mail returned without a forwarding address; and promptly re-mailing to
13 PAGA Members for whom new addresses are found.

14 38. **Funding of the Gross Settlement Amount.** Within thirty (30) calendar days of the
15 Effective Date, Defendants will deposit the Gross Settlement Amount into a Qualified Settlement
16 Fund (“QSF”) to be established by the Settlement Administrator.

17 39. **Payment of PAGA Payment Shares.** The Settlement Administrator shall pay to
18 each PAGA Member his or her PAGA Payment Share by sending a check in the appropriate amount
19 to the PAGA Member at the address indicated in the Aggrieved Employee List. Such payment, with
20 the PAGA Notice, shall be sent by the Settlement Administrator via U.S. Mail within fourteen (14)
21 calendar days of its receipt of the Gross Settlement Amount from Defendants.

22 40. **Uncashed PAGA Payment Share Checks.** Any checks paid to PAGA Members
23 shall be negotiable for one hundred eighty (180) calendar days from the date of their issuance. A
24 PAGA Member must cash his or her PAGA Payment Share check within one hundred eighty (180)
25 calendar days after it is mailed to him or her. If a check remains uncashed after one hundred eighty
26 (180) calendar days from the initial mailing, or if a check is returned to the Settlement
27 Administrator as undeliverable during the one hundred eighty-day period, the Settlement
28 Administrator shall take all reasonable efforts to identify the PAGA Member’s correct address,

1 including the performance of a “skip-trace.” If an updated address can be identified, the Settlement
2 Administrator shall issue another check to the PAGA Member and mail it to the PAGA Member at
3 his or her updated address. If an updated address for the PAGA Member cannot be identified, if a
4 reissued check is once again returned to the Settlement Administrator as undeliverable, or if the
5 reissued check remains uncashed after one hundred eighty (180) calendar days, the Settlement
6 Administrator will keep an accounting of such funds and shall give notice to the Parties of the total
7 balance of uncashed PAGA Payment Shares. A PAGA Member who fails to negotiate or receive
8 their PAGA Payment Share check despite the procedures described above shall nevertheless remain
9 bound by the Settlement and the releases contained herein.

10 41. The funds represented by PAGA Payment Share checks remaining uncashed for
11 more than one hundred eighty (180) calendar days after issuance shall be voided and then shall be
12 transmitted to the Controller of the State of California to be held pursuant to the Unclaimed
13 Property Law, California Code of Civil Procedure § 1500, *et seq.* in the names of those PAGA
14 Members who did not cash their checks until such time they claim their property. After the
15 expiration of the 180-calendar day check cashing period, as outlined above, the Settlement
16 Administrator shall begin the process of transferring the funds in accordance with California Code
17 of Civil Procedure §§ 1500-1582 and the timing requirements set forth by the Office of the State
18 Controller. The Parties agree that this disposition results in no “unpaid residue” under California
19 Civil Procedure Code § 384, as the entire Net Settlement Amount will be paid out to the LWDA and
20 PAGA Members, whether or not all PAGA Members cash their settlement checks.

21 **SETTLEMENT TERMS AND CONDITIONS**

22 42. **Gross Settlement Amount.** The total value of the Settlement is Fifteen Thousand
23 Dollars (\$15,000) (the “Gross Settlement Amount”). The Gross Settlement Amount is non-
24 reversionary and includes all: (1) Plaintiff’s Counsel’s fees, (2) Plaintiff’s Counsel’s costs, (3)
25 Settlement Administration Costs, (4) Incentive Payment to Plaintiff; and (5) Payment of PAGA
26 penalties to the LWDA and PAGA Members. The Gross Settlement Amount is based on
27 Defendants’ representation that there are approximately 1,372 Pay Periods during the period
28 between April 23, 2020, and April 23, 2021. Should the qualifying Pay Periods worked by the

1 PAGA Members between April 23, 2020, and April 23, 2021, increase by more than 10% (i.e., by
2 more than 137 Pay Periods), Defendants shall increase the Gross Settlement Amount on a pro-rata
3 basis equal to the percentage increase in the number of Pay Periods worked by the PAGA Members
4 above 10%. For example, if the number of Pay Periods increases by 16%, the Gross Settlement
5 Amount will increase by 6%.)

6 43. **Total Payment Amount.** In no event will Defendants be required to pay more than
7 the Gross Settlement Amount for distribution to the Plaintiff, Plaintiff's Counsel, PAGA Members,
8 LWDA, or for any other costs or expenses not otherwise enumerated.

9 44. **Payments to Plaintiff, Plaintiff's Counsel and Others.** Subject to the terms and
10 conditions of this Settlement, the Settlement Administrator will make the following payments out of
11 the Gross Settlement Amount as follows:

12 (a) **To Plaintiff:** In addition to her PAGA Payment Share, Plaintiff will apply to
13 the Superior Court for a Plaintiff's Representative Payment in an amount not to exceed One
14 Thousand Five Hundred Dollars (\$1,500.00). Defendants will not oppose Plaintiff's Representative
15 Payment. The Settlement Administrator will pay the Plaintiff's Representative Payment approved
16 by the Superior Court out of the Gross Settlement Amount. Payroll tax withholding and deductions
17 will not be taken from the Plaintiff's Representative Payment and an IRS Form 1099 will be issued
18 to Plaintiff for this payment.

19 (b) **To Plaintiff's Counsel:** Plaintiff's Counsel will apply to the Superior Court
20 for the Plaintiff's Counsel Fees Payment in an amount not to exceed one third (1/3) of the Gross
21 Settlement Amount (\$5,000). Plaintiff's Counsel will also submit to the Superior Court a
22 memorandum of costs for the Plaintiff's Counsel Litigation Costs Payment in an amount not to
23 exceed One Thousand Dollars (\$1,000.00) as requested reasonable costs incurred in the Action to
24 be paid from the Gross Settlement Amount. Defendants will not oppose these requests. The costs
25 and fees provided under the Settlement Agreement and approved by the Court shall be the total
26 costs and attorneys' fees recoverable in the Action. Plaintiff's Counsel shall not seek additional
27 costs or fees arising from the litigation of the Action. The Settlement Administrator will pay the
28 amounts approved by the Superior Court out of the Gross Settlement Amount. Withholding and

deductions will not be taken from the Plaintiff's Counsel Fees Payment or Plaintiff's Counsel Litigation Costs Payment and one or more IRS Forms 1099 will be issued to Plaintiff's Counsel with respect to those payments.

(c) **To the Settlement Administrator:** The Settlement Administrator will be paid from the Gross Settlement Amount its reasonable fees and expenses as approved by the Superior Court, which are estimated to be One Thousand Dollars and (\$1,000.00). Any costs associated with the administration of the settlement in excess of One Thousand Dollars shall be paid by Defendants separately from and in addition to the Gross Settlement Amount.

(d) **Distribution of the Net Settlement Amount:** As part of their Motion for Approval, the Parties will jointly apply to the Superior Court to approve the distribution of the Net Settlement Amount to the LWDA and PAGA Members. Seventy-five percent (75%) of the Net Settlement Amount shall be distributed to the LWDA ("LWDA Payment"). The remaining 25% of the Net Settlement Amount shall be distributed to the PAGA Members on a *pro rata* basis based upon the number of pay periods worked by each PAGA Member ("PAGA Payment").

45. **PAGA Payment Shares.** The PAGA Payment Share for each PAGA Member will be calculated as follows, understanding that the formulas below do not constitute an admission by either Party, and are intended only to provide a practical means to simplify and administer the claims process:

(a) **Number of PAGA Members and Pay Periods.** Defendants shall determine the total number of PAGA Members and the aggregate number of Pay Periods for those PAGA Members during the PAGA Period. This information shall be provided to the Settlement Administrator along with the Aggrieved Employee List as described above.

(b) **Calculation of the Pay Period Value.** The Settlement Administrator shall determine the value of a Pay Period ("Pay Period Value") by taking the PAGA Payment amount (i.e., 25% of the Net Settlement Amount) and dividing it by the sum of all PAGA Members' Pay Periods.

(c) **Calculation of PAGA Payment Shares.** The Settlement Administrator shall assign to each PAGA Member a PAGA Payment Share which shall be equal to the Pay Period

1 Value multiplied by each PAGA Member's Individual Pay Periods. Upon calculation of the PAGA
2 Members' PAGA Payment Shares, the Settlement Administrator shall furnish to Plaintiff's Counsel
3 and Defense Counsel a worksheet containing a list of employee identification numbers for the
4 PAGA Members with their corresponding Individual Pay Periods and PAGA Payment Shares.

5 **46. Taxes and Withholdings.** Each PAGA Payment Share is intended to settle the
6 PAGA Members' claims for civil penalties arising under PAGA. Accordingly, one hundred percent
7 (100%) of each PAGA Payment Share shall represent civil penalties. The PAGA Payment Share
8 shall be paid to the PAGA Member in full without deductions or withholdings, and the Settlement
9 Administrator shall issue an IRS Form 1099 to each PAGA Member for that amount. Each PAGA
10 Member shall be individually responsible for their own share of applicable income tax withholdings
11 and deductions for his or her PAGA Payment Share.

12 **47. Appointment of Settlement Administrator.** The Parties will ask the Superior Court
13 to appoint ILYM Group, Inc, a qualified and experienced administrator based in California to serve
14 as the Settlement Administrator, which, as a condition of appointment, will agree to be bound by
15 this Settlement Agreement with respect to the performance of its duties and its compensation. The
16 Settlement Administrator's duties will include (i) calculating PAGA Payment Shares; (ii) preparing,
17 translating, printing, and mailing the PAGA Notice to all PAGA Members; (iii) using reasonable
18 measures to contact all PAGA Members, including conducting a National Change of Address
19 search on all PAGA Members before mailing the PAGA Notice to each PAGA Member's address;
20 (iv) re-mailing the PAGA Notice to the PAGA Member's new address for those PAGA Members
21 whose address had changed; (v) setting up a toll-free telephone number to receive calls from PAGA
22 Members; (vi) issuing the checks to effectuate the payments due under the Settlement; (vii) using
23 reasonable measures to deliver issued checks to PAGA Members, including use of a "skip-trace" for
24 undeliverable checks; and (viii) otherwise administering the Settlement pursuant to this Settlement
25 Agreement. The Settlement Administrator will have the final authority to resolve all disputes
26 concerning the calculation of a PAGA Member's PAGA Payment Share, subject to the terms set
27 forth in this Settlement Agreement. The Settlement Administrator's reasonable fees and expenses
28 are estimated to be One Thousand Dollars (\$1,000.00) and will be paid out of the Gross Settlement

1 Amount, as set forth herein, subject to Court approval.

2 **RELEASE OF CLAIMS**

3 48. **Released Claims.** Upon the funding of the Gross Settlement Amount, PAGA
4 Members, without the need to manually sign a release document, in exchange for the consideration
5 recited in this Settlement Agreement, PAGA Members and the LWDA will fully and finally release
6 and discharge Defendants and the Released Parties from any and all claims for the recovery for civil
7 penalties, attorneys' fees and costs permissible under PAGA which Plaintiff and/or the Aggrieved
8 Employees had, or may claim to have, against Released Parties, arising out of the violations alleged
9 in the Complaint or the PAGA Notice, including unpaid straight and overtime wages (including any
10 work off-the-clock), failure to provide reporting time pay, failure to pay employees all minimum
11 wages and overtime wages owed including by failing to pay all overtime and double time at the
12 correct regular rate of pay, failure to provide compliant meal and rest breaks, failure to pay them all
13 premium wages owed for short, late or missed meal and rest periods, failure to pay all wages owed
14 at discharge or resignation; failure to timely pay wages within the times permissible under Labor
15 Code section 204; failure to provide complete and accurate wage statements;; failure to keep
16 complete and accurate payroll records; failure to reimburse necessary business-related expenses;
17 including penalties arising from violations of Labor Code sections 201, 202, 203, 204, 226(a),
18 226.7, 510, 512(a), 551, 552, 1174(d), 1194, 1197, 1197.1, 1198, 2800, 2802 (the "Released
19 Claims"). The release shall of the Released Claims shall cover all Released Claims that accrued
20 during the PAGA Period. PAGA Members cannot opt out of or object to the Release. The State of
21 California and the LWDA will also release Released Parties from the Released Claims that accrued
22 during the PAGA Period.

23 49. The Released Claims expressly exclude all claims made by PAGA Members for
24 individual wage claims, vested benefits, wrongful termination, unemployment insurance, disability,
25 social security, workers' compensation, claims while classified as exempt, and claims outside of the
26 PAGA Period.

27 50. **Plaintiff's General Release of Claims.** Upon funding of the Gross Settlement
28 Amount, in exchange for the consideration set forth in this Settlement Agreement, Plaintiff will

1 agree to the additional following General Release: In consideration of Defendants' promises and
2 agreements as set forth herein, Plaintiff hereby releases all claims related to her employment or
3 alleged employment with the Defendants or the Released Parties including all claims alleged in the
4 Action, and all claims known and unknown, without exception, except as may be prohibited by law.

5 **51. Plaintiff's Waiver of California Civil Code § 1542.** Upon the funding of the Gross
6 Settlement Amount, in exchange for the consideration set forth in this Settlement Agreement,
7 Plaintiff also agrees to expressly waive the provisions of California Civil Code § 1542, which
8 provides as follows:

9
10 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
11 WHICH THE CREDITOR OR RELEASING PARTY DOES NOT
12 KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT
13 THE TIME OF EXECUTING THE RELEASE AND THAT, IF
14 KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY
15 AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR
16 OR RELEASED PARTY.

17 Plaintiff's general release and waiver of California Civil Code §1542 shall cover the time
18 period from the start of her employment with Defendants up to the Effective Date. This release
19 general release and waiver of California Civil Code §1542 by Plaintiff is not intended to release any
20 claims that cannot be waived or released as a matter of law, including specifically, without
21 limitation, any claim under the California workers' compensation statute.

22 **MISCELLANEOUS PROVISIONS**

23 **52. Effect on Other Benefit Plans.** The payment of PAGA Payment Shares made to
24 PAGA Members under this Settlement will not be used to calculate any additional benefits under
25 any benefit plans to which any PAGA Member may be eligible, including, but not limited to profit-
26 sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans,
27 PTO plans, and any other benefit plan. Rather, it is the Parties' intention that this Settlement
28 Agreement will not affect any rights, contributions, or amounts to which any PAGA Member may
be entitled under any benefit plans.

53. No Prior Assignments. The Parties and their counsel represent, covenant, and

warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or right herein released and discharged.

54. **Continued Jurisdiction.** After entry of the Judgment, the Superior Court will have continuing jurisdiction over the Action and the Settlement solely for purposes of addressing: (i) the interpretation and enforcement of the terms of the Settlement, (ii) settlement administration matters, and (iii) such post-dismissal matters as may be appropriate under court rules or as set forth in this Settlement.

55. **Stay of Litigation.** The Parties agree that upon the signing of this Agreement, the continuing litigation of this action shall be stayed absent any filings necessary to obtain approval of the settlement and the time to bring this action to trial shall be extended pending the outcome of the settlement process.

56. **Integrated Agreement.** After this Settlement is signed and delivered by all Parties and their counsel, this Settlement and its exhibits will constitute the entire agreement between the Parties relating to the Settlement, and it will then be deemed that no oral representations, warranties, covenants, or inducements have been made to any Party concerning this Settlement or its exhibits other than the representations, warranties, covenants, and inducements expressly stated in this Settlement and its exhibits.

57. **Amendment or Modification of Agreement.** This Settlement Agreement may be amended or modified only by a written instrument signed by counsel for all Parties or their successors-in-interest and approved by the Court.

58. **Waiver of Certain Appeals.** The Parties agree to waive appeals; except, that either Party may appeal any court order that materially modifies the Settlement Agreement's terms.

59. **Authorization to Enter into Settlement Agreement.** Counsel for all Parties warrant and represent 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

1 counsel will cooperate with each other and use their best efforts to affect the implementation of the
2 Settlement. If the Parties are unable to reach agreement on the form or content of any document
3 needed to implement the Settlement, or on any supplemental provisions that may become necessary
4 to effectuate the terms of this Settlement, the Parties may seek the assistance of the Court to resolve
5 such disagreement.

6 **60. Settlement Binding on Successors and Assigns.** This Settlement Agreement will be
7 binding upon, and inure to the benefit of, the successors or assigns of the Parties hereto, as
8 previously defined.

9 **61. California Law Governs.** All terms and conditions of this Settlement and its
10 exhibits will be governed by and interpreted according to the laws of the State of California.

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

16 **63. Acknowledgement that the Settlement is Fair and Reasonable.** The Parties and
17 their respective counsel believe and warrant that this Settlement is a fair, reasonable, and adequate
18 settlement of the Action and have arrived at this Settlement after arms-length negotiations by
19 experienced counsel, taking into account all relevant factors, current and potential.

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

24 **65. Captions.** The captions of any section or paragraph of this Agreement are inserted
25 for the reader's convenience, and in no way define, limit, construe or describe the scope or intent of
26 the provisions of this Agreement.

27 **66. Waiver.** No waiver of any condition or covenant contained in this Settlement
28 Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to

1 imply or constitute a further waiver by such party of the same or any other condition, covenant,
2 right or remedy.

3 **67. Enforcement Action.** In the event that one or more of the Parties institutes any legal
4 action or other proceeding against any other Party or Parties arising out of that other Party's or
5 Parties' breach of this Agreement, the successful Party or Parties will be entitled to recover from the
6 unsuccessful Party or Parties reasonable attorneys' fees and costs, including expert witness fees
7 incurred in connection with any enforcement actions.

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

13 **69. Representation by Counsel.** The Parties acknowledge that they have been
14 represented by counsel throughout all negotiations that preceded the execution of this Agreement,
15 and that this Agreement has been executed with the consent and advice of counsel and reviewed in
16 full. The Parties further acknowledge that they have had an opportunity to consult with their counsel
17 regarding the fairness and reasonableness of this Settlement.

18 **70. Cooperation and Execution of Necessary Documents.** The Parties will cooperate
19 in good faith and execute all documents to the extent reasonably necessary to effectuate the terms of
20 this Settlement Agreement. If the Parties are unable to reach agreement on the form or content of
21 any document needed to implement the Settlement, or on any supplemental provisions that may
22 become necessary to effectuate the terms of this Settlement, the Parties may seek the assistance of
23 the Court to resolve such disagreement.

24 **71. Voluntary Agreement.** The Parties acknowledge that they have entered into this
25 Settlement Agreement voluntarily, on the basis of their own judgment and without coercion, duress,
26 or undue influence of any Party, and not in reliance on any promises, representations, or statements
27 made by the other Parties other than those contained in this Settlement Agreement. Each of the
28 Parties hereto expressly waives any right she/they might ever have to claim that this Settlement

1 Agreement was in any way induced by fraud.

2 72. **Binding Agreement.** The Parties warrant that they understand and have full
3 authority to enter into this Settlement, and further intend that this Settlement Agreement will be
4 fully enforceable and binding on all Parties and agree that it will be admissible and subject to
5 disclosure in any proceeding to enforce its terms.

6 73. **Non-Admission of Liability.** The Parties enter into this Agreement to resolve the
7 dispute that has arisen between them and to avoid the burden, expense and risk of continued
8 litigation. In entering into this Agreement, Defendants do not admit, and specifically deny, they
9 have violated any federal, state, or local law; violated any regulations or guidelines promulgated
10 pursuant to any statute or any other applicable laws, regulations or legal requirements; breached any
11 contract; violated or breached any duty; engaged in any misrepresentation or deception; or engaged
12 in any other unlawful conduct with respect to their employees. Neither this Agreement, nor any of
13 its terms or provisions, nor any of the negotiations connected with it, shall be construed as an
14 admission or concession by Defendants of any such violations or failures to comply with any
15 applicable law. Except as necessary in a proceeding to enforce the terms of this Agreement, this
16 Agreement and its terms and provisions shall not be offered or received as evidence in any action or
17 proceeding to establish any liability or admission on the part of Defendants or to establish the
18 existence of any condition constituting a violation of, or a non-compliance with, federal, state, local
19 or other applicable law.

20 74. **Neutral Employment Reference:** In the event that any potential or future employers
21 of Plaintiff request a reference regarding Defendants' employment of Plaintiff, Defendants shall
22 only provide Plaintiff's dates of employment, job titles during employment, and final rate of pay.
23 Defendants shall not refer to the Action or this Settlement.

24 75. **Non-Disparagement:** Plaintiff agrees not to make any untruthful, malicious,
25 disparaging or defamatory statements, allegations, comments or communications, regardless of
26 form (whether written, oral, electronic, including but not limited to Glassdoor, Yelp, or otherwise),
27 regarding Defendants, its employees, other past and current employees or Defendants' subsidiaries,
28 divisions, affiliates, or services. Plaintiff further agrees not to encourage authorize or permit any

1 such statements, allegations, comments or communications to be made by others on his behalf. To
2 the extent Plaintiff has posted any negative comments about Defendants on Glassdoor, Yelp, or
3 other websites, Plaintiff agrees to request that these comments be removed and to provide a copy of
4 such request within 30 days of the execution of this Agreement. Defendants' Management Team
5 agrees not to make any untruthful, malicious, disparaging or defamatory statements, allegations,
6 comments or communications, regardless of form (whether written, oral, electronic, or otherwise),
7 regarding Plaintiff.

8 **76. No Publicity.** Plaintiff and Plaintiff's Counsel agree that they have not and will not
9 publish the Settlement in any form of media. Plaintiff's Counsel shall not report the settlement in
10 any medium or in any publication, shall not post or report anything regarding the claims of Plaintiff
11 or the Settlement on their website, and shall not contact any reporters or media regarding the
12 Settlement. However, Plaintiff's Counsel is authorized to make disclosures to the Court and the
13 LWDA, the PAGA Members, the Settlement Administrator, and for any other reason necessary to
14 effectuate obtaining the approval of the settlement or the administration thereof.

15 **77. Assignment.** None of the rights, commitments, or obligations recognized under this
16 Agreement may be assigned by any Party, PAGA Member, Plaintiff's Counsel, or Defendants'
17 Counsel without the express written consent of each other Party and their respective counsel hereto.
18 The representations, warranties, covenants, and agreements contained in this Agreement are for the
19 sole benefit of the Parties under this Agreement and shall not be construed to confer any right or to
20 avail any remedy to any other person.

21 **78. Counterparts.** This Agreement, and any amendments hereto, may be executed in
22 any number of counterparts and any Party and/or their respective counsel hereto may execute any
23 such counterpart, each of which when executed and delivered shall be deemed to be an original and
24 all of which counterparts taken together shall constitute but one and the same instrument. It shall
25 not be necessary in making proof of this Agreement or any counterpart hereof to produce or account
26 for any of the other counterparts. A facsimile, scanned or digital signature, including but not limited
27 to DocuSign shall be treated as an original signature for all purposes.

1 APPROVED AS TO FORM AND CONTENT:
2

3 DATED: 11/12/2021 21:32 UTC
4

PLAINTIFF WENDY GRICELDA LOPEZ

5 *Gricelda Lopez*
6

7 DATED: _____
8

DEFENDANT KAAB, INC.

9 By: _____

10 Its: _____
11

12 DATED: _____
13

**DEFENDANT SOPHIE'S RB, LLC DBA
RIVIERA HOUSE.**

14

15 By: _____

16 Its: _____
17

18 DATED: _____

**DEFENDANT 610 AVENIDA VICTORIA
RESTAURANT DBA PIER SIDE KITCHEN +
BAR**

20 By: _____

21 Its: _____
22

23

24

25

26

27

28

1 APPROVED AS TO FORM ONLY:
2

3 DATED: _____
4

PROTECTION LAW GROUP LLP

5 By: _____
6 Heather Davis, Esq.

7 Attorney for Defendants
8

9 DATED: 11/12/2021 21:43 UTC
10

**LAWYERS FOR EMPLOYEE AND
CONSUMER RIGHTS**

11 By: *Edith Alvarez*
12 Edith Alvarez, Esq.

13 Attorneys for Plaintiff.
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1. Gricelda Lopez (amorwg2021@gmail.com)

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11/12/2021 04:52AM UTC	Document viewed by Gricelda Lopez (amorwg2021@gmail.com). 172.58.19.147 Mozilla/5.0 (Linux; Android 11; SM-A125U) AppleWebKit/537.36 (KHTML, like Gecko) Chrome/87.0.4280.141 Mobile Safari/537.36
11/12/2021 04:56AM UTC	Document viewed by Gricelda Lopez (amorwg2021@gmail.com). 172.58.19.147 Mozilla/5.0 (Linux; Android 11; SM-A125U) AppleWebKit/537.36 (KHTML, like Gecko) Chrome/87.0.4280.141 Mobile Safari/537.36
11/12/2021 21:32PM UTC	Gricelda Lopez (amorwg2021@gmail.com) has agreed to terms of service and to do business electronically with Edith Alvarez (ealvarez@lfecr.com). 172.58.22.233 Mozilla/5.0 (Linux; Android 11; SM-A125U) AppleWebKit/537.36 (KHTML, like Gecko) Chrome/87.0.4280.141 Mobile Safari/537.36
11/12/2021 21:32PM UTC	Signed by Gricelda Lopez (amorwg2021@gmail.com). 172.58.22.233 Mozilla/5.0 (Linux; Android 11; SM-A125U) AppleWebKit/537.36 (KHTML, like Gecko) Chrome/87.0.4280.141 Mobile Safari/537.36
11/12/2021 21:32PM UTC	Document copy sent to Gricelda Lopez (amorwg2021@gmail.com).

Document Reference : 5ec5a958-ffb3-4551-9e03-49123c90f1b5
Document Title : Gricelda Lopez Stipulation
Document Region : Northern Virginia
Sender Name : Edith Alvarez
Sender Email : ealvarez@lfecr.com
Total Document Pages : 22
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Participants

1. Edith Alvarez (ealvarez@lfecr.com)

Document History

Timestamp	Description
11/12/2021 21:42PM UTC	Document sent by Edith Alvarez (ealvarez@lfecr.com).
11/12/2021 21:42PM UTC	Email sent to Edith Alvarez (ealvarez@lfecr.com).
11/12/2021 21:43PM UTC	Document viewed by Edith Alvarez (ealvarez@lfecr.com). 75.84.110.95 Mozilla/5.0 (Windows NT 10.0; Win64; x64) AppleWebKit/537.36 (KHTML, like Gecko) Chrome/95.0.4638.69 Safari/537.36
11/12/2021 21:43PM UTC	Edith Alvarez (ealvarez@lfecr.com) has agreed to terms of service and to do business electronically with Edith Alvarez (ealvarez@lfecr.com). 75.84.110.95 Mozilla/5.0 (Windows NT 10.0; Win64; x64) AppleWebKit/537.36 (KHTML, like Gecko) Chrome/95.0.4638.69 Safari/537.36
11/12/2021 21:43PM UTC	Signed by Edith Alvarez (ealvarez@lfecr.com). 75.84.110.95 Mozilla/5.0 (Windows NT 10.0; Win64; x64) AppleWebKit/537.36 (KHTML, like Gecko) Chrome/95.0.4638.69 Safari/537.36
11/12/2021 21:43PM UTC	Document copy sent to Edith Alvarez (ealvarez@lfecr.com).

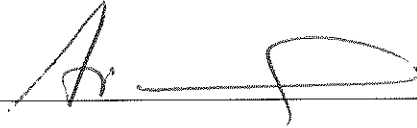
1 APPROVED AS TO FORM AND CONTENT:
2

3 DATED: _____
4
5

PLAINTIFF WENDY GRICELDA LOPEZ
6 _____

7 DATED: 10/27/21
8

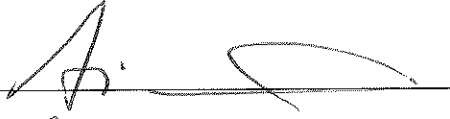
DEFENDANT KAAB, INC.

9 By: 

10 Its: CEO

11
12 DATED: 10/27/21
13

**DEFENDANT SOPHIE'S RB, LLC DBA
RIVIERA HOUSE.**

14
15 By: 

16 Its: Managing Member

17
18 DATED: 10/27/21
19

**DEFENDANT 610 AVENIDA VICTORIA
RESTAURANT DBA PIERSIDE KITCHEN +
BAR**

20
21 By: 

22 Its: Managing Member
23
24
25
26
27
28

1 APPROVED AS TO FORM ONLY:

2

3 DATED: 11/1/2021

PROTECTION LAW GROUP LLP

4

5

By:



Heather Davis, Esq.

6

7

Attorney for Defendants

8

9 DATED: _____

**LAWYERS FOR EMPLOYEE AND
CONSUMER RIGHTS**

10

11

12

By:

Edith Alvarez, Esq.

13

14

Attorneys for Plaintiff.

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EXHIBIT A

SETTLEMENT ADMINISTRATOR LETTERHEAD

NOTICE OF SETTLEMENT

Name
Address

Lopez v. KAAB, Inc.
Los Angeles County Superior Court Case No. 21STCV28238

Dear NAME:

You are receiving the enclosed check in settlement of a lawsuit entitled *Lopez v. KAAB, Inc.* Los Angeles County Superior Court Case No. 21STCV28238 In this lawsuit, Wendy Gricelda Lopez (“Plaintiff”) pursued various claims against KAAB, Inc., Sophie’s RB LLC dba Riviera House, and 610 Avenida Victoria Restaurant LLC dba Pierside Kitchen + Bar. (“Defendants”) under Labor Code § 2699 *et seq.*, the California Private Attorney General Act (“PAGA”). Plaintiff was acting on behalf of the State of California, in order to recover penalties for Labor Code violations she alleges were committed against herself and other Aggrieved Employees. The Parties have reached an agreement to settle this matter. As part of this settlement, all non-exempt employees who worked for Defendants in California between April 23, 2020, and [date of settlement approval] (“PAGA Members”) shall receive a portion of the recovered penalties. Defendant denies all of the allegations and liability for any claims in this case.

The enclosed check for \$ [redacted], is your share of the settlement. Your settlement amount represents penalties and will be reported on an IRS Form 1099. Your check is valid for 180 days from the date of mailing. Funds attributable to any uncashed check will escheat to the California State Controller’s Office and may be claimed from there.

As a result of this settlement Plaintiff, all PAGA Members, and the State of California shall release Defendants KABB, Inc., Sophie’s RB, LLC dba Riviera House, and 610 Avenida Victoria Restaurant, LLC dba Pierside Kitchen + Bar, and their past, present and/or future, direct and/or indirect, officers, directors, members, managers, employees, agents, representatives, attorneys, insurers, partners, investors, shareholders, administrators, parent companies, subsidiaries, affiliates, divisions, predecessors, successors, assigns, and joint venturers (the Released Parties) from any and all claims for the recovery for civil penalties, attorneys’ fees and costs permissible under PAGA which Plaintiff and/or the Aggrieved Employees had, or may claim to have, against Released Parties, arising out of the violations alleged in the Complaint or the PAGA Notice, including unpaid straight and overtime wages (including any work off-the-clock), failure to provide reporting time pay, failure to pay employees all minimum wages and overtime wages owed including by failing to pay all overtime and double time at the correct regular rate of pay, failure to provide compliant meal and rest breaks, failure to pay all premium wages owed for short, late or missed meal and rest periods, failure to pay all wages owed at discharge or resignation; failure to timely pay wages within the times permissible under Labor Code section 204; failure to provide complete and accurate wage statements; failure to keep complete and accurate payroll records; and failure to reimburse necessary business-related expenses; including penalties arising from violations of Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 551, 552, 1174(d), 1194, 1197, 1197.1, 1198, 2800, 2802 (the Released Claims).

Claims of PAGA Members, if any, for individual wage claims, claims while classified as exempt, and claims outside the period between April 23, 2020, and [date of settlement approval] are not encompassed within the definition of “Released Claims.” PAGA Members cannot opt out of or object to the foregoing PAGA Release.

Exhibit 2

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

GRICELDA LOPEZ, an individual, on behalf
of herself and others similarly situated,

Plaintiff,

vs.

KAAB, INC., a California corporation;
SOPHIE’S RB LLC d/b/a RIVIERA HOUSE,
a California limited liability company; and 610
AVENIDA VICTORIA RESTAURANT, LLC
d/b/a PIERSIDE KITCHEN + BAR, a
California limited liability company; and
DOES 1 through 100, inclusive,

Defendants.

Case No. 21STCV28238

*Assigned for all purposes to: Hon. Richard J.
Burdge Jr., Dept. 37*

**FIRST AMENDMENT TO JOINT
STIPULATION OF PAGA ACTION
SETTLEMENT AND RELEASE OF
CLAIMS**

1 This First Amendment to the Joint Stipulation of PAGA Settlement and Release of Claims is
2 made and entered into by and between Plaintiff GRICELDA LOPEZ ("Plaintiff" or "PAGA
3 Representative"), individually and on behalf of all putative class members, and Defendants KAAB,
4 INC., SOPHIE'S RB LLC d/b/a RIVIERA HOUSE, and 610 AVENIDA VICTORIA
5 RESTAURANT, LLC d/b/a PIERSIDE KITCHEN + BAR ("Defendants"). Plaintiff and
6 Defendants are collectively referred to herein as "the Parties."

7
8 **RECITALS**

9 1. **WHEREAS**, Plaintiff and Defendants entered into a Joint Stipulation and Settlement
10 Agreement (the "Settlement Agreement") on or about November 12, 2021.

11 2. **WHEREAS**, the Settlement Agreement defines the "PAGA Period" as "the period
12 of time commencing on April 23, 2020, and ending on the date of approval of the settlement by the
13 Court."

14 3. **WHEREAS**, the PAGA Members are defined as all current and former hourly-paid,
15 non-exempt employees who were employed by Defendants in the state of California at any time
16 during the PAGA Period.

17 4. **WHEREAS**, the Parties wish to limit the PAGA Period in order to better reflect the
18 negotiated pay periods at issue.

19 5. **WHEREAS**, Paragraph 57 of the Settlement Agreement provides that "The
20 Settlement Agreement may be amended or modified only by a written instrument signed by counsel
21 for all Parties or their successors-in-interest and approved by the Court."

22 6. **WHEREAS**, Counsel whose signatures appear below represent and warrant that
23 they are authorized by the Parties whom they represent to negotiate and enter into this Amendment
24 as set forth in the Settlement Agreement.

25 **NOW, THEREFORE**, the Parties hereby agree to amend and modify the Settlement
26 Agreement as follows:

1 1. Paragraph 5 of the Settlement Agreement shall be revised to state: "The 'PAGA
2 Period' shall mean the period in time commencing on April 23, 2020, and ending on August 2,
3 2021."

4 2. The proposed notice attached to the Settlement Agreement as Exhibit A shall be
5 amended to reflect the revised PAGA Period.
6

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8
9 DATED: 2/11/2022

PROTECTION LAW GROUP LLP

10
11 By: 

Heather Davis, Esq.

12
13 Attorney for Defendants

14 DATED: 02/11/2022 21:47 UTC

**LAWYERS FOR EMPLOYEE AND
CONSUMER RIGHTS**

15
16
17 By: 

Edith Alvarez, Esq.

18
19 Attorneys for Plaintiff.
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Document Reference : 47718bfe-b9ea-4061-bc3a-1faf09a575e5
Document Title : Gricelda Lopez- Amendment to Joint Stipulation
Document Region : Northern Virginia
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1. Edith Alvarez (ealvarez@lfecr.com)

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02/11/2022 21:44PM UTC	Email sent to Edith Alvarez (ealvarez@lfecr.com).
02/11/2022 21:44PM UTC	Document viewed by Edith Alvarez (ealvarez@lfecr.com). 75.84.110.95 Mozilla/5.0 (Windows NT 10.0; Win64; x64) AppleWebKit/537.36 (KHTML, like Gecko) Chrome/98.0.4758.82 Safari/537.36
02/11/2022 21:47PM UTC	Edith Alvarez (ealvarez@lfecr.com) has agreed to terms of service and to do business electronically with Edith Alvarez (ealvarez@lfecr.com). 75.84.110.95 Mozilla/5.0 (Windows NT 10.0; Win64; x64) AppleWebKit/537.36 (KHTML, like Gecko) Chrome/98.0.4758.82 Safari/537.36
02/11/2022 21:47PM UTC	Signed by Edith Alvarez (ealvarez@lfecr.com). 75.84.110.95 Mozilla/5.0 (Windows NT 10.0; Win64; x64) AppleWebKit/537.36 (KHTML, like Gecko) Chrome/98.0.4758.82 Safari/537.36
02/11/2022 21:47PM UTC	Document copy sent to Edith Alvarez (ealvarez@lfecr.com).

Exhibit 3

From: [DIR PAGA Unit](#)
To: [Lonny Osterman](#)
Subject: Thank you for your Proposed Settlement Submission
Date: Tuesday, August 23, 2022 4:02:58 PM

08/23/2022 04:02:38 PM

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

Item submitted: Proposed Settlement

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

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

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

Exhibit 4

**CONFIRMATION FOR
COURT FILING**

ONE LEGAL LLC



This is not an Invoice

ONE LEGAL CONFIRMATION FOR ORDER NO.: 16689072 DATE: 08/02/2021

Customer: Lawyers for Employee and Consumer Right **Attorney:** Shelley Mack
Customer No.: 0100003 **Attorney e-mail:** smack@lfecr.com
Address: 4100 West Alameda Ave. 3rd. **Contact:** Star Miller
Flr. , Burbank , CA 91505 **Contact e-mail:** smiller@lfecr.com
Contact Phone: (323)306-5176
Contact Fax:
Law Firm File No.:

CASE INFORMATION:

Case Number: 21STCV28238
County: Los Angeles
Court: Central District
Case Short Title: GRICELDA LOPEZ vs. KAAB, INC

DOCUMENTS RECEIVED: No. Docs: 5 No. Pgs: 26

Complaint, Civil Case Cover Sheet, Civil Case Cover Sheet, Summons, Request

Confirmation Report. DO NOT PAY. An Invoice will be sent later.

Notes:	Services:	Summary of Charges:
	Court Filing Service Charge, 26 - 50 Pages	122.50
Services will be invoiced later.	DO NOT PAY NOW.	Total: 122.50

UPON RECEIPT, PLEASE REVIEW AND CONFIRM THAT THE ATTACHED DOCUMENTS ARE TRUE AND CORRECT. IF THERE IS AN ERROR OR OMISSION PLEASE CONTACT CUSTOMER SUPPORT IMMEDIATELY.

Customer Support | Ph: 1-800-938-8815