

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN JOAQUIN

SEREENA VILLA, as an aggrieved employee
pursuant to the Private Attorneys General Act
("PAGA"), on behalf of the State of California
and other aggrieved employees,

Case No. STK-CV-UOE-2021-0006075

PAGA SETTLEMENT AGREEMENT

Plaintiff,

vs.

NATION'S FOOD SERVICE, INC., a
California corporation; NATION'S GIANT
HAMBURGERS NO. 2 A CALIFORNIA
LIMITED PARTNERSHIP, a California limited
partnership; NATION'S GIANT
HAMBURGERS, NO. 5, A CALIFORNIA
LIMITED PARTNERSHIP, a California limited
partnership; NATION'S GIANT
HAMBURGERS NO. 6, A CALIFORNIA
LIMITED PARTNERSHIP, a California limited
partnership; NATION'S GIANT
HAMBURGERS NO. 7, A CALIFORNIA
LIMITED PARTNERSHIP, a California limited
partnership; NATION'S GIANT
HAMBURGERS NO. 9/NO.8, A
CALIFORNIA LIMITED PARTNERSHIP, a
California limited partnership; NATION'S
GIANT HAMBURGERS NO. 11, A
CALIFORNIA LIMITED PARTNERSHIP, a
California limited partnership; NATION'S
GIANT HAMBURGERS, NO. 14, A
CALIFORNIA LIMITED PARTNERSHIP, a
California limited partnership; NATION'S

1 GIANT HAMBURGERS NO. 15, A
2 CALIFORNIA LIMITED PARTNERSHIP, a
3 California limited partnership; NATION'S
4 GIANT HAMBURGERS NO. 19, A
5 CALIFORNIA LIMITED PARTNERSHIP, a
6 California limited partnership; NATION'S
7 GIANT HAMBURGERS NO. 20 A
8 CALIFORNIA LIMITED PARTNERSHIP, a
9 California limited partnership; NATION'S
10 GIANT HAMBURGERS, NO. 21/NO. 26, A
11 CALIFORNIA LIMITED PARTNERSHIP, a
12 California limited partnership; NATION'S
13 GIANT HAMBURGERS NO. 22, A
14 CALIFORNIA LIMITED PARTNERSHIP, a
15 California limited partnership; NATION'S
16 GIANT HAMBURGERS NO. 23, A
17 CALIFORNIA LIMITED PARTNERSHIP, a
18 California limited partnership; NATION'S
19 GIANT HAMBURGERS NO. 25, A
20 CALIFORNIA LIMITED PARTNERSHIP, a
21 California limited partnership; NATION'S
22 GIANT HAMBURGERS NO. 27, A
23 CALIFORNIA LIMITED PARTNERSHIP, a
24 California limited partnership; NATION'S
25 GIANT HAMBURGERS NO. 28, A
26 CALIFORNIA LIMITED PARTNERSHIP, a
27 California limited partnership; NATION'S
28 GIANT HAMBURGERS NO. 29, A
CALIFORNIA LIMITED PARTNERSHIP, a
California limited partnership; NATION'S
GIANT HAMBURGERS NO. 30, A
CALIFORNIA LIMITED PARTNERSHIP, a
California limited partnership; NATION'S
GIANT HAMBURGERS NO. 31, A
CALIFORNIA LIMITED PARTNERSHIP, a
California limited partnership; and DOES 1
through 10, inclusive,

Defendants.

PAGA SETTLEMENT AGREEMENT

Subject to Court approval by the Superior Court of the State of California for the County of San Joaquin ("Court"), Plaintiff Sereena Villa ("Plaintiff") and Defendant Nation's Foodservice, Inc. ("Defendant") (collectively with Plaintiff, the "Parties") hereby agree to the following binding settlement ("Settlement" or "Settlement Agreement") of the action entitled *Villa v. Nation's Foodservice, Inc., et al.*, No. STK-CV-UOE-2021-0006075 (San Joaquin County Superior Court) (the "Action").

DEFINITIONS

The following definitions are applicable to this Settlement Agreement. Definitions contained elsewhere in this Settlement Agreement will also be effective:

1. "Action" means *Villa v. Nation's Foodservice, Inc., et al.*, No. STK-CV-UOE-2021-0006075 (San Joaquin County Superior Court).
2. "Aggrieved Employees" means all individuals who worked for Defendant in California as non-exempt employees at any time during the Settlement Period.
3. "Court" means the Superior Court for the State of California, County of San Joaquin.
4. "Effective Date" means the later of: (i) the sixty-first (61st) day after the Court enters the Order and Judgment in the Action, provided no appeal or motion for reconsideration or other efforts to obtain review has been filed; (ii) if any timely appeals or motions for reconsideration or review are filed, the sixty-first (61st) day after final resolution of any such appeals or motions for reconsideration or review have been finally concluded. In this regard, the Parties intend that the Effective Date of the Settlement shall not be a date before the Court's order approving the Settlement has become completely final and there is no timely recourse by any person who seeks to object or otherwise contest the Settlement.
5. "LWDA" means the California Labor and Workforce Development Agency.
6. "Maximum Settlement Amount" means the maximum settlement amount of Three Hundred Fifty Thousand Dollars and Zero Cents (\$350,000.00) to be paid by Defendant in full satisfaction of all Settled Claims arising from the Action. The Maximum Settlement Amount specifically includes all payments to Aggrieved Employees, Plaintiff, Plaintiff's Counsel, the LWDA, and the Settlement Administrator. With the possible exception of the Escalator Clause in Paragraph

1 18(c), in no event shall Defendant be obligated to pay more than the Maximum Settlement Amount as a
2 result of this Settlement.

3 7. "PAGA Penalties Fund" means the Maximum Settlement Amount less the Attorneys'
4 Fees and Costs, the Service Award, and the Settlement Administrator Costs.

5 8. "Plaintiff's Counsel" means Capstone Law APC.

6 9. "Released Parties" means Nation's Foodservice, Inc., Nation's Giant Hamburgers No. 2
7 a California Limited Partnership, Nation's Giant Hamburgers No. 5 a California Limited Partnership,
8 Nation's Giant Hamburgers No. 6 a California Limited Partnership, Nation's Giant Hamburgers No. 7 a
9 California Limited Partnership, Nation's Giant Hamburgers No. 9/No. 8 a California Limited
10 Partnership, Nation's Giant Hamburgers No. 11 a California Limited Partnership, Nation's Giant
11 Hamburgers No. 14 a California Limited Partnership, Nation's Giant Hamburgers No. 15 a California
12 Limited Partnership, Nation's Giant Hamburgers No. 19 a California Limited Partnership, Nation's
13 Giant Hamburgers No. 20 a California Limited Partnership, Nation's Giant Hamburgers No. 21/No. 26 a
14 California Limited Partnership, Nation's Giant Hamburgers No. 22 a California Limited Partnership,
15 Nation's Giant Hamburgers No. 23 a California Limited Partnership, Nation's Giant Hamburgers No. 25
16 a California Limited Partnership, Nation's Giant Hamburgers No. 27 a California Limited Partnership,
17 Nation's Giant Hamburgers No. 28 a California Limited Partnership, Nation's Giant Hamburgers No. 29
18 a California Limited Partnership, Nation's Giant Hamburgers No. 30 a California Limited Partnership,
19 and Nation's Giant Hamburgers No. 31 a California Limited Partnership, and all of each of their current
20 or former parent companies, subsidiary companies and/or related companies, partnerships, joint ventures,
21 and/or staffing agencies, and, with respect to each of them, all of their and/or such related entities'
22 predecessors and successors, and, with respect to each such entity, all of its past, present, and future
23 employees, officers, partners, principals, directors, stockholders, owners, representatives, assigns,
24 attorneys, agents, insurers, employee benefit programs (and the trustees, administrators, fiduciaries, and
25 insurers of such programs), and any other persons acting by, through, or under any of the persons or
26 entities listed in this subsection, and their successors.

27 10. "Service Award" means the amount to be paid to Plaintiff as payment for her service on
28 behalf of the LWDA and Aggrieved Employees and in exchange for a general release of all claims

1 arising out of her employment with Defendant.

2 11. "Settled Claims" means all claims, rights, or causes of action for PAGA civil penalties
3 predicated on the claims, allegations, contentions, and representations asserted in the Action, during the
4 Settlement Period, against Defendant and the Released Parties, including, but not limited to, claims
5 seeking civil penalties under PAGA that are based on the alleged violations by Defendant of the
6 California Labor Code (including, but not limited to, California Labor Code §§ 201, 202, 203, 204, 210,
7 221, 223, 224, 225.5, 226, 226.3, 226.7, 256, 510, 512, 516, 551, 552, 558, 1174, 1174.5, 1182.12, 1194,
8 1194.5, 1197, 1197.1, 1198, 2699, 2699.3, 2699.5, 2802, 6401, and 6403) and the corresponding
9 sections of the IWC Orders that were alleged, or reasonably could have been alleged, based on the facts
10 in the Complaint and Notice to the LWDA.

11 12. "Settlement Period" means May 3, 2020 and continuing through the earlier of (i) the
12 date of entry of the Order and Judgment in the Action, or (ii) June 26, 2022.

13 RECITALS

14 13. PAGA Notice Letter To The LWDA. On or about April 23, 2021, Plaintiff sent a notice
15 letter to the LWDA as well as to Nation's Foodservice, Inc., Nation's Giant Hamburgers No. 2 a
16 California Limited Partnership, Nation's Giant Hamburgers No. 5 a California Limited Partnership,
17 Nation's Giant Hamburgers No. 6 a California Limited Partnership, Nation's Giant Hamburgers No. 7 a
18 California Limited Partnership, Nation's Giant Hamburgers No. 9/No. 8 a California Limited
19 Partnership, Nation's Giant Hamburgers No. 11 a California Limited Partnership, Nation's Giant
20 Hamburgers No. 14 a California Limited Partnership, Nation's Giant Hamburgers No. 15 a California
21 Limited Partnership, Nation's Giant Hamburgers No. 19 a California Limited Partnership, Nation's
22 Giant Hamburgers No. 20 a California Limited Partnership, Nation's Giant Hamburgers No. 21/No. 26 a
23 California Limited Partnership, Nation's Giant Hamburgers No. 22 a California Limited Partnership,
24 Nation's Giant Hamburgers No. 23 a California Limited Partnership, Nation's Giant Hamburgers No. 25
25 a California Limited Partnership, Nation's Giant Hamburgers No. 27 a California Limited Partnership,
26 Nation's Giant Hamburgers No. 28 a California Limited Partnership, Nation's Giant Hamburgers No. 29
27 a California Limited Partnership, Nation's Giant Hamburgers No. 30 a California Limited Partnership,
28 and Nation's Giant Hamburgers No. 31 a California Limited Partnership (together, the "Named

Entities”), advising that Plaintiff intended to seek civil penalties pursuant to PAGA, on behalf of herself and other current and former non-exempt employees of the Named Entities, identifying alleged violations of and penalties under California Labor Code §§ 201, 202, 203, 204, 210, 221, 223, 224, 225.5, 226, 226.3, 226.7, 256, 510, 512, 516, 551, 552, 558, 1174, 1174.5, 1182.12, 1194, 1194.5, 1197, 1197.1, 1198, 2699, 2699.3, 2699.5, 2802, 6401, and 6403, as well as pursuant to the applicable IWC Wage Orders.

14. Complaint Filed In San Joaquin County Superior Court. On or about July 7, 2021, Plaintiff filed a lawsuit in San Joaquin County Superior Court, alleging claims against the Named Entities for PAGA penalties on behalf of herself, the State of California, and all current and former non-exempt, hourly-paid employees of Defendant and the Named Entities who worked in the State of California, based on the following substantive wage-and-hour allegations: (1) Unpaid Overtime Compensation (Violation of Cal. Lab. Code §§ 510, 1198); (2) Unpaid Minimum Wages (Violation of Cal. Lab. Code §§ 1182.12, 1194, 1197, 1197.1, 1198); (3) Failure to Provide Meal Periods (Violation of Cal. Lab. Code §§ 226.7, 512, 516, 1198); (4) Failure to Authorize and Permit Rest Breaks (Violation of Cal. Lab. Code §§ 226.7, 516, 1198); (5) Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records (Violation of Cal. Lab. Code §§ 226, 1174, 1198); (6) Failure to Timely Pay Wages During Employment (Violation of Cal. Lab. Code § 204); (7) Failure to Timely Pay Final Wages Upon Termination (Violation of Cal. Lab. Code §§ 201, 202, 203); (8) Unlawful Deductions (Violation of Cal. Lab. Code §§ 221, 224); (9) Secret Payment of Lower Wages (Violation of Cal. Lab. Code § 223); (10) Failure to Provide One Day’s Rest in Seven (Violation of Cal. Lab. Code §§ 551, 552); (11) Failure to Provide Suitable Resting Facilities (Violation of Cal. Lab. Code § 1198; 8 Cal. Code Regs. § 11050, subd. 13(B)); (12) Failure to Provide Suitable Seating (Violation of Cal. Lab. Code § 1198; 8 Cal. Code Regs. § 11050, subd. 14(B)); (13) Unreimbursed Business Expenses (Violation of Cal. Lab. Code § 2802); (14) Failure to Provide Safety Devices and Safeguards (Violation of Cal. Lab. Code §§ 6401, 6403); and (15) Violation of Labor Code § 558(a). On August 30, 2021, Defendant and the Named Entities filed an Answer to Plaintiff’s Representative Action Complaint.

15. Mediation And Settlement. On March 28, 2022, the Parties and their counsel participated in a full-day mediation with Lou Marlin, Esq., a well-respected mediator with considerable

1 experience mediating wage-and-hour class and PAGA actions. At the conclusion of the mediation
2 session, the Parties reached an agreement to resolve the Action pursuant to terms set forth in a
3 Memorandum of Agreement. This Stipulation formalizes the agreement reached by the Parties.

4 **TERMS**

5 16. All Terms Subject to Court Approval. California Labor Code § 2699(1)(2) requires that
6 the Court review and approve any penalties sought as part of a proposed settlement agreement pursuant
7 to PAGA. All amounts and procedures described in this Settlement are subject to the Court's approval.
8 Should the Court not approve the Settlement, the Parties shall request leave to, and jointly attempt to,
9 modify this settlement and Settlement Agreement in order to obtain the Court's approval.

10 17. Maximum Settlement Amount. In consideration for Plaintiff's promises and
11 representations described in this Settlement Agreement, and subject to all of the conditions of the
12 Settlement being met, Defendant will pay a maximum amount of Three Hundred Fifty Thousand Dollars
13 and Zero Cents (\$350,000.00) (the "Maximum Settlement Amount"), which represents the maximum
14 amount payable by Defendant pursuant to this Settlement. The Maximum Settlement Amount includes
15 all amounts for Plaintiff's counsel's attorneys' fees, Plaintiff's counsel's litigation costs and expenses,
16 consideration for Plaintiff's service on behalf of the LWDA and Aggrieved Employees, Settlement
17 Administration Costs, and payments to Aggrieved Employees and the LWDA for their respective shares
18 of the PAGA Penalties Fund. No portion of the Maximum Settlement Amount will be retained by, or
19 revert to, Defendant.

20 18. PAGA Penalties Fund. The PAGA Penalties Fund is the portion of the Maximum
21 Settlement Amount that will be paid to Aggrieved Employees and the LWDA in full satisfaction of all
22 claims for PAGA civil penalties under the California Labor Code, Wage Orders, regulations, and/or
23 other provisions of law alleged to have been violated in the Action with respect to Plaintiff and the
24 Aggrieved Employees. The PAGA Penalties Fund means the Maximum Settlement Amount less
25 deductions for the Settlement Administration Costs, the Service Award, and the Attorneys' Fees and
26 Cost, and it shall be paid from, and shall not be in addition to, the Maximum Settlement Amount.
27 Pursuant to PAGA, Seventy-Five Percent (75%) of the PAGA Penalties Fund will be paid to the
28 LWDA, and the remaining Twenty-Five Percent (25%) will be paid to all Aggrieved Employees

1 according to the following formula:

2 18(a) Defendant will calculate: (i) the total number of pay periods worked by each
3 Aggrieved Employee during the Settlement Period, and (ii) the total number
4 of pay periods worked by all Aggrieved Employees during the Settlement
5 Period.

6 18(b) To determine each Aggrieved Employee's payment from the PAGA
7 Penalties Fund, Defendant will use the following formula: Settlement
8 Payment = 25% of PAGA Penalties Fund $\times$ [Pay Periods Worked by
9 Individual Aggrieved Employee During the Settlement Period $\div$ Total Pay
10 Periods Worked by All Aggrieved Employees during the Settlement
11 Period].

12 18(c) If the total number of Pay Periods worked by all Aggrieved Employees
13 during the Settlement Period is greater than 25,000, then the Maximum
14 Settlement Amount will be proportionally increased according to the
15 following formula: Proportionally Increased Maximum Settlement Amount
16 = Total Number of Pay Periods During Settlement Period $\div$ 25,000 $\times$
17 \$350,000 ("Escalator Clause").

18 19. Attorneys' Fees and Costs. Defendant agrees not to oppose or impede any application
19 or motion by Plaintiff's Counsel for attorneys' fees and costs of not more than One Hundred Sixteen
20 Thousand Six Hundred Sixty Seven Dollars and Zero Cents (\$116,667.00), plus the reimbursement of all
21 out-of-pocket costs and expenses associated with Plaintiff's Counsel's litigation and settlement of the
22 Action (including expert/consultant fees, investigations costs, etc.), not to exceed Twenty Thousand
23 Dollars and Zero Cents (\$20,000.00), both of which will be paid from, and not in addition to, the
24 Maximum Settlement Amount (the "Attorneys' Fees and Costs"). Any portion of the Attorneys' Fees
25 and Costs not awarded to Plaintiff's Counsel by the Court will be added to the PAGA Penalties Fund.
26 The Settlement is not contingent on Plaintiff and Plaintiff's Counsel recovering the full amount of the
27 requested Attorneys' Fees and Costs, or any amount as attorneys' fees and costs. Even in the event that
28 the Court reduces or does not approve the full amount of the requested Attorneys' Fees and Costs,

1 Plaintiff's Counsel shall not have the right to revoke this Settlement, and it will remain binding, but
2 Plaintiff's Counsel will have the right to appeal such a reduction.

3 20. Service Award And General Release By Plaintiff. In consideration for a general release
4 of all claims Plaintiff may have against Defendant arising out of her employment, and for her service on
5 behalf of the LWDA and Aggrieved Employees, Defendant agrees not to oppose or impede any
6 application or motion by Plaintiff for a service award of up to Ten Thousand Dollars and Zero Cents
7 (\$10,000.00) (the "Service Award"). In addition to the release of Settled Claims, upon receipt of the
8 Service Award, Plaintiff will make the additional general release of all of her individual claims as
9 follows: Plaintiff releases Defendant and the Released Parties from any and all claims, actions, demands,
10 causes of action, suits, debts, obligations, damages, rights, or liabilities of any nature and description
11 whatsoever, known or unknown, that Plaintiff individually may possess against Defendant and/or the
12 Released Parties arising from Plaintiff's employment with Defendant or termination thereof, including,
13 but not limited to, claims for wages, premiums, expense reimbursement, restitution, penalties, retaliation,
14 defamation, discrimination, harassment, wrongful termination of employment, breach of contract, or
15 other tortious conduct. Plaintiff hereby acknowledges that, upon receiving the Service Award and the
16 additional sums provided for pursuant to this Settlement, she will not be owed any additional wages,
17 damages, restitution, penalties, interest, and attorneys' fees and costs from Defendant and/or any of the
18 Released Parties.

19 21. Plaintiff also agrees to expressly and fully waive the provisions of California Civil Code
20 section 1542, which provides as follows:

21 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT**
22 **THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR**
23 **SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF**
24 **EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR**
HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER
SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

25 Plaintiff's general release as to Defendant and the Released Parties shall cover the time period from the
26 beginning of time up to and including the date of the Order and Judgment in the Action.

27 22. Settlement Administration Costs. The Parties will retain CPT Group, Inc. as the third-
28 party settlement administrator ("Settlement Administrator") for the Action. The Settlement

1 Administrator will be responsible for establishing a qualified settlement fund ("QSF") and issuing
2 payments and appropriate tax forms to Aggrieved Employees, the LWDA, Plaintiff, and Plaintiff's
3 Counsel. The Settlement Administration Costs will be paid from, and not in addition to, the Maximum
4 Settlement Amount. Based on the estimate that there are approximately One Thousand Two Hundred
5 (1,200) Aggrieved Employees, Settlement Administration Costs are estimated at Ten Thousand Five
6 Hundred Dollars and Zero Cents (\$10,500.00).

7 23. Court Approval of the Settlement and Distribution of Settlement Payments. The Parties
8 will present this Settlement Agreement to the Court and the LWDA. The Parties will request that the
9 Court issue an order and judgment approving and incorporating by reference the terms and conditions of
10 the Settlement Agreement (the "Order and Judgment"). The Parties agree that the preferred method of
11 obtaining Court approval of the Settlement is through stipulation rather than motion, and will attempt to
12 have the Settlement approved by the Court via stipulation unless otherwise required by the Court.
13 Plaintiff's Counsel shall have thirty (30) days from the date the Settlement Agreement is fully executed
14 to file a mutually agreed upon stipulation and proposed order seeking approval of the Settlement. If,
15 however, a motion is required by the Court, Plaintiff's counsel shall provide Defendant's counsel with
16 courtesy drafts of the motion for approval and all supporting documents, for Defendant's review and
17 comment, at least three (3) business days prior to filing.

18 24. List of Aggrieved Employees. Within ten (10) business days after the Effective Date,
19 Defendant will provide the Settlement Administrator a complete list of all Aggrieved Employees (the
20 "Aggrieved Employee List"). The Aggrieved Employee List will be formatted in Microsoft Office
21 Excel and will include each Aggrieved Employee's full name; most recent mailing address and
22 telephone number; Social Security number; number of pay periods during which each Aggrieved
23 Employee worked during the Settlement Period; and any other relevant information needed to calculate
24 settlement payments. Plaintiff's Counsel will not receive a copy of the Aggrieved Employee List. The
25 Settlement Administrator shall treat the Aggrieved Employee List, including the information contained
26 within it, as confidential, and shall not use the Aggrieved Employee List or any information contained
27 therein for any purpose other than to administer the Settlement in accordance with this Settlement
28 Agreement.

1 25. Funding of the Settlement. Within ten (10) business days after the Effective Date,
2 Defendant will deposit the Maximum Settlement Amount into the QSF to be established by the
3 Settlement Administrator. Within fourteen (14) calendar days following the funding of the Settlement,
4 the Settlement Administrator will issue payments to: (i) the Aggrieved Employees; (ii) the LWDA; (iii)
5 Plaintiff; (iv) Plaintiff's Counsel; and (v) itself. The Settlement Administrator, and not Defendant, will
6 issue the appropriate tax forms for all payments issued under this Settlement.

7 26. Settlement Payments to Aggrieved Employees. The Settlement Administrator will issue
8 each Aggrieved Employee one check for his or her share of the PAGA Penalties Fund along with an
9 explanatory letter, the template for which is attached hereto as **Exhibit A**. Prior to mailing, the
10 Settlement Administrator will perform a search based on the National Change of Address Database for
11 information to update and correct for any known or identifiable address changes. Any checks returned
12 as non-deliverable within 180 days after first mailing will be sent promptly via regular First-Class U.S.
13 Mail to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement
14 Administrator will promptly attempt to determine the correct address using a skip-trace, or other search
15 using the name, address, or Social Security number of the Aggrieved Employee involved, and will then
16 perform a single re-mailing. Checks will remain negotiable for 180 days, after which time any uncashed
17 checks will be voided. Those funds represented by uncashed checks that remain outstanding 180 days
18 after the initial mailing of the Settlement checks by the Settlement Administrator will be tendered to the
19 LWDA. All settlement payments to Aggrieved Employees will be treated as miscellaneous income for
20 which a 1099 will be issued by the Settlement Administrator.

21 27. Settled Claims. Upon entry of the Order and Judgment, the LWDA; Plaintiff
22 (individually and on behalf of Plaintiff's heirs, executors, administrators, representatives, attorneys,
23 agents, successors, and assigns, to the fullest extent allowable by law); and all Aggrieved Employees will
24 fully and finally release and forever discharge Defendant and the Released Parties from the Settled
25 Claims during the Settlement Period. As a result, upon entry of the Order and Judgment, the LWDA;
26 Plaintiff (individually and on behalf of Plaintiff's heirs, executors, administrators, representatives,
27 attorneys, agents, successors, and assigns, to the fullest extent allowable by law); and all Aggrieved
28 Employees shall be forever barred from pursuing against Defendant and any of the Released Parties any

1 and all Settled Claims that arose during the Settlement Period. Aggrieved Employees, other than
2 Plaintiff, will not be deemed to have released any individual wage and hour claims by virtue of this
3 Settlement. This Settlement effectively releases, precludes, and bars all Settled Claims against
4 Defendant and the Released Parties during the Settlement Period, regardless of whether Plaintiff and/or
5 the Aggrieved Employees cash their individual settlement award checks, so long as the Settlement is
6 administered and carried out according to the Parties' Agreement. Beyond the Maximum Settlement
7 Amount, Defendant shall not owe any further monies to Plaintiff, the Aggrieved Employees, or to the
8 State of California based upon any of the Settled Claims.

9 28. No Right to Exclusion or Objections by Aggrieved Employees. Because this settlement
10 resolves claims and actions brought pursuant to PAGA by Plaintiff acting as a proxy and as a Private
11 Attorney General of, and for, the State of California and the LWDA, the Parties agree that no Aggrieved
12 Employee has the right to exclude himself or herself from the Settlement. Aggrieved Employees will be
13 bound by the terms of the Settlement Agreement, upon its approval by the Court, regardless of whether
14 he or she cashes any check received as a result of this Settlement. The Parties also agree that no
15 Aggrieved Employee has the right to object to the terms of the Settlement Agreement.

16 29. Tax Liability. Other than the reporting requirements by the Settlement Administrator,
17 the Aggrieved Employees, including Plaintiff, shall be solely responsible for the reporting and payment
18 of any federal, state, and/or local income or other tax or any other withholdings, if any, on any of the
19 payments made pursuant to this Settlement. Defendant makes no representations, and it is understood
20 and agreed that Defendant has made no representations, as to the taxability of any portions of the PAGA
21 Penalties Fund to any Aggrieved Employee, the payment of any costs or an award of attorney fees, or
22 any payments to Plaintiff. The correspondence to Aggrieved Employees (Exhibit A) will inform
23 Aggrieved Employees of the opportunity to seek their own tax advice in connection with their receipt of
24 funds pursuant to this Settlement, and Plaintiff and Plaintiff's Counsel agree that this is sufficient to alert
25 Aggrieved Employees of their option to seek tax advice.

26 30. No Credit Toward Benefit Plans. Payments to Aggrieved Employees as referenced
27 herein will not be utilized to calculate any additional benefits under any benefit plans to which any
28 Aggrieved Employee may be eligible, including, but not limited to, profit-sharing plans, bonus plans,

1 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, and any other benefit
2 plan. Rather, it is the Parties' intention that this Settlement Agreement will not affect any rights,
3 contributions, or amounts to which any Aggrieved Employee may be entitled under any benefit plans.

4 31. Settlement Administrator's Duties. The Settlement Administrator shall be responsible
5 for (i) processing the data provided by Defendant to be used in calculating the amounts paid to
6 Aggrieved Employees; (ii) preparing, printing, and mailing to the Aggrieved Employees correspondence
7 to accompany the checks (attached hereto as Exhibit A), as well as following up with reasonable skip
8 tracing; (iii) calculating and mailing payments to Aggrieved Employees; (iv) filing any required federal
9 and state tax forms and related agency reporting; (v) filing any required reports with the Court; and (vi)
10 all other tasks described in this Settlement, as to which the Parties mutually agree, and/or which the
11 Court orders the Settlement Administrator to perform.

12 32. Defendant and Defendant's Counsel shall have no responsibility for validating or
13 ensuring the accuracy of the Settlement Administrator's work, and shall not be bound by any contract or
14 agreement entered into between the Settlement Administrator and Plaintiff's Counsel, if any. In
15 addition, Defendant and Defendant's Counsel shall not bear any responsibility any for errors or
16 omissions by the Settlement Administrator in administering the Settlement.

17 33. Confidentiality. Plaintiff and Plaintiff's Counsel agree not to disclose or publicize the
18 Settlement, including the fact of the Settlement, its terms or contents, and the negotiations underlying the
19 Settlement, in any manner or form, directly or indirectly, to any person or entity, except potential
20 aggrieved employees and as shall be contractually required to effectuate the terms of the Settlement. For
21 the avoidance of doubt, this section means that Plaintiff and Plaintiff's Counsel agree not to issue press
22 releases; communicate with, or respond to any media or publication entities; publish information in
23 manner or form, whether printed or electronic, on any medium; or otherwise communicate, whether by
24 print, video, recording, or any other medium, with any person or entity concerning the Settlement,
25 including the fact of the Settlement, its terms or contents and the negotiations underlying the Settlement,
26 except as shall be contractually required to effectuate the terms of the Settlement. However, Plaintiff's
27 Counsel may disclose the name of the Parties in this action, the venue/case number, and Settlement
28 details available in the public record, for the limited purpose of allowing Plaintiff's Counsel to prove

adequacy as class counsel in other actions or for purposes of seeking approval of an unrelated settlement.

34. Documents Marked Confidential. All confidential documents and data provided to Plaintiff's Counsel by Defendant and/or Defendant's counsel in connection with the mediation or other settlement negotiations in this matter may be used only with respect to this Settlement, and for no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule. Within thirty (30) calendar days after entry of the Order and Judgment in the Action, Plaintiff's Counsel will return or destroy any such confidential documents and data, and will confirm in writing to Defendant /or Defendant's counsel the disposition of all such documents and data. To the extent Plaintiff's Counsel chooses to return such documents and data pursuant to this Paragraph, the return shall be effectuated by sending the materials to Defendant's counsel, to the attention of Jack S. Sholkoff (jack.sholkoff@ogletree.com).

35. 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.

36. 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 original respective positions as of March 28, 2022.

37. Judgment and Continued Jurisdiction. After entry of the Order and Judgment, the Court will have continuing jurisdiction solely 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.

38. Entire Agreement. This Settlement Agreement constitutes the entirety of the Parties' settlement terms. No other prior or contemporaneous written or oral agreements regarding settlement of the Action may be deemed binding on the Parties.

39. 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 counsel for all

1 Parties.

2 40. Authorization to Enter Into Settlement Agreement. Counsel for all Parties warrant and
3 represent they are expressly authorized by the Parties whom they represent to negotiate this Settlement
4 Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant
5 to this Settlement Agreement to effectuate its terms and to execute any other documents required to
6 effectuate the terms of this Settlement Agreement. The Parties and their counsel will cooperate with
7 each other and use their best efforts to affect the implementation of the Settlement. If the Parties are
8 *unable to reach agreement on the form or content of any document needed to implement the Settlement,*
9 *or on any supplemental provisions that may become necessary to effectuate the terms of this Settlement,*
10 the Parties may seek the assistance of the Court to resolve such disagreement.

11 41. Binding on Successors and Assigns. This Settlement Agreement will be binding upon,
12 and inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

13 42. California Law Governs. All terms of this Settlement Agreement will be governed by
14 and interpreted according to the laws of the State of California.

15 43. Execution and Counterparts. This Settlement Agreement is subject only to the execution
16 of all Parties. However, the Settlement Agreement may be executed in one or more counterparts. All
17 executed counterparts and each of them, including electronic signatures (*e.g.*, DocuSign), facsimiles, and
18 scanned copies of the signature pages, will be deemed to be one and the same instrument.

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

24 45. Attorneys' Fees and Costs. The Parties shall bear their own respective attorneys' fees
25 and costs incurred in and/or arising out of the Action, except as otherwise provided for in this Settlement
26 Agreement and as later approved by the Court.

27 46. Waiver of Certain Appeals. The Parties agree to waive appeals; except, however, that
28 Plaintiff may appeal any reduction to the Attorneys' Fees and Costs below the amount they request from

1 the Court, and either party may appeal any court order that materially alters the Settlement's terms.

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

6 48. Captions. The captions and section numbers in this Settlement Agreement are inserted
7 for the reader's convenience, and in no way define, limit, construe, or describe the scope or intent of the
8 provisions of this Settlement Agreement.

9 49. Waiver. No waiver of any condition or covenant contained in this Settlement
10 Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to
11 imply or constitute a further waiver by such party of the same or any other condition, covenant, right, or
12 remedy.

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

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

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

27 53. Cooperation and Execution of Necessary Documents. All Parties will cooperate in good
28 faith and execute all documents to the extent reasonably necessary to effectuate the terms of this

1 Settlement Agreement. The Parties agree not to object to any Court filings consistent with this
2 Agreement. The Parties further agree that, upon signing, all litigation and proceedings in the Action will
3 be stayed for all purposes other than to effectuate the Settlement.

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

9 55. Denial of Liability. The Parties expressly recognize that the making of this Agreement
10 does not in any way constitute an admission or concession of wrongdoing on the part of Defendant or
11 any of the Released Parties. Nothing in this Settlement, nor any action taken in implementation thereof,
12 nor any statements, discussions, or communications, nor any materials prepared, exchanged, issued, or
13 used during the pendency of the Action, is intended by the Parties to, nor will any of the foregoing
14 constitute, be introduced, be used, or be admissible in any way in any other judicial, arbitral,
15 administrative, investigative, or other forum or proceeding, as evidence of any violation of any federal,
16 state, or local law, statute, ordinance, regulation, rule, or executive order, or any obligation or duty at law
17 or in equity. Notwithstanding the foregoing, this Agreement may be used in any proceeding in the Court
18 that has as its purpose the interpretation, implementation, or enforcement of the Settlement or any orders
19 or judgments of the Court entered into in connection therewith.

20
21 **READ CAREFULLY BEFORE SIGNING**

22 **PLAINTIFF**

23 Dated: 7/25/2022

24 Sereena Villa

DocuSigned by:

Sereena Villa

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Dated:

6/20/22

DEFENDANT



Patrick Marasco

Nation's Foodservice, Inc.

APPROVED AS TO FORM

Dated:

7/25/2022

CAPSTONE LAW APC



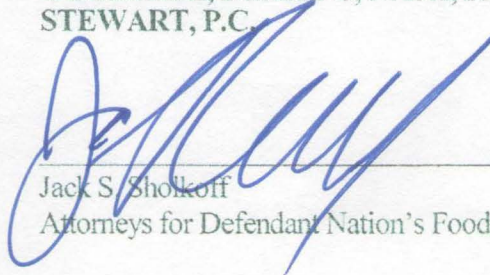
Raul Perez

Attorneys for Plaintiff Sereena Villa

OGLETREE, DEAKINS, NASH, SMOAK &
STEWART, P.C.

Dated:

7/08/22



Jack S. Sholkoff

Attorneys for Defendant Nation's Foodservice, Inc.

<<DATE>>

<<FIRST_NAME>> <<LAST_NAME>>

<<ADDRESS 1>>

<<ADDRESS 2>>

Re: Notice of Settlement & Payment From Sereena Villa v. Nation's Foodservice, Inc., et al., Case No. STK-CV-UOE-2021-0006075 (San Joaquin County Superior Court)

Dear <<FIRST_NAME>> <<LAST_NAME>>:

Enclosed you will find a check made payable to you. This is your payment from the Court-approved settlement of the lawsuit entitled *Villa v. Nation's Foodservice, Inc., et al.*, Case No. STK-CV-UOE-2021-0006075 (San Joaquin County Superior Court) (the "Action").

The Action was filed against Defendant Nation's Foodservice, Inc. and related entities (together, "Nation's") pursuant to the California Private Attorneys General Act of 2004, Cal. Lab. Code § 2698 *et seq.* (called "PAGA"). The Action was brought by a former employee of Nation's on behalf of the State of California and all allegedly "aggrieved employees" who work or have worked for Nation's during the Settlement Period (May 3, 2020 through **Date**) ("Eligible Employees"). You have been identified as one of the Eligible Employees on whose behalf the case was brought.

The Plaintiff in the Action, Sereena Villa, has claimed that Nation's owed civil penalties recoverable under PAGA for alleged violations of the California Labor Code and California Wage Orders that occurred during the Settlement Period. Nation's denies all claims and allegations in the Action, denies that it owes any penalties, and asserts that it has fully complied with all applicable Labor Code and Wage Order provisions. Nevertheless, to avoid further costs and time in defending the Action, Nation's has settled the lawsuit. By settling the Action, Nation's is not admitting that it has done anything wrong.

The Court has not ruled on the merits of the Action but it has approved the settlement of PAGA civil penalties by an Order dated **Approval Date**. The PAGA statute provides that 75% of the PAGA civil penalties approved by the Court are to be paid to the State of California, and 25% are to be paid to the "aggrieved employee" group, which in this case is the group of Eligible Employees.

The settlement resolves all claims, rights, or causes of action for PAGA civil penalties predicated on the claims, allegations, contentions, and representations asserted in the Action based on the facts alleged therein, during the Settlement Period, against Defendant and the Released Parties (as that term is defined by the Settlement) including, but not limited to, claims seeking civil penalties under PAGA that are based on the alleged violations by Defendant of the California Labor Code (including, but not limited to, California Labor Code §§ 201, 202, 203, 204, 210, 221, 223, 224, 225.5, 226, 226.3, 226.7, 256, 510, 512, 516, 551, 552, 558, 1174, 1174.5, 1182.12, 1194, 1194.5, 1197, 1197.1, 1198, 2699, 2699.3, 2699.5, 2802, 6401, and 6403) and the corresponding sections of the IWC Orders that were alleged, or reasonably could have been alleged, based on the facts in the Complaint and Notice to the LWDA (the "Released PAGA Claims"). This settlement excludes all other legal claims.

Aggrieved employees, other than Plaintiff, will not be deemed to have released by virtue of the settlement any individual wage and hour claims based on alleged violations of the Labor Code or of a California Wage Order for which they have a private right of action.

According to Nation's records, you are an allegedly aggrieved employee and are therefore entitled to a share of the settlement based upon the Court-approved allocation. Enclosed with this Notice is your check for your share. The settlement check shall remain valid for one hundred eighty (180) days. Thereafter, all uncashed checks shall be voided, and the funds represented by those uncashed checks shall be tendered to the LWDA.

Please Note: One hundred percent (100%) of the payment you are receiving in connection with the settlement will be considered penalties and may be subject to local, state, or federal tax withholdings and will be reported to the IRS and state tax authorities. You should rely on your own tax advisors as to the tax consequences of your settlement payment. Neither Plaintiff nor Nation's has made any representations or warranties regarding the taxation of your settlement payment. Nothing in this Notice or any other communication shall constitute or be construed or relied upon as tax advice.

You are not a party to this lawsuit, but you and the government will be bound by the settlement in this matter as to civil penalties under PAGA as described above. If you have any questions, you can contact the settlement administrator (whose contact information is at the top of this letter).

Very Truly Yours,

[Administrator]