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

MARTHA LIZAOLA, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

HAWAIIAN HOST CANDIES OF L.A. INC., a
California corporation; and DOES 1 through 100,

Defendants.

Case No. 21STCV20136

*[Assigned for all purposes to Hon.
Carolyn B. Kuhl, Dept. SSC-12]*

**DECLARATION OF SEAN M.
BLAKELY IN SUPPORT OF
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Date: January 12, 2023
Time: 10:30 a.m.
Dept.: SSC-12

Complaint Filed: May 27, 2021
Trial Date: None

1 I, SEAN M. BLAKELY, declare as follows:

2 1. I am a Partner at the Haines Law Group, APC, and counsel for the named Plaintiff
3 Martha Lizaola (“Plaintiff”) and the proposed Settlement Class in the above-captioned matter. I
4 am a member in good standing of the bar of the State of California and am admitted to practice
5 in this Court. I have personal knowledge of the facts stated in this declaration and could testify
6 competently to them if called upon to do so.

7 2. I am a 2008 graduate of Southwestern Law School. I was admitted to the California
8 State Bar in September 2009. From December 2010 to September 2011, I worked as a Law Clerk
9 for Rose, Klein & Marias, a civil litigation firm in Long Beach, California. At Rose, Klein &
10 Marias I assisted trial attorneys in employment and personal injury cases. From September 2011
11 to May 2016, I worked as an associate at the employment law firm of Mahoney Law Group, APC
12 in Long Beach, California. The vast majority of my work at Mahoney Law Group, APC focused
13 on representing employees in wage and hour class actions. My work at Mahoney Law Group,
14 APC also included representing employees in individual claims for wrongful termination,
15 harassment, discrimination, and retaliation. Although non-exhaustive, the types of work I
16 performed at Mahoney Law Group, APC included: conducting client intakes; performing pre-
17 filing research and analysis; drafting complaints; attending court hearings; corresponding with
18 opposing counsel; drafting and responding to written discovery; preparing for and taking and
19 defending depositions; analyzing payroll and timekeeping records and employee handbooks;
20 opposing motions for summary judgment, as well as a variety of other motions such as motions
21 for remand, demurrers and motions to dismiss, motions to strike, motions to compel, motions to
22 quash, and motions for class certification; drafting mediation briefs, attending mediations;
23 drafting long-form settlement agreements; drafting motions for preliminary and final settlement
24 approval; and overseeing the claims process.

25 3. Since November 8, 2016, I have worked at my current firm, Haines Law Group,
26 APC, where, in 2020, I became a Partner. I am currently responsible for managing over forty
27 (40) active wage and hour class and representative actions in both state and federal courts.
28

1 4. The following is a non-exhaustive list of wage and hour class actions in which I
2 have been appointed as class counsel and/or played a significant role in prosecuting the litigation,
3 and which have received final approval: *Santimateo v. Sun Healthcare Group, Inc., et al*, Case
4 No. BC471884, California Superior Court, Los Angeles County, Judge Jane L. Johnson presiding
5 (granted final approval of settlement on behalf of employees at rehabilitation facility involving
6 claims for unpaid wages and meal and rest period violations, and other claims, in which I was
7 approved at an hourly rate of \$325 for work performed in 2012-2013); *Teyuca v. Pacific Alliance*
8 *Medical Center, Inc.*, California Superior Court, Los Angeles County, Judge William F.
9 Highberger presiding (granting final approval of settlement on behalf of healthcare workers for
10 unpaid wages, meal and rest period violations, and other claims, in which I was approved at an
11 hourly rate of \$325 for work performed in 2012-2013); *Arteaga v. Command Center Security,*
12 *Inc.*, Case No. BC480496, California Superior Court, Los Angeles County, Judge John Shepard
13 Wiley, Jr. presiding (granting final approval of settlement on behalf of security guards involving
14 claims for unpaid overtime, meal and rest period violations, and other claims, in which I was
15 approved at an hourly rate of \$425 for work performed in 2012-2015); *Casadine v. Maxim*
16 *Healthcare Services, Inc.*, Case No. CV 12-10078-DMG (CWx), United States District Court,
17 Central District of California, Judge Dolly M. Gee presiding (granting final approval of settlement
18 on behalf of home health care employees involving claims for unpaid wages and other claims, in
19 which I was approved at an hourly rate of \$425 for work performed in 2012-2015); *Guzman v.*
20 *Andrew Lauren Interiors, Inc., et al.*, Case No. BC567757, California Superior Court, Los
21 Angeles County, Judge Elihu M. Berle presiding (granting final approval of settlement on behalf
22 of construction workers involving claims for unpaid wages, meal and rest period violation, and
23 other claims, in which I was approved at an hourly rate of \$425 for work performed in 2014-
24 2016); *Booker v. The Goodyear Tire and Rubber Company*, Case No. BC498399, California
25 Superior Court, Los Angeles County, Judge Amy Hogue presiding (granting final approval of
26 settlement on behalf of tire mechanics involving claims for unpaid wages, meal and rest period
27 violations, and other claims, in which I was approved at an hourly rate of \$425 for work performed
28 in 2013-2015); *Nunez v. CompuCom Systems, Inc.*, Case No. BC618385, California Superior

1 Court, Los Angeles County, Judge John Shepard Wiley, Jr. presiding (granting final approval of
2 settlement on behalf of IT support workers for overtime, meal and period, reimbursement, and
3 related violations, approved at hourly rate of \$475 for work performed in 2016 and 2017); *Galvan*
4 *v. AMVAC Chemical Corporation*, Case No. 30-2014-00716103-CU-OE-CXC, California
5 Superior Court, Orange County, Judge William D. Claster presiding (granting final approval of
6 settlement on behalf of non-exempt employees of a chemical manufacturing company involving
7 claims for unpaid overtime and waiting time penalties); *Razon v. TTM Technologies, Inc., et al.*,
8 Case No. 37-2016-00038326-CU-OE-CTL, California Superior Court, San Diego County, Judge
9 Gregory W. Pollack presiding (granting final approval of settlement involving claims for unpaid
10 overtime wages, wage statement violations, and meal period violations); *Blank v. Coty, Inc., et*
11 *al.*, Case No. BC624850, California Superior Court, Los Angeles County, Judge Williams F.
12 Highberger presiding (granting final approval of settlement involving claims for wage statement
13 violations, meal period violations, and other claims); *Morales v. Caremeridian, LLC, et al.*, Case
14 No. BC593191, California Superior Court, Los Angeles County, Judge William F. Highberger
15 presiding (granting final approval of settlement on behalf of direct support professionals
16 involving claims for unpaid wages, meal and rest period violations, wage statement violations,
17 and other claims); *Aguilar v. Act Fulfillment, Inc.*, Case No. RIC1616643, California Superior
18 Court, Riverside County, Judge Sharon J. Waters presiding (granting final approval of settlement
19 on behalf of non-exempt factory workers involving claims for meal period violations); *Sandoval*
20 *v. AMCOR Flexibles Inc.*, Case No. BC617499, California Superior Court, Los Angeles County,
21 Judge Kenneth R. Freeman presiding (granting final approval of settlement on behalf of
22 manufacturing employees involving claims for unpaid wages, meal period violations, rest period
23 violations, and waiting time penalties); *Le v. GBW Railcar Services, L.L.C.*, Case No.
24 RIC1612209, California Superior Court, Riverside County, Judge Sharon J. Waters presiding
25 (granting final approval of settlement on behalf of non-exempt employees of a freight railcar
26 manufacturer involving claims for unpaid overtime and minimum wages, meal period violations,
27 and rest period violations); *Silva v. ADJ Products, LLC*, Case No. BC618581, California Superior
28 Court, Los Angeles County, Judge William F. Highberger presiding (granting final approval of

1 settlement involving claims for unpaid overtime and minimum wages, rest period violations,
2 wage statement violations, and waiting time penalties); *Lira v. Discus Dental, LLC, et al.*, Case
3 No. CIVDS1620402, California Superior Court, San Bernardino County, Judge David Cohn
4 presiding (granting final approval of settlement on behalf of non-exempt manufacturing
5 employees involving claims for unpaid minimum and overtime wages, meal and rest period
6 violations, and other claims); *Gonzales v. PathPoint*, Case No. BC657147, California Superior
7 Court, Los Angeles County, Judge Carolyn B. Kuhl presiding (granting final approval of
8 settlement on behalf of non-exempt direct support professionals involving claims for meal and
9 rest period violations and other claims); *Duran v. PRADA USA CORP.*, Case No. BC644319,
10 California Superior Court, Los Angeles County, Judge Maren E. Nelson presiding (granting final
11 approval of settlement on behalf of non-exempt commissioned salespersons involving claims for
12 unpaid overtime wages, meal and rest period violations, failure to reimburse for necessary
13 expenditures, and other claims); *Banegas v. UPM, Inc.*, Case No. BC644438, California Superior
14 Court, Los Angeles County, Judge Carolyn B. Kuhl presiding (granting final approval of
15 settlement on behalf of non-exempt manufacturing employees involving claims for unpaid wages,
16 meal and rest period violations, and other claims); *Palafox v. Pacific Line Clean-Up, Inc.*, Case
17 No. 30-2017-00921632-CU-OE-CXC, California Superior Court, Orange County, Judge William
18 D. Claster presiding (granting final approval of settlement on behalf of non-exempt employees
19 involving claims for unpaid overtime wages, meal and rest period violations, and other claims);
20 *Janet Arroyo v. AST Sportswear, Inc., dba Bayside Apparel Manufacturing, Inc.*, Case No. 30-
21 2017-00909663-CU-OE-CXC, California Superior Court, Orange County, Judge Glenda Sanders
22 presiding (granting final approval of settlement on behalf of non-exempt garment employees
23 involving claims for unpaid minimum wages, meal and rest period violations, and other claims);
24 *Carlos Garcia v. Fabrica International, Inc.*, Case No. 30-2017-00949461-CU-OE-CXC,
25 California Superior Court, Orange County, Judge William D. Claster presiding (granting final
26 approval of settlement on behalf of non-exempt manufacturing employees involving claims for
27 unpaid minimum and overtime wages, meal and rest period violations, and statutory penalties);
28 *Jonathan Leon v. Piercey West, Inc.*, Case No. BC656874, California Superior Court, Los

1 Angeles County, Judge Amy D. Hogue presiding (granting final approval of settlement on behalf
2 of non-exempt commissioned salespersons and other employees involving claims for unpaid
3 wages, meal and rest period violations, unreimbursed business expenses, and other claims); and
4 *Matthew Tovar, et al. v. Rentokil North America, Inc.*, Case No. BC676386, California Superior
5 Court, Los Angeles County, Judge Daniel J. Buckley presiding (granting final approval of
6 settlement on behalf of non-exempt employees involving claims for unpaid overtime, meal and
7 rest break violations, and other claims); *Seungmin Samantha Lee v. Infor (US) Inc.*, Case No.
8 CGC-18-566393, California Superior Court, San Francisco County, Judge Ethan P. Schulman
9 presiding (granting final approval of settlement on behalf of sales development representatives
10 involving claims for unpaid overtime, meal and rest period violations, and penalty claims); *Tracy*
11 *Aguilar, et al. v. Aero Port Services, Inc.*, Case No. BC659234, California Superior Court, Los
12 Angeles County, Judge Carolyn B. Kuhl presiding (granting final approval of settlement on behalf
13 of non-exempt employees involving claims for meal and rest period violations, and other claims);
14 *Carlos Perez, et al. v. Moss Bros. Auto Group, Inc., et al.*, Case No. RIC1709905, California
15 Superior Court, Riverside County, Judge Sunshine S. Sykes presiding (granting final approval of
16 settlement on behalf of non-exempt commissioned salespersons involving claims for unpaid
17 wages, meal and rest period violations, other claims); *Julio Alfaro v. Orange Automotive d/b/a*
18 *Kia of Orange*, Case No. 30-2017-00945105-CU-OE-CXC, California Superior Court, Orange
19 County, Judge Randall J. Sherman presiding (granting final approval settlement on behalf of non-
20 exempt commissioned employees involving claims for unpaid wages, meal and rest period
21 violations, unreimbursed business expenses, and penalty claims); *Sepulveda, et al. v. Caliber*
22 *Collision Transport Service LLC, et al.*, Case No. BC669786, California Superior Court, Los
23 Angeles County, Judge Carolyn B. Kuhl presiding (granting final approval of settlement on behalf
24 of non-exempt commissioned employees involving claims for unpaid wages, meal and rest period
25 violations, and penalty claims); *Mariela Cruz v. Traina Dried Fruit, Inc.*, Case No. 9000819,
26 California Superior Court, Stanislaus County, Judge Marie Sovey Silveira presiding (granting
27 final approval of settlement on behalf of non-exempt employees involving claims for unpaid
28 wages, meal and rest period violations, and penalty claims); *Joshua Anthony v. Semper Solaris*

1 *Construction Inc.*, Case No. 37-2018-00035320-CU-OE-CTL, California Superior Court, San
2 Diego County, Judge Gregory W. Pollack presiding (granting final approval of settlement on
3 behalf of non-exempt employees involving claims for overtime wages, wage statement penalties,
4 waiting time penalties, and PAGA civil penalties); *Fabio Gallo v. Coast Composites, LLC*, Case
5 No. 30-2018-01016120-CU-OE-CXC, California Superior Court, Orange County, Judge Glenda
6 Sanders presiding (granting final approval of settlement on behalf of non-exempt employees
7 involving claims for wage statement violations and PAGA civil penalties); *Maria Jessenia*
8 *Gomez, et al. v. CareMeridian, LLC*, Case No. BC655730, California Superior Court, Los
9 Angeles County, Judge William F. Highberger presiding (granting final approval of settlement
10 on behalf of non-exempt nursing employees involving claims for meal and rest period violations,
11 minimum and overtime violations, and penalty claims); *Alfredo Villarreal v. Spenuzza, Inc.*, Case
12 No. RIC1902836, California Superior Court, Riverside County, Judge Sunshine S. Sykes
13 presiding (granting final approval of settlement on behalf of non-exempt manufacturing
14 employees involving claims for unpaid wages, meal and rest period violations, and various
15 penalty claims); *Rosalie A. Wayman v. San Fernando Valley Automotive, LLC, et al.*, Case No.
16 19STCV35904, California Superior Court, Los Angeles County, Judge Maren E. Nelson
17 presiding (granting final approval of settlement on behalf of commission-based employees
18 involving claims for unpaid minimum wages, meal and rest period violations, and penalty claims);
19 *Danielle Bradley Queen, et al. v. Unlimited Quest, Inc.*, Case No. CIVDS1716151, California
20 Superior Court, San Bernardino County, Judge David Cohn presiding (granting final approval of
21 settlement on behalf of non-exempt Direct Support Professionals and Program Supervisors
22 involving claims for rest period violations, unpaid wages, failure to reimburse for necessary
23 business expenditures, wage statement violations, and other penalty claims); *Fabian Santana, et*
24 *al. v. A.M. Cabinets, Inc.*, Case No. 19STCV00803, California Superior Court, Los Angeles
25 County, Judge Daniel J. Buckley presiding (granting final approval of settlement on behalf of
26 non-exempt employees involving claims for unpaid wages, meal and rest period violations, wage
27 statement violations, failure to reimburse for necessary business expenditures, and other penalty
28 claims); *Jonathan Reyes-Delcid v. SNS Transportation Services Inc.*, Case No. BC683026, Judge

1 Daniel J. Buckley presiding (granting final approval of settlement on behalf of non-exempt
2 employees involving claims for piece-rate violations, unpaid wages, meal and rest period
3 violations, failure to reimburse for necessary business expenditures, and other penalty claims);
4 *Damien Dana Council v. Professional Courier & Newspaper Distribution, et al.*, Case No.
5 BC715054, California Superior Court, Los Angeles County, Judge Amy D. Hogue presiding
6 (granting final approval of settlement on behalf of non-exempt employees involving claims for
7 unpaid wages, meal and rest period violations, and various penalty claims); and *Jose Jimenez v.*
8 *Fenceworks, Inc.*, Case No. 30-2018-01034150-CU-OE-CXC, California Superior Court, Orange
9 County, Judge William D. Claster presiding (granting final approval of settlement on behalf of
10 non-exempt employees involving claims for piece-rate violations, unpaid wages, meal period
11 violations, and various penalty claims).

12 5. I have also moved to certify and have received an order certifying a class action in
13 *Ontiveros v. Safelite Fulfillment, Inc., et al.*, Case No. CV 15-7118-DMG (RAOx), United States
14 District Court, Central District of California, Honorable Dolly M. Gee presiding (certifying six
15 classes of employees for rest period violations, wage statement violations, meal period violations,
16 and overtime and double-time violations); and *Vazquez v. Kraft Heinz Foods Company*, Case No.
17 16-CV-02749-WQH (BLM), United States District Court, Southern District of California,
18 Honorable William Q. Hayes, presiding (certifying unpaid wages classes, meal period classes,
19 wage statement class, and waiting time penalty class).

20 6. In 2018, 2019, 2020, 2021, and 2022, Thomson Reuters recognized me as a Top
21 Young Attorney in Southern California in the annual Rising Star Edition of Super Lawyers. This
22 is an honor awarded to no more than two-and-a-half percent (2.5%) of attorneys under the age of
23 forty in Southern California each year.

24 7. The proposed Stipulation of Settlement (“Settlement” or “Settlement Agreement”) is
25 attached hereto as **Exhibit 1**. The proposed Class Notice and Notice of Estimated Settlement
26 Award are attached to the Settlement as **Exhibits A and B**, respectively.

27 8. Founded in 1927, Defendant Hawaiian Host Candies of LA LLC, formerly known
28 as Hawaiian Host Candies of L.A., Inc. (“Hawaiian Host” or “Defendant”) is the world’s largest

1 manufacturer of chocolate covered macadamia nuts. During a portion of the Class Period,
2 Hawaiian Host manufactured its chocolates in Gardena, California. However, in June 2020,
3 Hawaiian Host permanently closed its Gardena, California location, terminated the majority of its
4 California-based employees, and relocated to Hawaii. As part of its closing, Hawaiian Host
5 offered its employees severance and release agreements. Plaintiff worked for Hawaiian Host as a
6 non-exempt “Packer” from August 1986 to May 22, 2020.

7 9. On May 27, 2021, Plaintiff filed the instant action against Hawaiian Host alleging
8 claims for failure to pay minimum and overtime wages, failure to authorize and permit rest
9 periods, failure to provide meal periods, failure to issue accurate itemized wage statements, failure
10 to timely pay all final wages, and unfair competition. On August 13, 2021, Plaintiff filed her First
11 Amended Class and Representative Action Complaint to add a cause of action for PAGA civil
12 penalties. Attached hereto as **Exhibit 2** is a true and correct copy of Plaintiff’s correspondence to
13 the Labor & Workforce Development Agency (“LWDA”). As part of the Settlement, the Parties
14 are stipulating to the filing of Plaintiff’s Second Amended Class and Representative Action
15 Complaint (“SAC”) which adds causes of action for violations of the California WARN Act,
16 WARN Act, and FLSA. The Parties are submitting a Joint Stipulation For Leave to File Second
17 Amended Class and Representative Action Complaint concurrently with this Motion.

18 10. In connection with mediation, the Parties engaged in extensive informal discovery.
19 In response to Plaintiff’s informal discovery requests, Hawaiian Host provided Plaintiff with raw
20 punch data for a sampling of Settlement Class members, a list of putative class members with
21 their hire and termination dates, a spreadsheet containing all meal period premiums paid,
22 Hawaiian Host’s written wage and hour policies, and other information and documents. Plaintiff
23 conducted a comprehensive analysis and extrapolation of the data to calculate Hawaiian Host’s
24 potential exposure for each of Plaintiff’s claims. This discovery allowed the Parties to assess the
25 merits and potential value of Plaintiff’s claims and Hawaiian Host’s potential defenses.

26 11. The Parties attended a full-day mediation on May 19, 2022 with Lou Marlin, Esq.,
27 an experienced wage and hour class action mediator. During mediation, the Parties vigorously
28 debated their legal positions, the likelihood of certification of Plaintiff’s claims, and the legal

1 bases for the claims and defenses. With the help of Mr. Marlin, the Parties negotiated and reached
2 a settlement in principle, eventually resulting in the Settlement now before the Court.

3 12. The monetary terms of the Settlement are summarized below:

4	• Maximum Settlement Amount (“MSA”):	\$140,000.00
5	• Minus Court-approved attorney fees (one-third):	\$46,666.66
6	• Minus Court-approved verified costs (up to):	\$25,000.00
7	• Minus Court-approved Enhancement Payment:	\$7,500.00
8	• Minus Amount Set Aside as PAGA penalties:	\$10,000.00
9	• <u>Minus estimated settlement administration costs:</u>	<u>\$5,500.00</u>
	Net Settlement Amount (“NSA”):	\$45,333.34
	PLUS 25% “PAGA Amount” to Settlement Class:	\$2,500.00
	Total Amount Paid to Settlement Class:	\$47,833.34

10 13. According to Hawaiian Host, there are approximately 38 Settlement Class
11 members. Thus, the average Individual Settlement Payment from the NSA is estimated to be
12 approximately \$1,192.98. Further, according to Hawaiian Host’s records, there are approximately
13 7 employees who worked during the PAGA Period. Therefore, the average PAGA share is
14 estimated to be approximately \$357.14.

15 14. As described in the accompanying Motion for Preliminary Approval of Class
16 Action Settlement, Plaintiff contends that Hawaiian Host underpaid Settlement Class members
17 due to its allegedly unlawful rounding policies/practices. Based on Plaintiff’s review of employee
18 timekeeping records, Plaintiff contends that Hawaiian Host’s rounding practice resulted in
19 approximately 1,289 net hours of unpaid wages. Because employees generally worked shifts of
20 at least eight (8) hours, Plaintiff contends the underpaid wages should be paid at an overtime rate
21 of pay. Thus, and based upon the average overtime rate of pay of \$26.69 during the Class Period,
22 Plaintiff estimates that Hawaiian Host’s maximum exposure for this claim is approximately
23 \$34,403 (1,289 hrs. * \$26.69). However, Hawaiian Host argues that its rounding
24 policies/practices were lawful, since it was both neutral on its face and resulted, over time, in
25 employees being paid for all hours worked. Hawaiian Host also contends that multiple Courts of
26 Appeal have found rounding mechanisms to be lawful under similar circumstances. Hawaiian
27 Host further argues that just because an employee is clocked in does not mean they are *working*.
28 For example, much of the alleged unpaid time was pre-shift (i.e., employees clocked in before the

1 scheduled start of the shift), and Hawaiian Host argues employees do not begin performing work
2 before the start of their shift, and instead engage in personal activities like reading or talking with
3 co-workers before their shift. Moreover, Hawaiian Host asserts the amount of unpaid time per
4 shift is *de minimis* and thus non-compensable. Hawaiian Host also contends this claim was not
5 certifiable, since its rounding policy is facially neutral and some employees were *over* paid due
6 to rounding, and individualized inquiries would be necessary as to whether employees were in
7 fact underpaid or overpaid for each workday in question (including whether they were actually
8 working when they were clocked in), resulting in an unmanageable series of mini-trials. Based
9 on these defenses, Plaintiff discounted the maximum exposure by 20% to account for the risk of
10 non-certification, and an additional 20% to account for Hawaiian Host’s defenses on the merits,
11 to arrive at an estimated exposure of approximately \$22,019.

12 15. Plaintiff also alleges that Hawaiian Host failed to provide her and other Settlement
13 Class members with legally-compliant meal periods. Specifically, throughout the Class Period,
14 Plaintiff alleges that first meal periods were at times not provided until after the completion of
15 five hours of work due to work demands. Plaintiff further contends that meal periods were at
16 times short (i.e., less than 30 minutes). Plaintiff also alleges that she and other employees
17 generally were not provided second meal periods on shifts over 10.0 hours. Based on Plaintiff’s
18 review and extrapolation of employee timekeeping data, Plaintiff estimated approximately 761
19 shifts reflected a non-compliant first meal period (late, short, or missed first meal period(s)).
20 Additionally, there were approximately 1,191 non-complaint second meal periods on shifts in
21 excess of 10 hours. Therefore, Plaintiff estimated there were a total of approximately 1,952 meal
22 period violations during the Class Period. Further, the data produced by Hawaiian Host reflected
23 an average hourly rate of approximately \$17.79 for Settlement Class members during the Class
24 Period. Plaintiff therefore estimated a maximum total exposure for this claim at approximately
25 \$34,726 (1,952 non-compliant meal periods * \$17.79 average premium). In response, Hawaiian
26 Host contends that it has always maintained compliant written meal period policies throughout
27 the Class Period, and provided all legally-compliant meal periods in line with those policies.
28 Hawaiian Host also argues that under *Brinker*, it was only required to “provide” the opportunity

1 to take meal periods, not “ensure” meal periods are taken. Further, Hawaiian Host argues that any
2 short, missed, or late first meal periods were the result of lawful employee waiver or choice,
3 thereby precluding liability. Moreover, with respect to second meal periods, Hawaiian Host
4 argues that second meal periods may lawfully be waived on shifts of more than 10.0 hours but
5 less than 12.0 hours per Labor Code § 512, and that employees did so. Lastly, Hawaiian Host
6 argues individualized inquiries would be needed to determine why each meal period was taken
7 late or short or missed by each employee, and whether there was a valid waiver, making
8 certification of the meal period claim unlikely. In light of these defenses, Plaintiff discounted the
9 maximum amount by 20% for risk of non-certification and an additional 20% for risk of being
10 unsuccessful on the merits or failure to recover the full amount sought, to arrive at an estimated
11 realistic exposure of approximately \$22,225.

12 16. Plaintiff further alleges that Hawaiian Host failed to authorize and permit off-duty
13 third rest periods for shifts in excess of 10.0 hours. Based on Plaintiff’s analysis of employee
14 timekeeping records, there were approximately 1,191 shifts over 10 hours in which Plaintiff
15 alleges Hawaiian Host failed to authorize a third rest period during the Class Period. Thus,
16 Plaintiff estimated the maximum potential exposure for this claim at approximately \$21,188
17 (1,191 rest period violations * \$17.79 average premium). Hawaiian Host counters that it has
18 maintained compliant written rest period policies and has always authorized and permitted
19 employees a 10-minute rest period for each four (4) hours worked, or major fraction thereof, as
20 required under the Wage Order, and that any failure to take rest periods was as a result of
21 employee choice, rather than any Hawaiian Host policy and/or practice. Hawaiian Host further
22 contends that Plaintiff’s rest period claim is not amenable to class treatment as individualized
23 inquiries would be required to determine which employees failed to take rest periods, and the
24 reasons why a rest period was missed or otherwise non-compliant. These manageability concerns
25 are especially present with respect to rest period claims, Hawaiian Host argues, given that rest
26 periods are not recorded. In light of these defenses, Plaintiff discounted the maximum amount by
27 20% for risk of non-certification and an additional 20% for risk of being unsuccessful on the
28 merits or failure to recover the full amount sought, to arrive at an estimated realistic exposure of

1 approximately \$13,561.

2 17. Plaintiff also alleges that Hawaiian Host underpaid Settlement Class members’
3 overtime wages due to its failure to include all remuneration in the regular rate of pay for overtime
4 purposes. Specifically, Plaintiff alleges that Hawaiian Host paid Settlement Class members end-
5 of-the-year “bonuses” with regularity during the Class Period but did not include this payment
6 into Settlement Class members’ regular rate of pay for overtime purposes, thereby miscalculating
7 and underpaying Settlement Class members’ overtime wages. In response, Hawaiian Host
8 contends that the additional payments at the end of the year are discretionary holiday bonuses and
9 thus do not need to be included in the regular rate of pay for overtime purposes. Hawaiian Host
10 further contends that the discretionary-holiday bonuses were not tied to employees’ hours worked
11 and therefore do not need to be included in the regular rate. As evidence that the bonuses were
12 discretionary, Hawaiian Host pointed to examples in its records where employees did not receive
13 a bonus. Based on this defense and the fact that holiday bonuses do not need to be included in
14 the regular rate of pay under 29 C.F.R. § 778.200(a)(1), Plaintiff believes that Hawaiian Host was
15 correctly calculating the regular rate and Plaintiff did not believe there was a realistic chance of
16 recovery for this claim. Accordingly, Plaintiff did not assign value to this claim.

17 18. Plaintiff also contends that Hawaiian Host terminated her and other Settlement
18 Class members as part of a mass lay off but failed to provide her and other Settlement Class
19 members with written notice of at least 60 days in advance of their termination as required by the
20 WARN Act. Based on data produced by Hawaiian Host, there are approximately 7 Settlement
21 Class members who were terminated by Hawaiian Host within a 30-day period from May 2020
22 to June 2020 and who did not sign general releases. Accordingly, Plaintiff estimated an average
23 California WARN Act Penalty of approximately \$8,539 (\$17.79/hr * 8 hrs * 60 days), and
24 calculated Hawaiian Host’s maximum WARN Act exposure at approximately \$59,773 (7 former
25 employees * \$8,539 WARN Act penalty). Hawaiian Host argues it is not liable under the WARN
26 Act because it did not lay off the minimum number of employees within a 30-day window
27 required in order to trigger liability under the WARN Act. Additionally, Hawaiian Host argues
28 that the mass lay-off was caused by COVID-19 and, under Executive Order N-31-20, it was only

1 required to give as much notice as is “practicable.” Lastly, Hawaiian Host argues that even if the
2 Court were to find that Hawaiian Host violated the WARN Act, Plaintiff’s claim cannot meet the
3 numerosity requirement under Cal. Code Civ. Proc. § 382, as all but seven employees who were
4 terminated between May 2020 and June 2020 accepted severance payments and signed general
5 releases. Based on these defenses, Plaintiff discounted the maximum exposure by 40% for risk of
6 non-certification, and by an additional 40% for risks on the merits, for an estimated realistic
7 exposure of approximately \$21,519.

8 19. As a result of these alleged wage and hour violations, Plaintiff asserts that
9 Hawaiian Host failed to comply with its wage statement obligations, in violation of Labor Code
10 § 226. Plaintiff’s analysis reflected that there were approximately 150 pay periods worked by
11 Settlement Class members, and 7 unique employees, within the one-year liability window under
12 Labor Code § 226. In calculating Hawaiian Host’s exposure, Plaintiff assumed she could recover
13 the “initial” \$50 penalty under Section 226(e) for each violation, for a total of \$7,500 (150 pay
14 periods * \$50 “initial” penalty) in potential penalties. Hawaiian Host contends that any alleged
15 wage statement violations could not be shown to be “knowing and intentional,” particularly given
16 its good-faith defenses; that Plaintiff cannot show she or other employees “suffer[ed] injury” due
17 to alleged wage statement violations, as required by Lab. Code § 226(e); and that the wage
18 statements always accurately reflected amounts *paid* to employees. Given Hawaiian Host’s
19 arguments that no violations occurred, that Settlement Class members suffered no “injury,” that
20 any violations were not “knowing and intentional,” as well as risks associated with Plaintiff’s
21 underlying claims discussed above, Plaintiff discounted the maximum exposure by 20% for risk
22 of non-certification, and by an additional 40% for risks on the merits, for an estimated realistic
23 exposure of approximately \$3,600.

24 20. As a further result of Hawaiian Host’s failure to pay all meal and rest period
25 premiums, Plaintiff alleges that Hawaiian Host is liable for waiting time penalties. Based on data
26 produced by Hawaiian Host, there are approximately 27 Settlement Class members who separated
27 their employment from Hawaiian Host at any time from May 27, 2018, through August 17, 2022,
28 and are therefore eligible for waiting time penalties. Plaintiff estimated an average waiting time

penalty of approximately \$4,269 ($\$17.79/\text{hr} * 8 \text{ hrs} * 30 \text{ days}$), and calculated Hawaiian Host's maximum waiting time penalty exposure at approximately \$115,263 (27 former employees * \$4,269 average waiting time penalty). Hawaiian Host asserts it has strong, good-faith defenses to Plaintiff's underlying claims and thus, even if Plaintiff were able to recover on her underlying claims, she would not be able to recover waiting time penalties. Moreover, Plaintiff would need to overcome Hawaiian Host's defenses, both as to class certification and as to the merits, to her underlying claims. Based on these defenses, Plaintiff discounted Hawaiian Host's maximum exposure by 20% for risk of non-certification and by an additional 30% for risk of being unsuccessful on the merits or failure to recover the full amount sought, to arrive at an estimated total of approximately \$64,548.

21. Plaintiff seeks civil penalties under the PAGA, based on the aforementioned claims. Plaintiff estimated a maximum PAGA exposure of \$15,000 (150 pay periods during PAGA Period * \$100 "initial" violation rate). Hawaiian Host contends the PAGA claim fails because the underlying claims fail. Hawaiian Host further maintains that given its good-faith defenses, the Court would substantially reduce any PAGA penalties awarded. Thus, Plaintiff discounted the maximum figure by 15% for risk of losing on the merits and/or not recovering a PAGA penalty for each and every pay period, and by an additional 20% for risk of the Court reducing penalties, for an estimated exposure of approximately \$10,200.

22. Using these figures, Plaintiff estimated the realistic total recovery for the Settlement Class would be approximately \$157,672. Thus, the proposed \$140,000.00 settlement represents approximately 88.8% of the reasonably forecasted recovery.

23. At final approval, my office will request an attorneys' fees award of one-third of the MSA, and up to \$25,000 in verified costs. My office has incurred substantial attorneys' fees in, among other things, conducting pre-filing investigation; analyzing Plaintiff's claims; legal research; analyzing Plaintiff's claims; analyzing employee records and other data and documents; preparing for and attending mediation; negotiating the Settlement; preparing this Motion; and otherwise prosecuting this case. I also anticipate that my office will incur additional fees in appearing at the hearing on this Motion, supervising the Notice process, and preparing the Final

1 Approval motion and appearing at the Final Approval Hearing.

2 24. Although the Parties engaged in significant informal discovery in advance of
3 mediation, the Parties still had substantial discovery to complete in formal litigation had the
4 matter not settled, which would have required the expenditure of substantial time and resources
5 by all Parties. Even if Plaintiff obtained class certification, the Parties would incur considerable
6 attorneys' fees and costs through a possible decertification motion, trial, and possible appeal. The
7 Settlement avoids those risks and the accompanying delay and expense, and thus this factor
8 supports preliminary approval.

9 25. Plaintiff will also request an enhancement payment of \$7,500.00 at final approval.
10 As will be fully briefed at final approval, Plaintiff's requested enhancement payment is in
11 recognition of the time and effort she expended on behalf of the Settlement Class, including
12 providing factual information and documents to counsel, discussing the claims and theories at
13 issue in the litigation, and otherwise actively participating in the prosecution of her claims.

14 26. I am not aware of any conflict between myself or any member of my firm, Haines
15 Law Group, APC, and any member of the Settlement Class. Nor am I aware of any conflict
16 between Plaintiff and any member of the Settlement Class.

17 I declare under penalty of perjury under the laws of the State of California that the
18 foregoing is true and correct. Executed on November 30, 2022, at El Segundo, California.

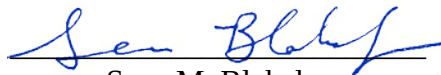
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EXHIBIT 1

STIPULATION OF SETTLEMENT

This Stipulation of Settlement (“Settlement Agreement”) is reached by and between Plaintiff Martha Lizaola (“Plaintiff” or “Class Representative”), individually and on behalf of all members of the Settlement Class (defined below), on one hand, and Hawaiian Host Candies of LA LLC, formerly known as Hawaiian Host Candies of L.A. Inc. (“Defendant”), on the other hand. Plaintiff and Defendant are referred to herein collectively as the “Parties.” Plaintiff and the Settlement Class are represented by Paul K. Haines, Sean M. Blakely and Alexandra R. McIntosh of Haines Law Group, APC (collectively, “Class Counsel”). Defendant is represented by Holger Besch of Seyfarth Shaw LLP.

On May 27, 2021, Plaintiff filed a class action complaint against Defendant in Los Angeles County Superior Court titled *Martha Lizaola v. Hawaiian Host Candies of L.A. Inc.*, Los Angeles Superior Court Case No. 21STCV20136 (the “Action”). On August 13, 2021, Plaintiff filed a First Amended Class and Representative Action Complaint in the Action, alleging that Defendant: (i) failed to pay all minimum wages; (ii) failed to pay all overtime wages; (iii) failed to provide all lawful meal periods; (iv) failed to provide all lawful rest periods; (v) failed to issue accurate, itemized wage statements; (vi) failed to pay all final wages due upon separation of employment; (vii) failed to comply with unfair competition laws; and (viii) is liable for civil penalties under the Private Attorneys General Act (Labor Code § 2698, *et seq.*) (“PAGA”). As part of the Settlement, the Parties will stipulate to the filing of a Second Amended Class and Representative Action Complaint (“SAC”) which will add causes of action under the California WARN Act, Labor Code § 1400, *et seq.*, the federal WARN Act, 29 U.S.C. § 2100, *et seq.*, and violations of the Fair Labor Standards Act (“FLSA”), and add certain factual allegations.

Given the uncertainty of litigation, Plaintiff and Defendant wish to settle both individually and on behalf of the Settlement Class. Accordingly, Plaintiff and Defendant agree as follows:

1. **Settlement Class and PAGA Aggrieved Employees Defined.** For the purposes of this Settlement Agreement only, Plaintiff and Defendant stipulate to the certification of the following Settlement Class:

All current and former non-exempt employees who worked for Defendant in California from May 27, 2017 until August 17, 2022 (the “Class Period”), and who did not sign a “Separation Agreement and General Release.”

The Parties agree that certification for purposes of settlement is not an admission that class certification is proper under Section 382 of the Code of Civil Procedure. If for any reason this Settlement Agreement is not approved or is terminated, in whole or in part, this conditional agreement to class certification will be inadmissible and will have no effect in this matter or in any claims brought on the same or similar allegations, and the Parties shall revert to the respective positions they held prior to entering into the Settlement Agreement.

Additionally, the “PAGA Aggrieved Employees” shall be defined as:

All current and former non-exempt employees who worked for Defendant in California from May 27, 2020 until August 17, 2022 (the “PAGA Period”).

2. **Release by Settlement Class Members and Plaintiff.** As of the Effective Date (as defined below), and upon Defendant's complete funding of the Maximum Settlement Amount, Plaintiff and every member of the Settlement Class (except those who submit a timely and valid Request for Exclusion) will release and discharge Defendant and any of its parents, owners, subsidiaries, affiliates, predecessors or successors, and all agents, employees (current and former), officers, directors, insurers and attorneys ("Released Parties"), as follows:

- A. Release by Settlement Class Members. Settlement Class members who do not opt out will release and discharge the Released Parties from liability for all claims that were pled in the operative SAC, or which could have been pled in the operative SAC, based on the factual allegations therein, that arose during the Class Period, including but not limited to claims regarding meal periods, rest periods, calculation and payment of meal and rest period premiums, unpaid wages and overtime, calculation of unpaid wages and overtime (including regular rate), minimum wages, pre and post-shift work, timely payment of wages and final wages, wage statements, recordkeeping, waiting time penalties, improper notice under the federal Worker Adjustment and Retraining Notification Act ("WARN") and/or California WARN Act, and violations of California's Unfair Competition Law (Cal. Bus. & Prof. Code §§ 17200, et seq.) whether sought under statute, tort, contract or as an unfair business practice, and the Fair Labor Standards Act, 29 U.S.C. Section 201 et seq. or the ("Released Claims"). This release shall run from May 27, 2017 to August 17, 2022.
- B. Released PAGA Claims. Plaintiff and all PAGA Aggrieved Employees will release and discharge the Released Parties from any and all claims under the PAGA premised on the facts and/or allegations in Plaintiff's letter to the LWDA dated May 27, 2021 that arose during the PAGA Period (the "PAGA Release"). It is understood and acknowledged that PAGA Aggrieved Employees receiving a share of the PAGA Amount as set forth in Paragraph 4.B.1 will be issued a check for their share of the PAGA Amount and will not have the opportunity to opt out of, or object to, the PAGA Release as set forth in this Paragraph. The PAGA Release is binding upon Plaintiff and all PAGA Aggrieved Employees upon Court approval and payment of the PAGA Amount as set forth in Paragraph 4.B.1. Further, the PAGA Aggrieved Employees are bound by the PAGA Release regardless of whether they cash their PAGA check.
- C. In light of Plaintiff's Class Representative Enhancement Payment, Plaintiff has agreed to release, as an individual and in addition to the Released Claims described above, all claims, whether known or unknown, under federal law or state law against the Released Parties. Plaintiff understands that this release includes unknown claims and that Plaintiff is, as a result, waiving all rights and benefits afforded by Section 1542 of the California Civil Code, which provides:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of 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.

Nothing contained herein shall constitute a release of any rights or claims that cannot be waived as a matter of law (including but not limited to claims arising under workers' compensation laws). Nor shall anything contained herein be construed to exclude the filing of an administrative charge or complaint with the Equal Employment Opportunity Commission or National Labor Relations Board, or participation in an administrative investigation or proceeding.

3. **Maximum Settlement Amount.** As consideration, Defendant agrees to pay a non-reversionary "Maximum Settlement Amount" of One Hundred Forty Thousand Dollars and Zero Cents (\$140,000.00) in full and complete settlement of the Action, as follows:

- A. The Parties have agreed to engage Phoenix Settlement Administrators as the "Settlement Administrator" to administer this Settlement.
- B. The Maximum Settlement Amount shall be deposited with the Settlement Administrator within thirty (30) calendar days of the Effective Date (which, for this purpose, shall be defined as the later of (1) 60 days after the Court enters an Order granting Final Approval of the Settlement Agreement or, (2) solely in the event that there are any objections to the Settlement Agreement (the filing of an objection being a prerequisite to the filing of an appeal), the later of: (i) the last date on which any appeal might be filed or (ii) the successful resolution of any appeal(s) – including expiration of any time to seek reconsideration or further review.
- C. This is a non-reversionary settlement. The Maximum Settlement Amount includes:
 - (1) All payments (including interest) to the Settlement Class members;
 - (2) All costs of the Settlement Administrator which are anticipated to be no greater than Seven Thousand Dollars and Zero Cents (\$7,000.00);
 - (3) Up to Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) for Plaintiff's Class Representative Enhancement Payment in recognition for Plaintiff's contributions to the Action and Plaintiff's service to the Settlement Class. In the event that the Court reduces or does not approve the requested Class Representative Enhancement Payment, Plaintiff shall not have the right to revoke the Settlement Agreement for that reason, and the Settlement will remain binding;
 - (4) Up to one-third of the Maximum Settlement Amount in Class Counsel's attorneys' fees (currently estimated at \$46,666.66), plus actual costs and expenses incurred by Class Counsel related to the Action as supported by declaration, which are currently estimated to be no greater than Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00). In the event that the Court reduces or does not approve the requested Class Counsel attorneys' fees or costs, Class Counsel shall not have the right to revoke the Settlement

Agreement based on that reason, and the Settlement will remain binding; and

- (5) Ten Thousand Dollars and Zero Cents (\$10,000.00) of the Maximum Settlement Amount has been set aside by the Parties as PAGA civil penalties. Per Labor Code § 2699(i), 75% of such penalties, or Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00), will be payable to the California Labor & Workforce Development Agency (“LWDA”), and the remaining 25%, or Two Thousand Five Hundred Dollars and Zero Cents (\$2,500.00), will be payable to the Settlement Class members as the “PAGA Amount,” as described below.
 - D. Any reduction by the Court of these requests will revert to the Net Settlement Amount for distribution to the Settlement Class members who do not opt-out.
 - E. **Escalator Clause.** Defendant represents that there were an estimated 3,085 total workweeks worked by the Settlement Class members during the Class Period. If the number of workweeks worked during the Class Period exceeds this figure by more than 20% (i.e., if there are 3,702 or more total workweeks), Defendant shall increase the Maximum Settlement Amount on a proportional basis above the 20% difference (e.g., if there was a 22% increase in the number of total workweeks, Defendant shall increase the Maximum Settlement Amount by 2%).
 - F. **Employer Payroll Taxes.** The Maximum Settlement Amount does not include Employer Payroll Taxes, which shall be paid by Defendant separate and apart, and in addition to, the Maximum Settlement Amount.
 - G. **Right of Defendant to Rescind.** Defendant has the right to void the settlement if more than 10% of Settlement Class members opt-out of the settlement.
4. **Payments to the Settlement Class.** Settlement Class members are not required to submit a claim form to receive a payment (“Individual Settlement Payment”) from the Settlement. Individual Settlement Payments will be determined and paid as follows:
- A. The Settlement Administrator shall first deduct from the Maximum Settlement Amount the amounts approved by the Court for Class Counsel’s attorneys’ fees, Class Counsel’s costs and expenses, the Class Representative Enhancement Payment, the Settlement Administrator’s fees and expenses for administration, and the amount designated as PAGA civil penalties. The remaining amount shall be known as the “Net Settlement Amount.”
 - B. Payments from the Net Settlement Amount. From the Net Settlement Amount, the Settlement Administrator will calculate each Settlement Class member’s Individual Settlement Payment based on the following formula:
 - i. Wage Statement Amount: 5% of the Net Settlement Amount shall be designated as the “Wage Statement Amount.” Each participating Settlement Class member who was employed by Defendant at any time between May 27,

2020 to August 17, 2022, shall receive a portion of the Wage Statement Amount proportionate to the number of workweeks that he or she worked during the aforementioned time period.

- ii. Waiting Time Amount: 5% of the Net Settlement Amount shall be designated as the “Waiting Time Amount.” The Waiting Time Amount shall be distributed in equal, pro-rata shares to each participating Settlement Class member who separated their employment from Defendant at any time after May 27, 2018.
 - iii. The remainder of the Net Settlement Amount will be distributed to each participating Settlement Class member based on their proportionate number of workweeks worked during the Class Period, by multiplying the remaining Net Settlement Amount by a fraction, the numerator of which is the Settlement Class member’s total workweeks worked during the Class Period, and the denominator of which is the total number of workweeks worked by all participating Settlement Class members during the Class Period.
- B.1. Payments from the PAGA Amount. In addition to the Net Settlement Amount, 25% of the amount set aside as PAGA penalties (i.e., \$2,500.00) has been set aside as the “PAGA Amount,” as mentioned above. The PAGA Amount shall be paid to all PAGA Aggrieved Employees (regardless of whether they opt out of the Settlement Class) who worked for Defendant at any time during the PAGA Period, based on their proportional number of workweeks worked for Defendant in California during the PAGA Period. Specifically, each Settlement Class member’s payment from the PAGA Amount will be calculated by multiplying the PAGA Amount by a fraction, the numerator of which is the PAGA Aggrieved Employee’s number of workweeks worked during the PAGA Period, and the denominator of which is the total workweeks worked by all PAGA Aggrieved Employees during the PAGA Period.
- C. Within ten (10) calendar days following the deposit of the Maximum Settlement Amount with the Settlement Administrator by Defendant, the Settlement Administrator will calculate Individual Settlement Payment amounts, as well as the amount of the employer’s share of payroll taxes due on the wage portion of the Individual Settlement Payments, and provide the same to counsel for review and approval. Within seven (7) calendar days of approval by counsel, the Settlement Administrator will prepare and mail Individual Settlement Payments, less applicable taxes and withholdings, to participating Settlement Class members. The Settlement Administrator shall simultaneously pay the withholdings to the applicable authorities with the necessary reports, submitting copies to Defendant’s counsel.
- D. Each Individual Settlement Payment shall be allocated as 25% wages and 75% penalties and interest. The Settlement Administrator will be responsible for issuing to participating Settlement Class members an IRS Form W-2 (for amounts paid as wages) and an IRS Form 1099 (for amounts paid as penalties and interest). Any payment from the PAGA Amount shall be designated as 100% penalties. The

Settlement Administrator shall be responsible for calculating and withholding all employee-share employment taxes and other legally required withholdings from each Individual Settlement Payment.

- E. Defendant shall fully discharge its obligations to the Settlement Class members through the mailing of an Individual Settlement Payment, regardless of whether such checks are actually received and/or negotiated by the recipients. Each member of the Settlement Class who receives an Individual Settlement Payment must cash that check within 180 days from the date the Settlement Administrator mails it. Any check that is not negotiated within 180 days of mailing to a Settlement Class member will be directed to the State of California's Unclaimed Property Fund, in the name of the Settlement Class members failing to cash their checks, such that there will be no unclaimed residue from this settlement.
- F. Neither Plaintiff nor Defendant shall bear any liability for lost or stolen checks, forged signatures on checks, or unauthorized negotiation of checks. Unless responsible by its own acts of omission or commission, the same is true for the Settlement Administrator.

5. **Attorneys' Fees and Costs.** Defendant will not object to Class Counsel's request for a total award of attorneys' fees of up to one-third of the Maximum Settlement Amount, which is currently estimated to be Forty-Six Thousand Six Hundred Sixty-Six Dollars and Sixty-Six Cents (\$46,666.66). Additionally, Class Counsel will request an award of actual costs and expenses as supported by declaration, in an amount not to exceed Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00) from the Maximum Settlement Amount. These amounts will cover any and all work performed and any and all costs incurred in connection with this litigation, including without limitation: all work performed and all costs incurred to date; and all work to be performed and costs to be incurred in connection with obtaining the Court's approval of this Settlement Agreement, including any objections raised and any appeals necessitated by those objections. Class Counsel will be issued an IRS Form 1099 by the Settlement Administrator for the fee award approved by the Court.

6. **Class Representative Enhancement Payment.** Defendant will not object to a request for Class Representative Enhancement Payment of Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) for Plaintiff's time and risk in prosecuting this case and Plaintiff's service to the Settlement Class. This award will be in addition to Plaintiff's Individual Settlement Payment as a Settlement Class member, and shall be reported on an IRS Form 1099 issued by the Settlement Administrator.

7. **Settlement Administrator.** Defendant will not object to the appointment of Phoenix Settlement Administrators as Settlement Administrator. Defendant will not object to Plaintiff seeking approval to pay up to Seven Thousand Dollars and Zero Cents (\$7,000.00) for the administration services from the Maximum Settlement Amount. The Settlement Administrator shall be responsible for depositing into an account and holding the various payments from Defendant comprising the Maximum Settlement Amount, sending Notice Packets in English and Spanish to the Settlement Class members, calculating Individual Settlement Payments and preparing all checks and mailings, and other duties as described in this Settlement Agreement. The

Settlement Administrator shall be authorized to pay itself from the Maximum Settlement Amount only after Individual Settlement Payments have been mailed to all participating Settlement Class members. The Settlement Administrator shall also give notice of final judgment by posting the Final Judgment to its website.

8. **Preliminary Approval.** Within a reasonable time after execution of this Settlement Agreement by the Parties, Plaintiff shall apply to the Court for the entry of an Order:

- A. Conditionally certifying the Settlement Class for settlement purposes only;
- B. Appointing Paul K. Haines, Sean M. Blakely, and Alexandra R. McIntosh of Haines Law Group, APC as Class Counsel;
- C. Appointing Plaintiff Martha Lizaola as Class Representative for the Settlement Class;
- D. Approving Phoenix Settlement Administrators as Settlement Administrator;
- E. Preliminarily approving this Settlement Agreement and its terms as fair, reasonable, and adequate;
- F. Approving the form and content of the Notice Packet (which is comprised of the Class Notice and Notice of Individual Settlement Payment, and is attached hereto as Exhibits A and B, respectively), and directing the mailing of the same in English and Spanish; and
- G. Scheduling a Final Approval hearing.

9. **Notice to Settlement Class.** Following preliminary approval, the Settlement Class shall be notified as follows:

- A. Within fifteen (15) business days of the Court signing an order preliminarily approving this Agreement, Defendant will provide the Settlement Administrator with the names, last known addresses, phone numbers, social security numbers, positions held, dates of employment, and workweek data for the Settlement Administrator to use to determine the number of workweeks worked by each Settlement Class member during the Class Period, as well as the number of workweeks worked by each PAGA Aggrieved Employee during the PAGA Period.
- B. Within ten (10) business days from receipt of this information, the Settlement Administrator shall (i) run the names of all Settlement Class members through the National Change of Address (“NCOA”) database to determine any updated addresses for Settlement Class members; (ii) update the address of any Settlement Class member for whom an updated address was found through the NCOA search; (iii) calculate the estimated Individual Settlement Payment for each Settlement Class member; and (iv) mail a Notice Packet to each Settlement Class member at his or her last known address or at the updated address found through the NCOA search, and retain proof of mailing.

- C. Any Notice Packets returned to the Settlement Administrator as non-delivered on or before the Response Deadline shall be re-mailed to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator shall make reasonable efforts, including utilizing a “skip trace,” to obtain an updated mailing address within five (5) business days of receiving the returned Notice Packet. If an updated mailing address is identified, the Settlement Administrator shall resend the Notice Packet to the Settlement Class member immediately, and in any event within five (5) business days of obtaining the updated address. The address identified by the Settlement Administrator as the current mailing address shall be presumed to be the best mailing address for each Settlement Class member. Settlement Class members to whom Notice Packets are re-mailed after having been returned as undeliverable to the Settlement Administrator shall have fourteen (14) calendar days from the date of re-mailing, or until the Respond Deadline has expired, whichever is later, to mail a Request for Exclusion, objection, or dispute. Notice Packets that are re-mailed shall inform the recipient of this adjusted deadline. If a Settlement Class member’s Notice Packet is returned to the Settlement Administrator more than once as non-deliverable, then an additional Notice Packet shall not be mailed. Nothing else shall be required of, or done by, the Parties, Class Counsel, or Defendant’s Counsel to provide notice of the proposed settlement.
- D. Requests for Exclusion. Any Settlement Class member who wishes to opt-out of the Settlement must complete and mail a Request for Exclusion (defined below) to the Settlement Administrator within sixty (60) calendar days of the date of the initial mailing of the Notice Packets (the “Response Deadline”).
- i. The Notice Packet shall state that Settlement Class members who wish to exclude themselves from the Settlement must submit a Request for Exclusion by the Response Deadline. The Request for Exclusion must: (1) contain the name, address, telephone number and the last four digits of the Social Security number of the Settlement Class member; (2) contain a statement that the Settlement Class member wishes to be excluded from the Settlement; (3) be signed by the Settlement Class member; and (4) be postmarked by the Response Deadline and mailed to the Settlement Administrator at the address specified in the Class Notice. If the Request for Exclusion does not contain the information listed in (1)-(3), it will not be deemed valid for exclusion from the Settlement, except a Request for Exclusion not containing a Settlement Class member’s telephone number and/or last four digits of the Social Security number will be deemed valid. The date of the postmark on the Request for Exclusion shall be the exclusive means used to determine whether a Request for Exclusion has been timely submitted. Any Settlement Class member who requests to be excluded from the Settlement Class will not be entitled to any recovery under this Settlement Agreement (except for any amount due to him or her from the PAGA Amount, if applicable) and will not be bound by the terms of the

Settlement (except for the PAGA release, if applicable) or have any right to object, appeal or comment thereon.

- ii. At no time will the Parties or their counsel seek to solicit or otherwise encourage any Settlement Class member to object to the Settlement or opt-out of the Settlement Class, or encourage any Settlement Class member to appeal from the final judgment.
- E. Objections. Members of the Settlement Class who do not request exclusion may object to this Agreement as explained in the Class Notice by filing a written objection with the Settlement Administrator (who shall serve all objections as received on Class Counsel and Defendant's counsel, who shall then promptly file all such objections with the Court) by the Response Deadline. Defendant's counsel and Class Counsel shall file any responses to objections no later than the deadline to file the Motion for Final Approval, unless an objection is filed within ten (10) days of the Motion for Final Approval filing deadline, in which case Defendant's counsel and Class Counsel shall have ten (10) days to respond. To be valid, any objection should: (1) contain the objecting Settlement Class member's full name and current address, as well as contact information for any attorney representing the objecting Settlement Class member for purposes of the objection; (2) include all objections and the factual and legal bases for same; (3) include any and all supporting papers, briefs, written evidence, declarations, and/or other evidence; and (4) be postmarked no later than the Response Deadline. Any Settlement Class member who wishes to may also appear in person or through their own counsel and raise an objection at the Final Approval Hearing.
- F. Notice of Individual Settlement Payment / Disputes. Each Notice Packet mailed to a Settlement Class member shall disclose the amount of the Settlement Class member's estimated Individual Settlement Payment as well as all of the information that was used to calculate the Individual Settlement Payment. Settlement Class members will have the opportunity, should they disagree with Defendant's records regarding the information stated in the Notice of Individual Settlement Payment, to provide documentation and/or an explanation to show contrary information. Any such dispute, including any supporting documentation, must be mailed to the Settlement Administrator and postmarked by the Response Deadline. If there is a dispute, the Settlement Administrator will consult with the Parties to determine whether an adjustment is warranted. The Settlement Administrator shall determine the eligibility for, and the amounts of, any Individual Settlement Payments under the terms of this Settlement Agreement. However, if the Settlement Administrator and the Parties cannot agree on a resolution, the Parties will submit the dispute to the Court for a final determination.
- G. Defendant understands its legal obligation not to retaliate against the Settlement Class members for their participation and/or election to participate in the benefits to be afforded any of them by the Settlement and/or the Action.

10. **Final Approval.** Following preliminary approval and the close of the period for filing requests for exclusion, objections, or disputes under this Settlement Agreement, Plaintiff shall apply to the Court for entry of an Order:

- A. Granting final approval to the Settlement Agreement and adjudging its terms to be fair, reasonable, and adequate;
- B. Approving Plaintiff's and Class Counsel's application for attorneys' fees and costs, Class Representative Enhancement Payment, settlement administration costs, and payment to the LWDA for its share of civil penalties under PAGA; and
- C. Entering judgment pursuant to California Rule of Court 3.769. Said judgment shall be posted on the Settlement Administrator's website.

11. **Non-Admission of Liability.** Nothing in this Settlement Agreement shall operate or be construed as an admission of any liability or that class certification is appropriate in any context other than this Settlement. Each of the Parties has entered into this Settlement Agreement to avoid the burden and expense of further litigation. Pursuant to California Evidence Code Section 1152, this Settlement Agreement is inadmissible in any proceeding, except a proceeding to approve, interpret, or enforce this Settlement Agreement. If Final Approval does not occur, the Parties agree that this Settlement Agreement is void, but remains protected by California Evidence Code Section 1152.

12. **Waiver and Amendment.** The Parties may not waive, amend, or modify any provision of this Settlement Agreement except by a written agreement signed by all of the Parties, and subject to any necessary Court approval. A waiver or amendment of any provision of this Settlement Agreement will not constitute a waiver of any other provision.

13. **Cooperation.** The Parties agree to work cooperatively, diligently and in good faith to ensure that all necessary documents are timely filed.

14. **Nondisclosure and Nonpublication.** Plaintiff and Class Counsel agree not to disclose or publicize the Settlement Agreement among the parties contemplated herein, the fact of the Settlement Agreement, its terms or contents, and the negotiations underlying the Settlement Agreement, in any manner or form, directly or indirectly, to any person or entity, except Settlement Class members and as shall be contractually required to effectuate the terms of the Settlement Agreement as set forth herein. However, for the limited purpose of allowing Class Counsel to prove adequacy as class counsel in other actions, Class Counsel may disclose the names of the Parties in this action and the venue/case number of this action for such purposes.

15. **Notices.** All notices, demands, and other communications to be provided concerning this Settlement Agreement shall be in writing and delivered by receipted delivery and by e-mail at the addresses set forth below, or such other addresses as either Party may designate in writing from time to time:

if to Plaintiff:

Paul K. Haines of Haines Law Group, APC
2155 Campus Drive, Suite 180, El Segundo, CA 90245
phaines@haineslawgroup.com

if to Defendant: Holger Besch of Seyfarth Shaw LLP
601 South Figueroa Street, Suite 3300, Los Angeles, CA 90017
hbesch@seyfarth.com

16. **Entire Agreement.** This Settlement Agreement contains the entire agreement between the Parties with respect to the transactions contemplated hereby, and supersedes all negotiations, presentations, warranties, commitments, offers, contracts, and writings prior to the date hereof relating to the subject matters hereof.

17. **Counterparts.** This Settlement Agreement may be executed by one or more of the Parties on any number of separate counterparts and delivered electronically, and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

18. **Enforcement and Continuing Jurisdiction of the Court.** To the extent consistent with class action procedure, this Settlement Agreement shall be enforceable by the Court pursuant to California Code of Civil Procedure section 664.6. The Court shall retain continuing jurisdiction over this Action and over all Parties and Settlement Class members, to the fullest extent to enforce and effectuate the terms and intent of this Settlement Agreement, and to adjudicate any claimed breaches of this Settlement Agreement. The Court may award reasonable attorneys' fees and costs to the prevailing party in any motion or action taken based on an alleged violation of any material term of this Settlement Agreement.

DATED: DEFENDANT HAWAIIAN HOST CANDIES OF
LA LLC

By: _____
Name: _____
Title: _____

DATED: Nov 28, 2022

PLAINTIFF MARTHA LIZAOLA

By: 
Martha Lizaola (Nov 28, 2022 11:49 PST)
Plaintiff and Settlement Class Representative

if to Defendant: Holger Besch of Seyfarth Shaw LLP
601 South Figueroa Street, Suite 3300, Los Angeles, CA 90017
hbesch@seyfarth.com

16. **Entire Agreement.** This Settlement Agreement contains the entire agreement between the Parties with respect to the transactions contemplated hereby, and supersedes all negotiations, presentations, warranties, commitments, offers, contracts, and writings prior to the date hereof relating to the subject matters hereof.

17. **Counterparts.** This Settlement Agreement may be executed by one or more of the Parties on any number of separate counterparts and delivered electronically, and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

18. **Enforcement and Continuing Jurisdiction of the Court.** To the extent consistent with class action procedure, this Settlement Agreement shall be enforceable by the Court pursuant to California Code of Civil Procedure section 664.6. The Court shall retain continuing jurisdiction over this Action and over all Parties and Settlement Class members, to the fullest extent to enforce and effectuate the terms and intent of this Settlement Agreement, and to adjudicate any claimed breaches of this Settlement Agreement. The Court may award reasonable attorneys' fees and costs to the prevailing party in any motion or action taken based on an alleged violation of any material term of this Settlement Agreement.

DATED:

11/04/22

DEFENDANT HAWAIIAN HOST CANDIES OF
LA LLC

By: ESA
Name: Edward SCHULTZ
Title: President

DATED:

PLAINTIFF MARTHA LIZAOLA

By: _____
Plaintiff and Settlement Class Representative

APPROVED AS TO FORM:

DATED:

SEYFARTH SHAW LLP

By: _____
Holger Besch
Attorneys for Defendant

DATED: November 28, 2022

HAINES LAW GROUP, APC

By: Sean Blakely _____
Paul K. Haines
Sean M. Blakely
Alexandra R. McIntosh
Attorneys for Plaintiff

APPROVED AS TO FORM:

DATED: November 21, 2022

SEYFARTH SHAW LLP

By: 

Holger Besch
Attorneys for Defendant

DATED:

HAINES LAW GROUP, APC

By: _____
Paul K. Haines
Sean M. Blakely
Alexandra R. McIntosh
Attorneys for Plaintiff

EXHIBIT A

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

MARTHA LIZAOLA, as an individual and on behalf
of all others similarly situated,

Plaintiff,

vs.

HAWAIIAN HOST CANDIES OF L.A. INC., a
California Corporation; and DOES 1 through 100,

Defendants.

Case No. 21STCV20136

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

To: All current and former non-exempt employees who worked for Hawaiian Host Candies of L.A. Inc. ("Hawaiian Host") in California from May 27, 2017 until August 17, 2022, and who did not sign a "Separation Agreement and General Release."

**PLEASE READ THIS NOTICE CAREFULLY
THIS NOTICE IS BEING SENT IN ENGLISH AND SPANISH
YOUR LEGAL RIGHTS MAY BE AFFECTED WHETHER YOU ACT OR NOT**

Why should you read this notice?

The Los Angeles County Superior Court has granted preliminary approval of a proposed class action settlement (the "Settlement") in the case of *Martha Lizaola v. Hawaiian Host Candies of L.A. Inc.*, Los Angeles Superior Court Case No. 21STCV20136 (the "Action"). Because your rights may be affected by the Settlement, it is important that you read this notice carefully.

You may be entitled to money from this Settlement. Hawaiian Host's records show that you were employed by Hawaiian Host in California as a non-exempt employee at some point between May 27, 2017 and August 17, 2022 (the "Class Period"). The Court ordered that this Notice be sent to you because you may be entitled to money under the Settlement and because the Settlement affects your legal rights.

The purpose of this notice is to provide you with a brief description of the Action, to inform you of the terms of the Settlement, to describe your rights in connection with the Settlement, and to explain what steps you may take to participate in, object to, or exclude yourself from the Settlement. If you do not exclude yourself from the Settlement and the Court finally approves the Settlement, you will be bound by the terms of the Settlement and any final judgment.

What is this case about?

Plaintiff Martha Lizaola ("Plaintiff") brought this Action against Hawaiian Host, seeking to assert claims on behalf of a class of current and former non-exempt employees who worked for Hawaiian Host in California during the Class Period. Plaintiff is known as the "Class Representative," and her attorneys, who also represent the interests of all Settlement Class members, are known as "Class Counsel."

The Action alleges that Hawaiian Host failed to pay Settlement Class members for all earned minimum and overtime wages, failed to provide Settlement Class members with all required meal and rest periods, and violated the California WARN Act by failing to give proper notice of termination. The Action also alleges that Hawaiian Host failed to provide Settlement Class members with accurate and complete wage statements and failed to timely pay all final wages at the time of separation of employment, and as a result of the

foregoing alleged violations, engaged in unfair business practices and is liable for civil penalties under the Labor Code Private Attorneys General Act (“PAGA”).

Hawaiian Host denies that it has done anything wrong. Hawaiian Host denies that it owes Settlement Class members any wages, restitution, penalties, or other damages. Accordingly, the Settlement constitutes a compromise of disputed claims and should not be construed as an admission of liability on the part of Hawaiian Host, which expressly denies all liability.

The Court has not ruled on the merits of Plaintiff’s claims. However, to avoid additional expense, inconvenience, and interference with its business operations, Hawaiian Host has concluded that it is in its best interests and the interests of Settlement Class members to settle the Action on the terms summarized in this Notice. After Hawaiian Host provided relevant information to Class Counsel, the Settlement was reached after mediation and arm’s-length negotiations between the parties.

The Class Representative and Class Counsel support the Settlement. Among the reasons for support are the defenses to liability potentially available to Hawaiian Host, the risk of denial of class certification, the inherent risks of trial on the merits, and the delays and uncertainties associated with litigation.

If you are still employed by Hawaiian Host, your decision about whether to participate in the Settlement will not affect your employment. California law and Hawaiian Host’s policy strictly prohibit unlawful retaliation. Hawaiian Host will not take any adverse employment action against or otherwise retaliate, or discriminate, against any Settlement Class member because of the Settlement Class member’s decision to either participate or not participate in the Settlement.

Who are the Attorneys?

Attorneys for the Plaintiff/Settlement Class members: HAINES LAW GROUP, APC Paul K. Haines phaines@haineslawgroup.com Sean M. Blakely sblakely@haineslawgroup.com Alexandra R. McIntosh amcintosh@haineslawgroup.com 2155 Campus Drive, Suite 180 El Segundo, California 90245 Tel: (424) 292-2350 Fax: (424) 292-2355 haineslawgroup.com	Attorneys for Defendant Hawaiian Host: SEYFARTH SHAW LLP Holger G. Besch hbesch@seyfarth.com 601 South Figueroa Street, Suite 3300 Los Angeles, California 90017 Tel: (213) 270-9600 Fax: (213) 270-9601 seyfarth.com
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What are the terms of the Settlement?

On <<PRELIM APPROVAL DATE>>, the Court preliminarily certified a class, for settlement purposes only, of all current and former non-exempt employees who worked for Hawaiian Host in California between May 17, 2017 and August 17, 2022, and who did not sign a “Separation Agreement and General Release.” Settlement Class members who do not opt out of the Settlement pursuant to the procedures set forth in this Notice will be bound by the Settlement and will release their claims against Hawaiian Host as described below.

Hawaiian Host has agreed to pay \$140,000.00 (the “Maximum Settlement Amount”) to fully resolve all claims in the Action, including payments to Settlement Class members, attorneys’ fees and expenses, Settlement Administration costs, PAGA civil penalties, and the Class Representative’s Enhancement Payment.

The following deductions from the Maximum Settlement Amount will be requested by the parties:

Settlement Administration Costs. The Court has approved Phoenix Settlement Administrators to act as the “Settlement Administrator,” who is sending this Notice to you and will perform many other duties relating to the Settlement. The Court has approved setting aside up to \$7,000.00 from the Maximum Settlement Amount to pay the Settlement Administration costs.

Attorneys’ Fees and Expenses. Class Counsel have been prosecuting the Action on behalf of the Settlement Class members on a contingency fee basis (that is, without being paid any money to date) and have been paying all litigation costs and expenses. The Court will determine the actual amount awarded to Class Counsel as attorneys’ fees, which will be paid from the Maximum Settlement Amount. Settlement Class members are not personally responsible for any of Class Counsel’s attorneys’ fees or expenses. Class Counsel will ask for fees of up to one-third of the Maximum Settlement Amount, which is estimated to be \$46,666.66, as reasonable compensation for the work Class Counsel performed and will continue to perform in this Action through Settlement finalization. Class Counsel also will ask for reimbursement of up to \$25,000.00 for verified costs Class Counsel incurred in connection with the Action.

Enhancement Payment to Class Representative. Class Counsel will ask the Court to award the Class Representative an enhancement payment in the amount of \$7,500.00 to compensate her for her service and extra work provided on behalf of the Settlement Class members.

PAGA Civil Penalties. \$7,500.00 will be paid to the California Labor & Workforce Development Agency (“LWDA”), representing 75% of the \$10,000.00 the parties have agreed to allocate to the settlement of Plaintiff’s claim on behalf of the Settlement Class members under the PAGA. The remaining \$2,500.00 will be payable to certain of the Settlement Class members as the “PAGA Amount,” as described below.

Calculation of Settlement Class Members’ Individual Settlement Payments. After deducting the Court-approved amounts above, the balance of the Maximum Settlement Amount will form the Net Settlement Amount (“NSA”), which will be distributed to all Settlement Class members who do not submit a valid and timely Request for Exclusion (described below). The NSA will be divided as follows:

- (i) Wage Statement Amount: 5% of the Net Settlement Amount shall be designated as the “Wage Statement Amount.” Each participating Settlement Class member who was employed by Hawaiian Host at any time between May 27, 2020 and August 17, 2022, shall receive a portion of the Wage Statement Amount proportionate to the number of workweeks that he or she worked during the aforementioned time period.
- (ii) Waiting Time Amount: 5% of the Net Settlement Amount shall be designated as the “Waiting Time Amount.” The Waiting Time Amount shall be distributed in equal, pro-rata shares to each participating Settlement Class member who separated their employment from Hawaiian Host at any time after May 27, 2018.
- (iii) The remainder of the Net Settlement Amount (i.e., 90%) will be distributed to each participating Settlement Class member based on their proportionate number of workweeks worked during the Class Period, by multiplying the remaining Net Settlement Amount by a fraction, the numerator of which is the Settlement Class member’s total workweeks worked during the Class Period, and the denominator of which is the total number of workweeks worked by all participating Settlement Class members during the Class Period.
- (iv) Payments from the PAGA Amount: In addition to payments from the NSA, \$2,500.00 has been set aside as the “PAGA Amount,” as mentioned above. The PAGA Amount shall be paid to all Settlement Class members (regardless of whether they opt out of the Settlement Class) who worked for Hawaiian Host in California from May 27, 2020 until August 17,

2022 (the “PAGA Period”), based on their proportional number of workweeks worked for Hawaiian Host in California during the PAGA Period.

Payments to Settlement Class Members. If the Court grants final approval of the Settlement, Individual Settlement Payments will be mailed to all Settlement Class members who did not submit a valid and timely Request for Exclusion. Settlement checks will be valid for 180 days from the date the Settlement Administrator mails it. Any funds payable to Settlement Class members whose checks were not cashed within 180 days after mailing shall be made payable to the State of California’s Unclaimed Property Fund, in the name of the Settlement Class members failing to cash their checks, such that there will be no unclaimed residue from this settlement.

Allocation and Taxes. For tax purposes, each Individual Settlement Payment will be treated as follows: 25% as “wages,” for which an IRS form W-2 will be issued; and 75% as penalties and interest, for which an IRS form 1099 will be issued. Any payment from the PAGA Amount shall be designated as 100% penalties. Settlement Class members are responsible for the proper income tax treatment of the Individual Settlement Payments. The Settlement Administrator, Hawaiian Host and its counsel, and Class Counsel cannot provide tax advice. Accordingly, Settlement Class members should consult with their tax advisors concerning the tax consequences and treatment of payments they receive under the Settlement.

Release. If the Court approves the Settlement, the Settlement Class, and Settlement Class members who do not opt out will release and discharge Hawaiian Host and any of its parents, owners, subsidiaries, affiliates, predecessors or successors, and all agents, employees (current and former), officers, directors, insurers and attorneys (the “Released Parties”) from liability for all claims that were pled in the operative Second Amended Complaint (“SAC”), or which could have been pled in the operative SAC, based on the factual allegations therein, that arose during the Class Period, including but not limited to claims regarding meal periods, rest periods, calculation and payment of meal and rest period premiums, unpaid wages and overtime, calculation of unpaid wages and overtime (including regular rate), minimum wages, pre and post-shift work, timely payment of wages and final wages, wage statements, recordkeeping, waiting time penalties, improper notice under the federal Worker Adjustment and Retraining Notification Act (“WARN”) and/or California WARN Act, and violations of California’s Unfair Competition Law (Cal. Bus. & Prof. Code & 17200, et seq.) whether sought under statute, tort, contract or as an unfair business practice, and the Fair Labor Standards Act, 29 U.S.C. Section 201 et seq. (“Released Claims”). This release shall run from May 27, 2017 to August 17, 2022. In addition, all Settlement Class members (whether or not they opt out) who worked for Hawaiian Host in California at any point during the PAGA Period will release the Released Parties from any and all claims under the PAGA premised on the facts and/or allegations in Plaintiff’s letter to the LWDA dated May 27, 2021 that arose during the PAGA Period (the “PAGA Release”).

Conditions of Settlement. The Settlement is conditioned upon the Court entering an order at or following the Final Approval Hearing finally approving the Settlement as fair, reasonable, adequate and in the best interests of the Settlement Class, and the entry of Judgment.

How can I claim money from the Settlement?

Do Nothing. If you do nothing, you will be entitled to your share of the Settlement based on the number of workweeks you worked during the Class Period, the proportionate number of workweeks you worked between May 27, 2020 through August 17, 2022, and whether you ended your employment between May 27, 2018 and August 17, 2022, as stated in the accompanying Notice of Estimated Settlement Award. You also will be bound by the Settlement, including the release of claims stated above.

What other options do I have?

Dispute Information in Notice of Settlement Award. Your award is based on the number of workweeks you worked during the Class Period, the proportionate number of workweeks you worked between May 27, 2020 through August 17, 2022, and whether you ended your employment between May 27, 2018 and August 17, 2022. The information contained in Hawaiian Host’s records regarding each of these factors, along with your estimated Individual Settlement Payment, is listed on the accompanying Notice of Estimated Settlement

Award. If you disagree with the information in your Notice of Estimated Settlement Award, you may submit a dispute, along with any supporting documentation, in accordance with the procedures stated in the Notice of Estimated Settlement Award. Any disputes, along with supporting documentation, must be postmarked no later than <<RESPONSE DEADLINE>>. **DO NOT SEND ORIGINALS; DOCUMENTATION SENT TO THE SETTLEMENT ADMINISTRATOR WILL NOT BE RETURNED OR PRESERVED.**

The Parties and the Settlement Administrator will evaluate the evidence submitted and discuss in good faith how to resolve any disputes submitted by Settlement Class members. The Settlement Administrator shall determine the eligibility for, and the amounts of, any Individual Settlement Payments under the terms of this Settlement Agreement. However, if the Settlement Administrator and the Parties cannot agree on a resolution, the Parties will submit the dispute to the Court for a final determination.

Exclude Yourself from the Settlement. If you **do not** wish to take part in the Settlement, you may exclude yourself by sending to the Settlement Administrator a written "Request for Exclusion" letter or card postmarked no later than <<RESPONSE DEADLINE>>, with your name, address, telephone number, last four digits of your social security number, and your signature.

Send the Request for Exclusion directly to the Settlement Administrator at <<INSERT ADMINISTRATOR CONTACT INFO>>. Any person who submits a timely Request for Exclusion from the Settlement shall, upon receipt by the Settlement Administrator, no longer be a Settlement Class member, shall be barred from participating in any portion of the class action Settlement, and shall receive no benefits from the class action Settlement. However, all Settlement Class members who worked for Hawaiian Host during the PAGA Period, including those who opt out, will be bound by the PAGA portion of the Settlement and will receive a portion from the PAGA Amount. **Do not submit both a Dispute and a Request for Exclusion.** If you do, the Request for Exclusion will be invalid, you will be included in the Settlement Class, and you will be bound by the terms of the Settlement.

Objecting to the Settlement. You also have the right to object to the terms of the Settlement. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement. If you wish to object to the Settlement, or any portion of it, you should mail a written objection to the Settlement Administrator. Your written objection must include your name, address, as well as contact information for any attorney representing you regarding your objection, the case name and number, each specific reason in support of your objection, and any legal or factual support for each objection together with any evidence in support of your objection. Objections should be in writing and must be postmarked on or before <<RESPONSE DEADLINE>>. Notwithstanding the foregoing, you do not need to object in writing to be heard at the Final Approval Hearing.

You may also appear at the Final Approval Hearing scheduled for <<FINAL APPROVAL HEARING DATE/TIME>> in Department SSC-12 of the Los Angeles County Superior Court, located at 312 N. Spring Street, Los Angeles, CA 90012. You have the right to appear either in person or through your own attorney at this hearing. Any attorney who intends to represent an individual objecting to the Settlement must file a notice of appearance with the Court and serve counsel for all parties on or before <<RESPONSE DEADLINE>>. All objections or other correspondence must state the name and number of the case, which is *Martha Lizaola v. Hawaiian Host Candies of L.A. Inc.*, Los Angeles Superior Court Case No. 21STCV20136.

If you object to the Settlement, you will remain a member of the Settlement Class, and if the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Settlement Class members who do not object.

What is the next step?

The Court will hold a Final Approval Hearing on the adequacy, reasonableness, and fairness of the Settlement on <<FINAL APPROVAL HEARING DATE/TIME>>, in Department SSC-12 of the Los Angeles County Superior Court, located at 312 N. Spring Street, Los Angeles, CA 90012. The Court also will be asked to

rule on Class Counsel's request for attorneys' fees and reimbursement of documented costs and expenses and the Enhancement Payment to the Class Representative. The Final Approval Hearing may be postponed without further notice to the Settlement Class. You may contact Class Counsel using the contact information provided above to confirm the address and time of the hearing. **You are not required to attend the Final Approval Hearing, although any Settlement Class member is welcome to attend the hearing.**

How can I get additional information?

This Notice is only a summary of the Action and the Settlement. For more information, you may inspect the Court's files and the Settlement Agreement at the Office of the Clerk of the Los Angeles County Superior Court, located at 312 N. Spring Street, Los Angeles, CA. 90012, during regular court hours. You may also contact Class Counsel using the contact information listed above for more information.

PLEASE DO NOT CALL OR WRITE THE COURT, HAWAIIAN HOST, OR ITS ATTORNEYS FOR INFORMATION ABOUT THIS SETTLEMENT OR THE SETTLEMENT PROCESS

REMINDER AS TO TIME LIMITS

The deadline for submitting any Disputes, Requests for Exclusion, or Objections is <<RESPONSE DEADLINE>>. These deadlines will be strictly enforced.

BY ORDER OF THE COURT ENTERED ON <<PRELIM APPROVAL DATE>>.

EXHIBIT B

NOTICE OF ESTIMATED SETTLEMENT AWARD

MARTHA LIZAOLA v. HAWAIIAN HOST CANDIES OF L.A. INC.
LOS ANGELES COUNTY SUPERIOR COURT CASE NO. 21STCV20136

Please complete, sign, date and return this Form to <<ADMINISTRATOR CONTACT INFO>> **ONLY IF** (1) your personal contact information has changed, and/or (2) you wish to dispute any of the items listed in Section (III), below. It is your responsibility to keep a current address on file with the Settlement Administrator.

(I) Please type or print your name:

(First, Middle, Last)

(II) Please type or print the following identifying information if your contact information has changed:

Former Names (if any)

New Street Address

City

State

Zip Code

(III) Information Used to Calculate Your Settlement Payment:

According to Hawaiian Host Candies of L.A. Inc.'s ("Hawaiian Host") records:

- (a) you worked [REDACTED] workweeks for Hawaiian Host in California between May 27, 2017 and August 17, 2022;
- (b) you worked [REDACTED] workweeks for Hawaiian Host in California between May 27, 2020 and August 17, 2022; and
- (c) your employment with Hawaiian Host <<DID/DID NOT>> end between May 27, 2018 and August 17, 2022.

Based on the above, your Settlement Payment is estimated at \$ [REDACTED].

(IV) If you disagree with items (a), (b), and/or (c) in Section (III) above, please explain why in the space provided below and include copies of any supporting evidence or documentation with this Form:

If you dispute the above information from Hawaiian Host's records, Hawaiian Host's records will control unless you are able to provide documentation that establishes otherwise and that Hawaiian Host's records are mistaken. If there is a dispute about whether Hawaiian Host's information or yours is accurate, and the dispute cannot be resolved informally, the dispute will be resolved by the Parties and the Settlement Administrator as described in the "Notice of Pendency of Class Action and Proposed Settlement" that accompanies this Form. If the Settlement Administrator and the Parties cannot agree on a resolution, the Parties will submit the dispute to the Court for a final determination.

**ANY DISPUTES, ALONG WITH ANY SUPPORTING DOCUMENTATION, MUST BE POSTMARKED
NO LATER THAN <<RESPONSE DEADLINE>>.**

EXHIBIT 2

HAINES LAW GROUP
EMPLOYMENT ATTORNEYS

May 27, 2021

VIA LWDA WEBSITE

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

Re: *Martha Lizaola v. Hawaiian Host Candies of L.A. Inc.*

To Whom It May Concern:

Please be advised that this law firm represents Martha Lizaola (“Ms. Lizaola”) in claims arising from her employment with Hawaiian Host Candies of L.A. Inc.; and Does 1 through 100 (collectively, “Hawaiian Host”). Ms. Lizaola is an “aggrieved employee” as defined by Labor Code Section 2698 *et seq.*, as to all of the violations alleged herein. *See Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745, 754 (“any Labor Code penalties recoverable by state authorities may be recovered in a PAGA action by a person who was employed by the alleged violator and affected by at least *one* of the violations alleged in the complaint.”) (emphasis added). The purpose of this letter is to comply with Labor Code Section 2699.3, which requires aggrieved employees to notify their employer and the Labor & Workforce Development Agency (“LWDA”) of the specific provisions of the Labor Code allegedly violated. For purposes of this letter, “aggrieved employees” include all of Hawaiian Host’s non-exempt employees who worked for Hawaiian Host in California during the one year immediately preceding the date of this letter through the present.

Hawaiian Host employed Ms. Lizaola in the non-exempt job position of “Packer” (or similarly titled position). Ms. Lizaola was initially hired by Hawaiian Host in approximately August 1986 and was laid off in approximately June 2020. On March 19, 2021, Ms. Lizaola submitted a written personnel records request to Hawaiian Host. Hawaiian Host failed to respond to Ms. Lizaola’s records request within 21 days from the date of the request, in direct violation of Labor Code section 226(c), and to date, has not responded to Ms. Lizaola’s request for records.

During Ms. Lizaola’s employment with Hawaiian Host, Hawaiian Host utilized a timekeeping system which resulted in Ms. Lizaola and other aggrieved employees not being compensated for all hours actually worked, whether by rounding, time-shaving, or otherwise. Specifically, Hawaiian Host rounded Ms. Lizaola’s timekeeping entries in an uneven manner to a quarter of an hour increment, so that, over a period of time, Ms. Lizaola was deprived of all earned minimum and overtime wages. Upon information and belief, Hawaiian Host’s timekeeping system regularly, systematically, and impermissibly rounded

the hours worked by Ms. Lizaola and non-exempt employees in Hawaiian Host's favor, resulting, over a period of time, in the failure to compensate Ms. Lizaola and other aggrieved employees for all hours worked. As a result, Ms. Lizaola and other aggrieved employees were not compensated for all required minimum and overtime wages.

During Ms. Lizaola's employment with Hawaiian Host, Ms. Lizaola worked over 8.0 hours per workday and/or more than 40.0 hours per workweek, but did not receive overtime compensation equal to one and one-half times her regular rate of pay for working overtime hours. Specifically, Hawaiian Host paid Ms. Lizaola and other aggrieved employees non-discretionary incentive pay, including but not limited to, payments denoted on their payroll records as "Other Awards" and/or other forms of pay that are not excludable from an employee's "regular rate" of pay (hereinafter the aforementioned forms of pay are collectively referred to as "Incentive Pay"). However, Hawaiian Host failed to properly calculate Ms. Lizaola's and other aggrieved employees' regular rates of pay as a result of their receipt of Incentive Pay, thereby miscalculating and underpaying the overtime wages owed to them.

Hawaiian Host also failed to provide Ms. Lizaola and other aggrieved employees with all legally compliant meal periods due to Hawaiian Host's meal period policies/practices, which have resulted in late (commencing after the fifth hour of work), short (less than 30 minutes), and missed meal periods. In addition, Hawaiian Host failed to provide Ms. Lizaola or other non-exempt employees with second meal periods on shifts over 10.0 hours. On those occasions when Ms. Lizaola was not provided with all legally-required meal periods to which she was entitled, Hawaiian Host did not always compensate Ms. Lizaola with the required meal period premium for each workday in which she experienced a meal period violation as mandated by Labor Code 226.7. Upon information and belief, during at least a portion of the relevant time period, Hawaiian Host maintained no payroll code or other mechanism for the payment of meal period premiums as required by Labor Code Section 226.7 in the event a legally compliant meal period was not provided to their non-exempt employees.

Ms. Lizaola was not authorized and permitted to take all legally compliant rest periods due to Hawaiian Host's rest period policies/practices, which fail to authorize and permit an off-duty rest period for every four hours worked, or major fraction thereof. Specifically, Ms. Lizaola was not authorized and permitted to take a third rest period on shifts in excess of 10.0 hours due to Hawaiian Host's rest period policies/practices, which fail to authorize and permit non-exempt employees to take a third rest period on occasions when they worked over 10.0 hours in a workday. On the occasions when Ms. Lizaola was not provided with all legally-compliant rest periods to which she was entitled, Hawaiian Host failed to compensate Ms. Lizaola with the required rest period premium for each workday in which she experienced a rest period violation as mandated by Labor Code § 226.7. Upon information and belief, during at least a portion of the relevant time period, Hawaiian Host maintained no payroll code or other mechanism for the payment of rest period premiums as required by Labor Code Section 226.7 in the event a legally compliant rest period was not provided to their non-exempt employees.

As a result of Hawaiian Host's failure to compensate Ms. Lizaola and other aggrieved employees for all minimum wages, overtime wages, and meal and rest period premium wages earned, Hawaiian Host maintained inaccurate payroll records and failed to issue accurate, compliant, itemized wage statements. As a further result of Hawaiian Host's failure to compensate Ms. Lizaola and other aggrieved employees for all minimum wages, overtime wages, and meal and rest period premium wages, Hawaiian Host failed to pay Ms. Lizaola and other aggrieved employees all wages owed at the time of their separation of employment with Hawaiian Host.

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

Minimum Wage Violations

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

Overtime Wage Violations

Hawaiian Host was required to pay Ms. Lizaola and other aggrieved employees overtime wages for all hours worked in excess of eight hours per workday and/or forty hours per workweek. *See* Labor Code §§ 1194(a) and 1198; Wage Order 1, § 3. According to Labor Code § 510(a), "Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee." This Section further provides, "Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee." As alleged above, Hawaiian Host caused Ms. Lizaola to work overtime hours, but did not compensate Ms. Lizaola and other aggrieved employees with one and one-half times their regular rate of pay for such hours. As a result of these policies/practices, Ms. Lizaola and other aggrieved employees were not compensated for all overtime and double-time wages.

Meal Period Violations

As alleged above, Hawaiian Host failed to provide Ms. Lizaola and other aggrieved employees with all required and compliant meal periods, due to Hawaiian Host's meal period policies/practices that often fail to provide first meal periods before the end of the fifth hour of work, and which fail to provide second meal periods for shifts of over 10.0 hours. *See* Labor Code §§ 226.7 and 512; Wage Order 1, § 11. As a result, Ms. Lizaola and other aggrieved employees are owed an additional hour of wages at their regular rate of compensation for each workday they experienced a meal period violation. *See* Labor Code § 226.7 ("If an employer fails to provide an employee a meal or rest or recovery period in accordance with ... [an] order of the Industrial Welfare Commission ... the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.").

Rest Period Violations

As alleged above, Hawaiian Host also failed to authorize and permit Ms. Lizaola and other aggrieved employees to take all required rest periods. *See* Labor Code §§ 226.7 and 516; Wage Order 1, § 12. As a result, Ms. Lizaola and other aggrieved employees are owed an additional hour of wages at their regular rate of compensation for each workday that they were not authorized and permitted to take all legally required rest periods. *See* Labor Code § 226.7 ("If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest period is not provided.")

Wage Statement Violations

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

Waiting Time Penalties

Labor Code §§ 201 and 202 require that employees receive all of their final wages at the time of their separation of employment. Hawaiian Host failed to timely pay Ms.

Lizaola and other aggrieved employees all of their final wages at the time of separation, which included all overtime, double-time, and minimum wages as well as all meal and rest period premium wages. Pursuant to Labor Code § 203, Hawaiian Host's failure to pay all final wages due to Ms. Lizaola and other aggrieved employees was willful and, consequently, entitles Ms. Lizaola and other aggrieved employees to waiting time penalties equal to one day of wages at their standard hourly rate for each day Hawaiian Host failed to pay their final wages after their separation, up to a maximum of thirty days.

Record Keeping Violations

Hawaiian Host is subject to Labor Code § 226 (c) which states that upon receipt of a written or oral request to inspect or copy records, the employer "shall comply with the request as soon as practicable, but no later than 21 calendar days from the date of the request." Labor Code § 226 (f) further provides that "[a] failure by an employer to permit a current or former employee to inspect or copy records within the time set forth in subdivision (c) entitles the current or former employee or the Labor Commissioner to recover a seven-hundred-fifty-dollar (\$750) penalty from the employer." Although Ms. Lizaola made a written request pursuant to subdivision (c), Hawaiian Host failed to respond within 21 days.

As an "aggrieved employee," Ms. Lizaola will initiate a civil action on behalf of herself and other aggrieved employees to recover civil penalties resulting from the wage and hour violations alleged herein. Based on Ms. Lizaola's own investigation, and on information and belief, Hawaiian Host committed and continues to commit the following Labor Code violations:

- a. Hawaiian Host violated Labor Code §§ 1182.12, 1194, 1194.2, and 1197 by failing to pay Ms. Lizaola and other aggrieved employees the statutory minimum wage for all hours worked;
- b. Hawaiian Host violated Labor Code §§ 204, 510, 1194, and 1198 by failing to pay Ms. Lizaola and other aggrieved employees all overtime compensation earned;
- c. Hawaiian Host violated Labor Code §§ 226.7, 512, 558, and 1198 by failing to provide meal periods as required by law and failing to pay meal period premiums to Ms. Lizaola and other aggrieved employees at these employees' respective regular rates of compensation for meal period violations;
- d. Hawaiian Host violated Labor Code §§ 226.7, 516, 558, and 1198 by failing to authorize and permit Ms. Lizaola and other aggrieved employees all required rest periods and failing to pay rest period premiums to Ms. Lizaola and other aggrieved employees at these employees' respective regular rates of compensation for rest period violations;

- e. Hawaiian Host violated Labor Code § 226 by failing to furnish Ms. Lizaola and other aggrieved employees with accurate and compliant itemized wage statements, and by failing to respond to Ms. Lizaola and other aggrieved employees' requests to inspect and/or copy employment records;
- f. Hawaiian Host violated Labor Code §§ 201, 202, and 203 by failing to timely pay all final wages due to Ms. Lizaola and other aggrieved employees;
- g. Hawaiian Host violated Labor Code § 204 by failing to pay Ms. Lizaola and other aggrieved employees all wages earned at least twice during each calendar month; and
- h. Hawaiian Host violated Labor Code §§ 1174 and 1198 by failing to maintain accurate records on behalf of Ms. Lizaola and other aggrieved employees.

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

Very truly yours,
HAINES LAW GROUP, APC



Paul K. Haines

cc: Hawaiian Host Candies of L.A. Inc. (via certified mail)



Mailer: Haines Law Group

Date Produced: 05/31/2021

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5/27/2021

LWDA Case No. LWDA-CM-833431-21
Law Firm : Haines Law Group, APC
Plaintiff Name : Martha Lizaola
Employer: Hawaiian Host Candies of L.A. Inc.
Filing Fee : \$75.00
IFP Claimed : No

Item submitted: Initial PAGA Notice

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

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

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

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