

PRIVATE ATTORNEYS GENERAL ACT SETTLEMENT AGREEMENT

This Private Attorneys General Act Settlement Agreement (“Settlement”) is made and entered into between ALBERTO APARICIO (acting in a private attorney general capacity) (“Plaintiff” or “Aparicio”) and NAGATANIEN RS FOODS, LLC (“Defendant” or “Nagatanien”).

I. DEFINITIONS

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

1. “PAGA Action” means the matter entitled *Alberto Aparicio v. Nagatanien RS Foods, LLC*, Los Angeles County Superior Court Case No. 21STCV31534, and as set forth in Aparicio’s correspondence to the California Labor and Workforce Development Agency (“LWDA Letters”) dated May 20, 2021.

2. “Aggrieved Employees” consist of all nonexempt former and current employees of Defendant from August 25, 2020 until the date that the Court approves this Settlement. The number of Aggrieved Employees, including Aparicio, is estimated to be ninety two (92) and the number of pay periods from August 25, 2020 through June 14, 2022 is estimated to be three thousand three hundred thirty nine (3,339).

3. “PAGA Complaint” means the Representative Action Complaint entitled *Alberto Aparicio v. Nagatanien RS Foods, LLC*, Los Angeles County Superior Court Case No. 21STCV31534, filed on August 25, 2021.

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

5. “Effective Date” means the date of entry of an Order by the Court approving the Settlement.

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

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

8. “Settlement” means the settlement of the PAGA Action as memorialized in this Agreement.

9. “Maximum Settlement Amount” is the non-reversionary sum of Two Hundred Eighty Thousand Dollars and Zero Cents (\$280,000.00), which represents the total amount payable under this Settlement by Defendant, including, without limitation, payments to all Aggrieved Employees, payment to the LWDA, payment to the Settlement Administrator, and payment of Aparicio’s attorneys’ fees and costs.

10. “Net Settlement Amount” is the amount remaining to distribute to the LWDA and Aggrieved Employees after the following amounts (if approved by the Court) are subtracted from the Maximum Settlement Amount: (a) Aparicio’s attorneys’ fees up to 33.3% of the Maximum Settlement Amount, currently estimated at Ninety Three Thousand Three Hundred Twenty Four Dollars and Zero Cents (\$93,333.00); (b) Aparicio’s costs up to \$10,000.00; (c) the cost of a claims

administrator, estimated to be Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00); and (d) Service Payment to Plaintiff of up to One Thousand Dollars and Zero Cents (\$1,000.00).

11. “PAGA” means the California Labor Code Private Attorneys General Act, California Labor Code § 2698, *et seq.*

12. “PAGA Period” means the time period from August 25, 2020 until the date the Court approves this Settlement.

13. “PAGA Released Claims” means any and all claims under PAGA that are pled in the PAGA Action, or which could have been pled under the PAGA Action based on the factual allegations in the PAGA Complaint and LWDA Letter that arose during the PAGA Period.

14. “Parties” means Aparicio and Nagatanien.

15. “Aparicio’s Counsel” means Justin Lo and May T. To of Work Lawyers, PC.

16. “Defendant” or “Nagatanien” means Nagatanien RS Foods, LLC.

17. “Defendant’s counsel” means Eric W. Witt, Marisol C. Mork and Hiroki Suyama of Squire Patton Boggs (US) LLP.

II. RECITALS

1. On May 20, 2021, Aparicio provided written notice to the LWDA and Defendant asserting claims for civil penalties pursuant to PAGA stemming from alleged violations of the California Labor Code described in the PAGA Action.

2. On August 25, 2021, Aparicio and his counsel filed the PAGA Complaint. In his PAGA Complaint, Aparicio alleges causes of action for: (1) failure to provide meal periods in violation of Labor Code section 512; (2) failure to provide rest breaks in violation of Labor Code section 226.7; (3) failure to provide complete and accurate wage statements in violation of Labor Code section 226; (4) failure to pay overtime wages; (5) failure to pay minimum wages; (6) failure to timely pay wages during employment; (7) failure to pay all wages due to discharged and quitting employees; and (8) failure to reimburse business expenses.

3. The Parties have conducted a thorough investigation into the facts of the PAGA Action. This included exchanging extensive data and information as well as documents relating to the underlying alleged violations.

4. On June 14, 2022, the Parties participated in mediation with Steve Cerveris, Esq. With the assistance of Mr. Cerveris, the Parties agreed to fully and finally resolve the PAGA Action as to Aparicio and the Aggrieved Employees.

III. **OPERATIVE TERMS OF THE SETTLEMENT AGREEMENT**

The Parties agree as follows:

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

2. **Funding of Maximum Settlement Amount.** Defendant shall pay Two Hundred Eighty Thousand Dollars and Zero Cents (\$280,000.00), as the non-reversionary Maximum Settlement Amount. Defendant will not pay more than the Maximum Settlement Amount. The Maximum Settlement Amount shall be deposited in an interest-bearing account set up by the Settlement Administrator and funded within fifteen (15) days of the Effective Date.

3. **Escalator Clause.** As stated above, Defendant represents that the number of relevant pay periods from August 25, 2020 through June 14, 2022, based on review of records, is estimated to be 3,339. If the actual number of relevant pay periods increases by ten percent (10%) or more, Defendant shall either (1) increase the Maximum Settlement Amount on a proportional basis, or (2) back the PAGA release date up to where the pay periods are 10% or less. In the event the number of pay periods worked increases by more than 10%, or 3,673 pay periods worked, and Defendant elects to increase the Maximum Settlement Amount on a proportional basis, then the Maximum Settlement Amount shall be increased proportionally by the pay periods in excess of 3,339 multiplied by the pay period value. The pay periods value shall be calculated by dividing the Maximum Settlement Amount by 3,339. The Parties agree that the pay period value equals \$83.85 per pay period (\$280,000 / 3,339 pay periods). Thus, for example, should there be 4,000 pay periods in the Period, then the Maximum Settlement Amount shall be increased by \$55,424.85 (4,000 pay periods – 3,339 pay periods x \$83.85/pay period.)

4. **Aparicio's Attorneys' Fees and Costs.** Defendant will not oppose Aparicio's request for attorneys' fees in the amount up to one third of the Maximum Settlement Amount and costs incurred in prosecuting this PAGA Action, up to \$10,000.00. In the event the Court approves a payment of less than these amounts, the difference will be added to the Net Settlement Amount (although Aparicio may appeal an order granting less than the full amount sought for attorneys' fees and costs). Defendant will report these payments on IRS Form 1099 issued to Aparicio's Counsel.

5. **Service Payment to Plaintiff.** Defendant will not oppose Aparicio's request for a Service Payment in the amount of up to One Thousand Dollars and Zero Cents (\$1,000.00). In the event the Court approves a payment of less than this amount, the difference will be added to the Net Settlement Amount.

6. **Allocation of Net Settlement Amount.** The Net Settlement Amount shall be designated as "2699 Civil Penalties" and shall be distributed 75% to the LWDA and 25% to Aggrieved Employees, pursuant to Lab. Code § 2699(i). The 25% portion to be paid to Aggrieved

Employees shall be paid to all Aggrieved Employees pro rata based on the number of pay periods worked by each Aggrieved Employee during the PAGA Period.

7. **Representative PAGA Release.** In his capacity as a private attorney general or “aggrieved employee” acting on behalf of himself, the State of California and Aggrieved Employees, Aparicio hereby releases Defendant and its respective heirs, executors, administrators, successors, assignees, parents, subsidiaries and related entities, owners, officers, directors, shareholders, employees, agents, servants, representatives, independent contractors, members, attorneys, insurers, re-insurers, assigns, and affiliates, and any and all other entities with whom they have been, are now, or may hereafter be affiliated, and any of their affiliated companies, predecessors, successors and assigns, as well as their past or present officers, directors, agents, representatives, attorneys, insurers, re-insurers, assigns, or employees (collectively “Releasees”) from any and all of the PAGA Released Claims that arose during the PAGA Period.

8. **PAGA Released Claims.** Aparicio agrees that upon entry of an Order approving the Settlement, all Aggrieved Employees will release any and all PAGA Released Claims against the Released Parties that arose during the PAGA Period. Upon entry of the Order approving the Settlement and judgment entered thereon, Aparicio and all Aggrieved Employees will be forever barred from pursuing any and all of the PAGA Released Claims that arose during the PAGA Period against the Released Parties.

9. **Covenants and Representations by Aparicio and Aparicio’s Counsel.**

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

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

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

To permit judicial review and approval of the PAGA Payment, as required by Labor Code § 2698, *et seq.*, Aparicio’s Counsel will file the Settlement with the Court and submit the Settlement to the LWDA as part of the Parties’ request for Court approval of the Settlement, per Lab. Code § 2699(1)(2).

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

11. **Judgment.** As part of the Motion to approve the Settlement, Aparicio shall submit a proposed order and judgment which enters judgment in the Action in accordance with the terms of the Settlement and retains jurisdiction over the Action for the purpose of enforcing the terms of the Settlement following approval of the Settlement. This Settlement is expressly conditioned upon the Court entering judgment as set forth herein. The judgment will not release or bar any claims other than the PAGA Released Claims as to Aparicio and Aggrieved Employees.

IV. **ADMINISTRATION OF SETTLEMENT**

1. **Settlement Administrator.** The Parties agree that Phoenix Settlement Administrators will manage the administration of this Settlement ("Settlement Administrator").

2. **Provision of Information for Aggrieved Employees.** Defendant will in good faith compile from its records a list of Aggrieved Employees that will be in a computer-readable format, such as a Microsoft Excel spreadsheet, and shall include each Aggrieved Employee's full name, last known mailing address, last known telephone number, start date(s) of employment, end date(s) of employment, total pay periods worked, and Social Security numbers. The list shall also include the sum total of all pay periods worked by Aggrieved Employees during the PAGA Period.

Within ten (10) business days of the Effective Date, Defendant will circulate the spreadsheet to the Settlement Administrator for purposes of calculating Individual PAGA Payments and mailing.

3. **Explanatory Letter and Individual PAGA Payments.** The Settlement Administrator will include copies of the explanatory letter, which has been mutually approved by the Parties and is attached hereto as **Exhibit A**, along with Individual PAGA Payments to all Aggrieved Employees via regular First-Class U.S. Mail. The explanatory letter and Individual PAGA Payments will be mailed to Aggrieved Employees by the Settlement Administrator as soon as practicable after the Effective Date and after receipt of a spreadsheet from the Defendant with sufficient information to allow payments to be made.

The amount to be received by each Aggrieved Employee, will be based on the formula set forth in Section III.6., *supra*. Checks will remain negotiable for 180 days. Each Individual PAGA Payment shall be deemed penalties and reported using IRS Form 1099.

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

Any checks returned as non-deliverable on or before the check cashing deadline will be sent promptly via regular First-Class U.S. Mail to the forwarding address affixed thereto. If no

forwarding address is provided, the Settlement Administrator will promptly attempt to determine the correct address using a skip-trace or other search using the name, address or Social Security number of the Aggrieved Employee involved and will perform a single re-mailing.

Defendant fully discharges its obligations to those Aggrieved Employees to whom it will pay Individual PAGA Payments through the mailing of a check, regardless of whether such checks are actually received and/or negotiated by Aggrieved Employees. Funds represented by checks returned as undeliverable after a re-mailing, and funds represented by checks remaining un-cashed for more than 180 days after issuance, will be tendered to the California Department of Industrial Relations – Unclaimed Wage Fund in the names of the Aggrieved Employees to whom the checks were issued.

5. **Payment of Remainder.** Within thirty (30) business days of the Effective Date, the Settlement Administrator will distribute the following additional payments: (1) the 75% share of 2699 Civil Penalties to the LWDA and (2) Court-approved attorneys' fees and costs to Aparicio's Counsel.

6. **Accounting.** Within five (5) business days after mailing the Individual PAGA Payments and the additional payments to the LWDA and the Settlement Administrator, the Settlement Administrator will provide an accounting under oath to Aparicio's Counsel and to Defendant's counsel of the amounts paid from the Settlement.

7. **Tax Consequences.** Individual PAGA Payments made under this Settlement will be attributed 100% as penalties and interest and paid via IRS Form 1099 issued to each Aggrieved Employee. Neither Aparicio nor Defendant, nor counsel for either of the Parties, makes any representations or warranties with respect to tax consequences of any payment under this Settlement.

V. **MISCELLANEOUS PROVISIONS**

1. **Drafting.** The Parties agree that the terms and conditions of this Settlement are the result of lengthy, intensive, arm's-length negotiations between the Parties and that neither Aparicio nor Defendant shall be considered the "drafter" of this Settlement for purposes of having terms construed against that Party.

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

3. **Costs and Fees.** The Parties shall each bear their own costs, attorneys' fees, mediator fees and other fees incurred in connection with this Settlement and the PAGA Action, except as specifically set forth in Section V.15.

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

5. **Complete Agreement.** The Parties each acknowledge and represent that no

promise or representation relating to the subject of this Settlement not contained in this Settlement has been made to them and acknowledge and represent that this Settlement contains the entire understanding between them and contains all terms and conditions pertaining to the compromise and settlement of the PAGA Released Claims. This Settlement cannot be amended or modified except by a writing signed by the Parties hereto.

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

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

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

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

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

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

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

13. **Severability.** If any term or provision of this Settlement is held to be invalid or

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

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

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

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

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

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

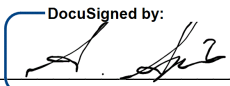
19. **Binding Agreement.** The Parties warrant that they understand and have full authority to enter into this Settlement, and further intend that this Settlement will be fully enforceable and binding on all Parties and agree that it will be admissible and subject to disclosure in any proceeding to enforce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

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

IN WITNESS THEREOF, the Parties each acknowledge that they have read the foregoing Settlement, accept and agree to the provisions contained in this Settlement and hereby execute it voluntarily and with full understanding of its consequences.

Dated: 7/11/2022, 2022

ALBERTO APARICIO

By: 
Alberto Aparicio

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Dated: July 12, 2022

NAGATANIEN RS FOODS, LLC



By: Tomohiro Matano

Its: President