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16 Attorneys for Plaintiff,
17 MARIA ELENA CAMPOS

18 **SUPERIOR COURT OF CALIFORNIA**

19 **COUNTY OF MONTEREY**

20 MARIA ELENA CAMPOS,
21
22 Plaintiff,

23 v.

24 JOSE ASCENSION TREJO, individually
25 and dba TACOS EL PARIENTE and
26 TACOS EL PARIENTE #2; ADRIANA
27 BEATRIZ TREJO, individually and dba
28 TACOS EL PARIENTE and TACOS EL
PARIENTE #2; and DOES 1 through 50,
inclusive,

Defendants.

Case No. 21CV002049

**DECLARATION OF LAURA L.
FRANKLIN IN SUPPORT OF
PLAINTIFF'S MOTION FOR APPROVAL
PURSUANT TO THE PRIVATE
ATTORNEY GENERAL ACT**

Date: June 9, 2023

Time: 8:30 a.m.

Dept.: 15

1 I, Laura L. Franklin, declare as follows:

2 1. I am an attorney duly licensed to practice before all courts in the State of
3 California, and I am an associate in law firm of Fitzpatrick & Swanston, counsel of record for
4 named plaintiff Maria Elena Campos. I have personal knowledge of the facts set forth below
5 and if called to testify I could and would do so competently.

6 **CASE SUMMARY**

7 2. On June 24, 2021, Plaintiff submitted written notice under Labor Code § 2699.3
8 (the “PAGA Notice”) to the California Labor and Workforce Development Agency
9 (“LWDA”) and Defendants Jose Ascension Trejo, individually and dba Tacos El Pariente and
10 Tacos El Pariente #2; and Adriana Beatriz Trejo, individually and dba Tacos El Pariente and
11 Tacos El Pariente #2 (“Defendants”). As set forth in the PAGA Notice, Plaintiff alleged that
12 Defendants violated numerous provisions of California Labor Code, including, but not limited
13 to, Labor Code §§ 201-203, 204, 226, 226.7, 510, 512, 558, 1194, 1197, 1197.1, and 2802,
14 based on Defendants’ failure to pay all minimum and/or overtime wages owed for all hours
15 worked, including on-call time, time spent making or receiving mandatory work calls while
16 off-the-clock, and reporting time pay for days when employees were required to call in or
17 remain available for a call but not report to work; failure to provide off-duty meal and rest
18 breaks; failure to provide accurate itemized wage statements; failure to pay earned wages upon
19 termination to separating employees; and failure to reimburse employees for expenses
20 associated with the required work-related use of their personal cell phones. Attached as
21 **Exhibit A** is a true and correct copy of the PAGA Notice submitted on June 24, 2021.

22 3. The LWDA did not elect to investigate or directly pursue the violations alleged
23 in the PAGA Notice.

24 4. On June 25, 2021, Plaintiff filed her Individual and Representative Action
25 lawsuit, which remains operative and asserts seventeen causes of action against Defendants,
26 including a representative cause of action for violation of the PAGA, based on the allegations
27 in the PAGA Notice. Specifically, Plaintiff’s Sixteenth Cause of Action for violation of the
28 PAGA, Labor Code § 2698, *et seq.* (the “PAGA Action”) is predicated on underlying
violations of Labor Code §§ 201-203, 204, 226, 226.7, 510, 512, 558, 1194, 1197, 1197.1, and

1 2802. The remaining causes of action the Complaint are asserted by Plaintiff in her individual
2 capacity and arise from alleged violations of the California Labor Code and the California Fair
3 Employment and Housing Act ("FEHA").

4 **DISCOVERY AND INVESTIGATION**

5 5. The Parties exchanged written discovery and Plaintiff took the deposition of
6 Defendant Jose Ascencion Trejo. Defendant Trejo's testimony affirmed that he is the sole
7 proprietor of the Tacos El Pariente restaurants named in this action. Specifically, Defendant
8 Trejo testified that he is the sole owner and operator of the Tacos El Pariente restaurant in
9 Salinas, California and one food truck that operates under the same name in the
10 Salinas/Prunedale area. Defendant Trejo further testified that he was the sole owner of the
11 Tacos El Pariente restaurant formerly located in Watsonville, California, but that the restaurant
12 had permanently closed two years prior, in 2020.

13 6. Plaintiff's allegations of unpaid wages stem largely from Defendants' failure to
14 pay Plaintiff and other employees for time associated with the requirement that they remain
15 available each day to report to work, sometimes immediately, if and when they receive a call
16 from Defendants telling them to come in that day. Deposition testimony provided by
17 Defendant Trejo affirmed that it was Defendants' practice to not schedule employees'
18 workdays in advance; rather, Defendants would decide each morning who they needed to work
19 that day and then call those employees to come in. Plaintiff alleges that this practice resulted in
20 unpaid hours for time when she and other employees were required to either call-in to find out
21 if and when they should report to work or be on controlled standby while they waited each day
22 for a potential call from their employer telling them to report to work. Plaintiff further alleges
23 reporting time pay for days when the employees were required call in or remain available for a
24 call from the employer but were not told to report to work that day, as well as reimbursement
25 owed for work-related expenses associated with the required use of the employees' personal
cell phones to make or be available to receive such calls each day.

26 7. Plaintiff alleges PAGA violations associated with Defendants' failure to
27 accurately record and pay for daily and weekly overtime hours worked. Defendants do not
28 dispute that they failed to keep copies of time records showing the hours worked by Plaintiff

1 and the Aggrieved Employees. Defendant Trejo also confirmed in his deposition testimony
2 that he paid Plaintiff in cash for hours worked over eight in a workday, and that such hours
3 were paid at Plaintiff's regular hourly rate of pay rather than at the applicable overtime
4 premium rate. However, Defendant Trejo insisted that this practice of paying cash payments
5 for hours worked was unique to Plaintiff, asserting that Plaintiff was the only employee who
6 failed to follow Defendants' policy that employees must stop working at or before the end of
7 their eighth hour of work to avoid incurring overtime hours.

8 8. There is no question that Defendants failed to maintain legally compliant written
9 policies as to most, if not all, of the underlying claims at issue. Defendants' written discovery
10 responses and deposition testimony confirm that it did not provide Plaintiff with an employee
11 handbook or any written policies during her employment. Defendants have identified only one
12 policy-related document in existence pertaining to the underlying wage claims, which
13 Defendant Trejo described in his deposition testimony (through an interpreter) as a "large sign
14 that tells [the employees] that it is their responsibility to keep track of their work hours and to
15 take their breaks and their lunch." Defendants dispute that Plaintiff and other employees were
16 unable to take timely, off-duty meal and rest breaks, despite being forced to acknowledge that
17 Defendants failed to keep copies of employee timecards or any other records affirming that
18 such breaks were taken.

19 9. Through written discovery, Defendant Trejo's deposition testimony, and data
20 voluntarily provided by Defendants in furtherance of settlement discussions, Plaintiff's
21 counsel acquired the necessary information to analyze Defendants' liability and potential
22 exposure for PAGA penalties. Defendants provided information concerning the size of the
23 PAGA group and the number of pay periods at issue, as well as Defendants' policies,
24 practices, and procedures regarding meal and rest breaks, timekeeping, scheduling,
25 recordkeeping, and the payment of wages.

26 10. Plaintiff's counsel also investigated information and documents voluntarily
27 provided by Defendants concerning asserted financial hardships impacting both the Tacos El
28 Pariente business and Defendant Trejo, individually. Defendant Trejo voluntarily produced
information and documents reflecting his lack of personal assets and significant personal

1 liabilities, including tax liability. Defendant Trejo also testified that the Watsonville restaurant
2 had permanently closed in 2020, during the COVID-19 pandemic, and that the Salinas
3 restaurant closed for a significant period of time in 2022 due to a fire. Defendants represented
4 that such financial liabilities and hardships limit their ability to fund a substantial judgment or
5 protracted litigation.

6 SETTLEMENT NEGOTIATION

7 11. The Parties engaged in settlement discussions, off and on, beginning in or
8 around May 2022, while simultaneously engaging in formal discovery. Because of
9 Defendants' alleged financial hardship touched on above, Defendants were not amenable to
10 participating in private mediation, expressing a desire to direct all available funds toward a
11 settlement fund rather than private mediation costs. Accordingly, counsel for Plaintiff and
12 Defendants worked together directly over the course of several months to negotiate a fair and
13 reasonable settlement, which is now before this Court.

14 12. During their settlement discussions, the Parties spoke at length about the
15 strengths and weaknesses of each side's claims and defenses and their respective positions as
16 to the scope of Defendants' liability. The data and other information provided by Defendants
17 in the discovery and settlement negotiation process allowed Plaintiff to analyze liability and
18 calculate Defendant's potential PAGA penalty exposure, as is detailed below.

19 13. From the inception of the case, Plaintiff's counsel have zealously represented the
20 interests of the aggrieved employees. The proposed Settlement was obtained for the benefit of
21 the aggrieved employees, as opposed to the individual Plaintiff.

22 SUMMARY OF THE PROPOSED SETTLEMENT

23 14. The Parties memorialized the terms of their settlement in the Stipulation of
24 Representative Action Settlement and Release of PAGA Claims ("Settlement Agreement"). A
25 true and correct copy of the Settlement Agreement is attached hereto as **Exhibit B**.

26 15. As set forth in the Settlement Agreement, the Aggrieved Employees affected by
27 this Settlement are defined as "all individuals who worked for Defendants in this Action as
28 non-exempt employees in California at any point during the PAGA Period." (Settlement
Agreement ¶ A.2.) The PAGA Period is defined as "the period between June 24, 2020 and

September 9, 2022.” (Settlement Agreement ¶ A.16.)

16. At the time this Settlement was negotiated, Defendants represented that, based on their records, there are just 42 employees who comprise the Aggrieved Employees and approximately 748 total pay periods at issue during the PAGA Period (see Settlement ¶ C.1.b), and Defendant has since affirmed that such numbers remain unchanged.

17. As set forth in the Settlement Agreement, the Parties have agreed that a total of Thirty Thousand Dollars (\$30,000.00) (the “Gross Settlement Amount”) shall be paid by Defendant in settlement of the action. (Settlement Agreement ¶ C.1.a.) This amount encompasses a settlement of PAGA claims asserted in this lawsuit, attorneys’ fees to Plaintiff’s counsel in the amount of \$10,000.00, Plaintiff’s counsel’s litigation costs in an amount of up to \$2,500.00, and settlement administration costs in an amount not to exceed \$2,500.00. (Settlement Agreement ¶¶ C.9.a-b, f-h.) Plaintiff is not requesting an incentive award in connection with this Settlement.

18. The balance of the Gross Settlement Amount remaining after deduction of the administrative expenses and the approved award to Plaintiff’s counsel for fees and litigation expenses will be available for distribution to the LWDA and Aggrieved Employees pursuant to the PAGA (the balance of the Gross Settlement Amount remaining after the above deductions is referred to as the “Net Settlement Amount”).

19. Pursuant to the PAGA, seventy-five percent (75%) of the Net Settlement Amount, or approximately \$11,250.00, will be paid to the LWDA. The remaining twenty-five percent (25%) of the Net Settlement Amount, or approximately \$3,750.00, will be distributed to Aggrieved Employees on a pro rata basis. (Settlement Agreement ¶¶ A.12; C.9.a.) The amount of each Individual PAGA Payment will be based on the number of PAGA Period Pay periods each Aggrieved Employee worked during the PAGA Period. (*Id.*)

20. Based on the number of Aggrieved Employees, employees will be entitled to recover, *on average*, approximately **\$89.29** each, after accounting for the three quarters of the Net Settlement Amount going to the State. The amount any particular Aggrieved Employee will be entitled to recover may be greater or lower than this average depending on the number of PAGA Period Pay periods he or she worked during the PAGA Period. This is fair, as it

1 directly allocates greater penalties to individual Aggrieved Employees who were employed
2 longer and thus allegedly suffered greater harm.

3 21. The Settlement Agreement provides for the payment of the fees and expenses
4 reasonably incurred by the Settlement Administrator, which are estimated at Two Thousand,
5 Five Hundred Dollars (\$2,500.00). (Settlement Agreement ¶ C.9.h.) The Parties have agreed
6 to utilize Phoenix Settlement Administrators, a well-known third-party settlement
7 administrator, to administer the Settlement, with the administration costs estimated not to
8 exceed \$2,500.00.

9 22. The Aggrieved Employees will be subject to only a limited release strictly
10 confined to the civil penalties available under PAGA based on the facts stated in the operative
11 Complaint and the PAGA Notice. (Settlement Agreement ¶¶ A.23, C.2.)

12 **POTENTIAL CIVIL PENALTIES**

13 23. Although Plaintiff's counsel is reasonably confident that Plaintiff would prevail
14 at trial, proceeding in litigation entails significant risk on the underlying merits of Plaintiff's
15 theory, in addition to the still-developing law under PAGA, including the Court's discretion to
16 reduce an award of PAGA penalties. The proposed Settlement also takes into consideration the
17 enhanced risk of post-judgment collection in light of Defendants' asserted financial hardships
18 and limitations, which weighed in favor of Plaintiff's counsel's determination that the present
19 settlement is fair and reasonable and in the best interest of the Aggrieved Employees and the
20 State.

21 24. Based on the data provided by Defendant, Plaintiff's counsel has calculated the
22 maximum exposure for all PAGA claims to be \$486,200.00 based on the following:

- 23 • Estimated \$74,800.00 for PAGA penalties with respect to minimum wage and
24 violations (based on approximately 748 pay periods during the PAGA period x
\$100 initial violation per pay period);
- 25 • Estimated \$74,800.00 for PAGA penalties with respect to overtime violations
26 (based on approximately 748 pay periods during the PAGA period x \$100 initial
27 violation per pay period);
- 28 • Estimated \$74,800.00 for PAGA penalties with respect to rest period violations

(based on approximately 748 pay periods during the PAGA period x \$100 initial violation per pay period);

- Estimated \$74,800.00 for PAGA penalties with respect to meal period violations (based on approximately 748 pay periods during the PAGA period x \$100 initial violation per pay period);and
- Estimated \$187,000.00 for PAGA penalties with respect to wage statement violations (calculated based on approximately 748 pay periods during the PAGA period x \$250 violation penalty under Labor Code § 226.3 pursuant to *Raines v. Coastal Pac. Food Dist.* (2018) 23 Cal. App. 5th 667).

25. Alternatively, Plaintiff calculated a more modest civil recovery penalty totaling \$74,800.00 (\$100 penalty x 748 pay periods) in the event the Court elected to not impose penalties for multiple PAGA violations per pay period. Based on this more modest maximum penalty calculation, **the proposed Settlement amounts to 40.11% of Defendants' probable maximum penalty exposure.** This more modest penalty calculation acknowledges that, even if Plaintiff were to prevail on the merits of her PAGA claim, the potential civil recovery is uncertain given the Court's discretion to reduce PAGA penalties where "if, based on the facts and circumstances of the particular case, to do otherwise, would result in an award that is unjust, arbitrary and oppressive, or confiscatory." Labor Code § 2699(e)(2).

26. Plaintiff maintains that there does not exist any reason for reducing PAGA penalties. However, Plaintiff is aware that Defendants could make a compelling argument to the contrary, given that there have been no prior notices of PAGA violations filed with the LWDA pertaining to Defendants. Even if there were a finding of liability, Defendants have argued that these violations were not intentional violations of the law and did not occur every pay period or apply to all employees.

27. Defendant has denied violations of any applicable laws and denied liability for any claims asserted in the Action. Defendants have denied violations of any applicable laws and deny liability for any claims asserted in the Action. While Defendant Trejo admitted during his deposition that employees were typically called into work on an as-needed basis each day, Defendants deny that the employees were required to call in or remain on-call to

1 receive such calls. Further, Defendants assert Plaintiff and the other employees knew that it
2 was their responsibility to take their meal and rest breaks and that they did so during their
3 employment.

4 28. I strongly believe that Plaintiff can prevail at trial. However, after taking into
5 account sharply disputed factual and legal issues involved in this litigation, the risks attending
6 further prosecution, including the still-developing law under PAGA, and the substantial
7 benefits to be received pursuant to the compromise and settlement of the litigation, I have
8 concluded that settlement on the terms set forth in the Settlement Agreement is appropriate
9 and in the best interests of Plaintiff, the State of California, and the Aggrieved Employees.

10 **ATTORNEY EXPERIENCE**

11 29. I am one of the primary attorneys on this matter. My qualifications are as
12 follows: I received my bachelor's degree with honors from the University of California,
13 Riverside and my Juris Doctor degree from Monterey College of Law. I was admitted to the
14 State Bar of California in 2012 and my primary practice has been employment law for the past
15 ten years. Beginning in 2012, I practiced employment litigation and counseling and general
16 civil litigation at Bohnen, Rosenthal & Kreeft in Monterey California, the same firm at which I
17 had been employed in various litigation support staff roles during the preceding four years. As
18 an associate at Bohnen, Rosenthal & Kreeft, I represented both plaintiffs and defendants in
19 wage and hour class action cases, and I was a member of a litigation team that obtained a
20 \$12.5 million verdict for a single plaintiff following a 5-week jury trial. In January 2016, I
21 continued my employment practice at the Salinas-based firm of L+G, LLP (now JRG
22 Attorneys at Law), representing both public and private employers and employees. From July
23 2016 through January 2020, I practiced primarily employer-side employment litigation and
24 counseling as an associate at Fenton & Keller in Monterey, California. Since January 2020, I
25 have been an associate attorney at Fitzpatrick & Swanston where I practice labor and
26 employment litigation, primarily Plaintiff-side class and representative actions.

27 30. Over the past ten years, I have litigated numerous wage and hour class actions,
28 both as counsel for the plaintiff(s)/class and as defense counsel, and I have been certified as
class counsel in numerous wage and hour class actions in California. Currently, I serve as

1 counsel for plaintiff(s)/the class in multiple ongoing wage and hour class actions in Alameda
2 County Superior Court, Monterey County Superior Court, Nevada County Superior Court,
3 Santa Clara Superior Court, San Benito Superior Court, Santa Cruz Superior Court, Ventura
4 County Superior Court, and the United States District Court, Northern District of California,
5 where we will seek class certification by way of a settlement or a class certification motion.

6 31. Based on the foregoing and on their own independent investigation and
7 evaluation, Plaintiff's counsel is of the opinion that the PAGA settlement with Defendant for
8 the consideration and on the terms set forth in the Settlement Agreement is fair, reasonable,
9 and adequate, and is in the best interests of Plaintiff, the State of California, and the Aggrieved
10 Employees.

11 I declare under penalty of perjury under the laws of the state of California that foregoing
12 is true and correct and if called as a witness I could and would competently testify to each of the
13 matters stated herein, and that I based the matters stated herein upon my personal knowledge
14 based on first-hand observation, except where the matters stated is an opinion or belief, and as to
15 all such opinions and/or beliefs, I do in fact believe them to be true. This declaration was
16 executed on May 11, 2023, at Salinas, California.

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Laura L. Franklin

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EXHIBIT A

FITZPATRICK & SWANSTON

B. JAMES FITZPATRICK
CHARLES SWANSTON
LAURA L. FRANKLIN

ATTORNEYS AT LAW
555 South Main Street
Salinas, California 93901
Telephone: 831.755.1311
Facsimile: 831.755.1319

June 24, 2021

Via Online Filing

Labor & Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, CA 94612

Via Certified Mail

Jose Ascension Trejo, individually and dba
Tacos El Pariente and Tacos El Pariente #2
100 Williams Road
Salinas, CA 93905

Via Certified Mail

Adriana Beatriz Trejo, individually and dba
Tacos El Pariente and Tacos El Pariente #2
100 Williams Road
Salinas, CA 93905

Re: Notice of Labor Law Violations
California Labor Code §§ 2699, 2699.3, 2699.5
Aggrieved Employee: Maria Elena Campos
Our File No.: C0067-600

To Representatives of the Labor and Workforce Development Agency, Jose Ascension Trejo and Adriana Beatriz Trejo, individually and doing business as Tacos El Pariente and Tacos El Pariente #2:

Pursuant to California Labor Code §§ 2699, 2699.3, and 2699.5, aggrieved employee Maria Elena Campos, on behalf of herself and as representative on behalf of all current and former aggrieved employees (hereinafter collectively referred to as “the employees”) of Jose Ascension Trejo and Adriana Beatriz Trejo, individually and doing business as Tacos El Pariente and Tacos El Pariente #2 (hereinafter collectively referred to as “the employer”), hereby notifies you of the labor law violations and facts and circumstances giving rise to them, committed by the employer.

The employees were subjected to numerous violations based on, among others, the following facts, circumstances and laws:

Maria Elena Campos worked for the employer from approximately April 9, 2019, through approximately September 22, 2020. Pursuant to Emergency Rule 9 enacted by the California Judicial Council in response to the COVID-19 pandemic, the statutes of limitations applicable to Ms. Campos’s claims were tolled through October 1, 2020.

The employer maintained and enforced a meal period policy and practice that failed to provide a 30-minute duty-free meal period to the employees that began before more than five hours were worked. The employees were generally not permitted to take any meal breaks while working, regardless of the length of their shifts. When employees attempted to take a break to eat, their breaks were routinely interrupted by their supervisor, who advised the employees that their help was needed with customers or other pressing work tasks. Pursuant to this policy and practice maintained by the employer, employees were required to abstain from taking a 30-minute duty-free meal period. The employer further failed to provide a second 30-minute duty-free meal period to employees who worked more than 10 hours per day. Additionally, the employer failed to compensate the employees one hour of wages at their regular rate of compensation for each meal period not afforded as required by California Labor Code § 226.7, and the applicable Industrial Welfare Commission Wage Order.

Likewise, the employer maintained and enforced a uniform policy by which they repeatedly failed to authorize, permit and provide the employees with a paid duty-free rest period of at least 10 consecutive uninterrupted minutes during which the employees were relieved of all duties for every four hours worked or major fraction thereof and which were counted as hours worked for which there would be no deduction from wages. As with meal breaks, the employer generally failed to authorize or permit employees to take *any* off-duty paid rest periods during their workday. Additionally, the employer failed to compensate the employees one hour of wages at their regular rate of compensation for each rest period not afforded as required by California Labor Code § 226.7, and the applicable Industrial Welfare Commission Wage Order.

When Ms. Campos complained to the employer about not being able to take her meal and rest breaks during her shift (which was typically 12 hours long), the employer advised her that none of the employees take meal or rest breaks because they have a restaurant to run. Toward the end of her employment, Ms. Campos would sometimes insist that she be permitted to take a break, which sparked threatening remarks from the employer and resentment from the other employees.

Additionally, the employer maintained and enforced a policy that failed to pay wages for all hours worked. The employees were not provided with any set work schedule. Rather, the employer required the employees to remain on-call each day for a call from the employer or, in some cases, to report to work by calling the employer each day to ascertain when and if the employee was required to show up to work physically. The employees were required to use their own personal cell phone for this purpose without reimbursement and were not paid for the time associated with making or receiving the mandatory work calls, the time they were required to keep available to physically show up for work, and reporting time pay on days the employees were required to call in but not report to work. Moreover, because of such practices, the employees were not reimbursed for the costs of such usage, which results in a further violation of Labor Code section 2802.

The employer maintained and enforced a policy that did not properly record all hours worked by the employees and, as a result, the employees were not paid for all hours worked in violation of Labor Code section 1174(d). For example, the employer failed to record and compensate Ms. Campos and other employees for time spent traveling to and attending a mandatory restaurant competition event that took place on the weekend in required the employees to stay in a shared hotel room with owner Jose Trejo and several other employees,

male and female, some of whom were required to sleep on the floor. Ms. Campos was not permitted to put the hours for this event on her timecard. When Ms. Campos requested payment for the hours she worked for this event on Saturday, Sunday, and Monday, the employer offered her only a flat rate payment of \$200 for all three days.

Consequently, the employees were forced to work without being paid at least minimum wage as required by California Labor Code §§ 1197 and 1199 and the applicable Industrial Welfare Commission Wage Order.

The employer maintained and enforced a uniform policy by which they regularly and consistently required the employees to work more than eight (8) hours in a single workday and more than forty (40) hours in a single workweek without paying them premium overtime wages for such overtime hours worked. Pursuant to this policy, the employer required the employees to work off the clock and without pay. This included, but was not limited to, work at the beginning of their shifts and the end of their shifts, and as otherwise described herein above. As a result of this policy, the employees worked unpaid hours in excess of eight (8) in a day and forty (40) in a week. Consequently, the employer failed to pay the employees overtime premium wages of one and one-half times the employee's regular rate of pay for all hours worked over eight (8) hours in a single workday and/or more than forty (40) hours in a single workweek, as required by California Labor Code §§ 510 and 1194 and the applicable Industrial Welfare Commission Wage Order. Ms. Campos, for example, typically worked at the restaurant six days per week, an average of 12 hours per day, but never received premium overtime wages.

The employer maintained and enforced a policy that failed to provide paid sick leave as required by Labor Code §§ 233 and 246. The employer further failed to pay paid sick leave as required by the Families First Coronavirus Response Act (FFCRA). For example, when Ms. Campos tested positive for COVID-19 in August 2020 and was required to be off work for three weeks, the employer did not pay her any portion of the 80 hours of sick leave she was entitled to pursuant to the FFCRA.

The employer maintained and enforced a policy by which they repeatedly required the employees to use their personal cell phones for work-related purposes. The employer failed to reimburse the employees for such work-related expenses as required by labor Code section 2802.

Moreover, the employer issued incomplete and inaccurate wage statements to the employees that included, but not limited to, the total hours worked, overtime hours worked, reimbursement for work-related expenses, gross wages earned, net wages earned, all applicable rates of pay and the corresponding number of hours worked under each rate, all deductions, premium wages owed for missed rest and meal periods, and an accurate accounting for all wages, in violation of Labor Code section 226.

The employer willfully failed to pay the employees upon the termination of their employment all owing and unpaid wages for work performed by them during their employment and at the end of their employment. Such wages include, but are not limited to, wages for all hours worked, minimum wages, overtime premium wages for all overtime hours worked, compensation for missed meal and rest periods, and reimbursement for work-related expenses.

The employer maintained and enforced a uniform policy by which it violated Labor Code section 204 by failing to pay all employees their earned wages in a timely manner following the end of each pay period within the deadlines set forth in Section 204.

The legal violations arising from the conduct referenced above and below include, but are not limited to, the following:

1. The employer failed to pay either agreed wages for all hours worked;
2. The employer failed to pay wages in a timely manner;
3. The employer failed to pay employees who were discharged or who resigned all wages owed within the time required by Labor Code §§ 201 and 202;
4. The employer failed to permit an employee to use in any calendar year the employees' accrued and available sick leave as required by Labor Code § 233;
5. The employer failed to:
 - a. Record in ink or other indelible form, properly dated, showing the month, day, and year, all deductions made from payment of wages of the employees. They also failed to provide the employees with a copy of the statement, and they failed to maintain a record of the deductions on file for at least three years at the place of employment or at a central location within the State of California;
 - b. Furnish to the employees, semimonthly or at the time of each payment of wages, a complete and accurate itemized statement in writing showing: (1) gross wages earned; (2) total hours worked; (3) all deductions; (4) net wages earned; (5) the inclusive dates of the period for which the employee is paid; (6) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer and; (7) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee;
6. The employer failed to keep accurate records, including but not limited to time and pay records showing when the employees begin and end each work period, start and stop times for meal periods and the total length of meal periods, the total daily hours worked in each payroll period, the applicable rate of pay and the total wages paid for at least three years at the place of employment or at a central location within the State of California;
7. The employer repeatedly employed the employees for work periods of more than five hours per day without providing them with timely meal periods of not less than 30 minutes during which the employees were relieved of all duties, and failed and refused to pay the employees one hour of pay at their regular rate of compensation for each work day that such meal periods were not provided;

8. The employer repeatedly employed the employees for work periods of more than ten hours per day without providing them with a second meal periods of not less than 30 minutes during which the employees were relieved of all duties, and failed and refused to pay the employees one hour of pay at the their regular rate of compensation for each work day that such meal periods were not provided;
9. The employer repeatedly employed the employees for work days of at least three and one half hours without authorizing and permitting them to take paid rest periods of at least 10 minutes net rest time for every four hours work time or major fraction thereof in the middle of each work period, insofar as practicable, and failed and refused to pay the employees one hour of pay at the their regular rate of compensation for each work day that one or more rest periods were not provided; and
10. The employer failed to provide the employees with reimbursement for work-related expenses

The above described conduct by the employer violates numerous provisions of the Labor Code, including but not limited to, Labor Code §§ 201, 201.3, 202, 203, 204, 207, 208, 209, 216, 218, 218.5, 218.6, 223, 225.5, 226, 510, 512, 558, 1174, 1194, 1197, 1197.1, 1198, 1199, 2699, 2800, 2802, and the applicable California Industrial Welfare Commission Wage Order. The employees seek wages and penalties from the employer.

Very truly yours,

FITZPATRICK & SWANSTON


B. James Fitzpatrick

BJF/jf

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EXHIBIT B

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Attorneys for Defendants

SUPERIOR COURT OF CALIFORNIA

COUNTY OF MONTEREY

MARIA ELENA CAMPOS,

Plaintiff,

v.

JOSE ASCENSION TREJO, individually
and dba TACOS EL PARIENTE and
TACOS EL PARIENTE #2; ADRIANA
BEATRIZ TREJO, individually and dba
TACOS EL PARIENTE and TACOS EL
PARIENTE #2; and DOES 1 through 50,
inclusive,

Defendants.

Case No. 21CV002049

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

1 This Stipulation of Representative Action Settlement and Release of PAGA Claims is
2 entered into by and between Plaintiff MARIA ELENA CAMPOS (“Plaintiff”), in her
3 representative capacity on behalf of the State of California and fellow Aggrieved Employees,
4 and Defendant JOSE ASCENSION TREJO, individually and dba TACOS EL PARIENTE and
5 TACOS EL PARIENTE #2(hereinafter “Defendant”):

6 **A. DEFINITIONS**

7 1. “Action” shall mean the Individual and Representative Action lawsuit filed by
8 Plaintiff on June 25, 2021 entitled *Maria Elena Campos v. Jose Ascension Trejo, individually*
9 *and dba Tacos El Pariente, et al.*, Monterey County Superior Court Case No. 21CV002049.

10 2. “Aggrieved Employees” shall mean all individuals who worked for Defendants in
11 this Action as non-exempt employees in California at any point during the PAGA Period.

12 3. “Agreement” or “Settlement Agreement” means this Stipulation of Settlement of
13 PAGA Actions and Release of PAGA Claims.

14 4. “Court” means the Superior Court for the State of California, County of Monterey
15 presiding over the Action.

16 5. “Defendants” shall mean the named defendants in the Action: JOSE ASCENSION
17 TREJO, individually and dba TACOS EL PARIENTE and TACOS EL PARIENTE #2; and
18 ADRIANA BEATRIZ TREJO, individually and dba TACOS EL PARIENTE and TACOS EL
19 PARIENTE #2.

20 6. “Defendants’ Counsel” shall mean Anais Mora and Stephan A. Barber of JRG
21 Attorneys at Law.

22 7. “Effective Date” means the date upon which the following has occurred: (i) the
23 long form Settlement Agreement has been executed by Plaintiff, Defendant Jose Ascension
24 Trejo and Counsel for the Parties; (ii) Notice of the Settlement has been sent to the LWDA; (iii)
25 the Court has given approval to the Settlement; (v) the Court has entered the Court’s Final Order
26 and Judgment; and (vi) the latest of the following events: (A) when the period for filing any
27 appeal, writ or other appellate proceeding opposing the Settlement has elapsed without any
28 appeal, writ or other appellate proceeding having been filed; (B) when any appeal, writ or other

1 appellate proceeding opposing the Settlement has been dismissed finally and conclusively with
2 no right to pursue further remedies or relief; or (C) when any appeal, writ or other appellate
3 proceeding has upheld the Court's Final Order and Judgment with no right to pursue further
4 remedies or relief. If the Court declines to approve the Settlement, the entire Settlement
5 Agreement and any documents generated to bring it into effect, are deemed void and
6 unenforceable as if no settlement of any claim was ever reached, and the Parties will be returned
7 to their respective positions. All negotiations, statements and proceedings and data relating
8 thereto shall be protected by California Evidence Code §1152 and shall be without prejudice to
9 the rights of any of the Parties. The Effective Date cannot occur, and Defendant will not be
10 obligated to fund this Settlement, until and unless there is no possibility of an appeal or further
11 appeal that could potentially prevent this Settlement from becoming final and binding.

12 8. "Employee Data" means information regarding the Aggrieved Employees that
13 Defendants will in good faith compile from their records and provide to the Settlement
14 Administrator. It shall be formatted in the manner requested by the Settlement Administrator
15 and shall include sufficient information to effectuate this settlement, including but not limited
16 to: each Aggrieved Employee's full name, last known address, Social Security Number, and the
17 number of Pay Periods worked during the PAGA Period.

18 9. "Funding Date" shall mean the latter of either the date the Gross Settlement
19 Amount is fully funded or fifteen (15) calendar days after the Effective Date.

20 10. "Gross Settlement Amount" means Thirty Thousand Dollars (\$30,000.00) that
21 Defendant must pay into the QSF in connection with this Settlement, inclusive of the Aggrieved
22 Employee Payment, LWDA Payment, Plaintiff's Counsel Award and the Settlement
23 Administration Costs.

24 11. "LWDA" means the California Labor and Workforce Development Agency.

25 12. "Net Settlement Amount" or "NSA" means the amount remaining from the Gross
26 Settlement Amount after deducting the Settlement Administration Cost and the Plaintiff's
27 Counsel Award. The NSA shall be used to satisfy the PAGA Representative's claims for civil
28 penalties arising under PAGA asserted on behalf of the Aggrieved Employees and the LWDA.

1 Twenty-five percent (25%) of the NSA shall be allocated to the Aggrieved Employees
2 (“Aggrieved Employee Payment”) and distributed based on the pro rata number of Pay Periods
3 worked by each Aggrieved Employee during the PAGA Period. Seventy-five percent (75%) of
4 the NSA shall be paid to the LWDA (“LWDA Payment”).

5 13. “Notice of PAGA Settlement” means the notice to be provided to the Aggrieved
6 Employees by the Settlement Administrator in the form set forth as Exhibit A to this Agreement.

7 14. “PAGA” means the California Labor Code Private Attorneys General Act of 2004,
8 Labor Code § 2698 *et seq.*

9 15. “PAGA Payment Ratio” means the respective Pay Periods worked during the
10 PAGA Period for each Aggrieved Employee divided by the total of the Pay Periods for all
11 Aggrieved Employees during the PAGA Period.

12 16. “PAGA Period” means the period between June 24, 2020 and September 9, 2022.

13 17. “Parties” means Plaintiff and Defendant, collectively, and “Party” shall mean
14 either Plaintiff or Defendant, individually.

15 18. “Pay Period” for purposes of calculating the distribution of the Aggrieved
16 Employee Payment, as defined herein, means any biweekly period in which Aggrieved
17 Employees received wages during their employment with Defendant during the PAGA Period.

18 19. “Plaintiff” or “PAGA Representative” shall mean Plaintiff MARIA ELENA
19 CAMPOS.

20 20. “Plaintiff’s Counsel” shall mean B. James Fitzpatrick and Laura L. Franklin of
21 Fitzpatrick & Swanston, and Larry W. Lee and Howard L. Magee of Diversity Law Group.

22 21. “Plaintiff’s Counsel Award” means the award of attorneys’ fees and
23 reimbursement of litigation expenses that the Court authorizes to be paid to Plaintiff’s Counsel
24 for the services they have rendered to Plaintiff, the State of California, the LWDA and the
25 Aggrieved Employees consisting of attorneys’ fees not to exceed one-third of the Gross
26 Settlement Amount *plus* actually incurred litigation costs up to Two Thousand, Five Hundred
27 Dollars (\$2,500.00) as documented by Plaintiff’s Counsels’ billing records. Plaintiff’s Counsels’
28 application for the Plaintiff’s Counsel Award is subject to Court approval, and a reduction in

1 attorneys' fees, costs, awarded by the Court is not a basis for Plaintiff to void, rescind, or
2 terminate this Agreement.

3 22. "QSF" means the Qualified Settlement Fund established, designated and
4 maintained by the Settlement Administrator to fund the Gross Settlement Amount.

5 23. "Released PAGA Claims" means all claims for civil penalties under PAGA arising
6 from the same facts and/or claims alleged in Plaintiff's Individual and Representative Action
7 Complaint, as well those included in Plaintiff's June 24, 2021 letter to the LWDA, that were
8 pled or that could have been pled based on the facts alleged in the said complaint and letter
9 during the PAGA Period, together "Complaints." The *res judicata* effect of the judgment will be
10 the same as that of the release.

11 24. "Released Parties" shall mean Defendants named in the Action (JOSE
12 ASCENSION TREJO, individually and dba TACOS EL PARIENTE and TACOS EL
13 PARIENTE #2; and ADRIANA BEATRIZ TREJO, individually and dba TACOS EL
14 PARIENTE and TACOS EL PARIENTE #2) and all Defendants' past and present parents,
15 subsidiaries, and affiliates, including without limitation any corporation, limited liability
16 company, partnership, trust, foundation and non-profit entity that controls, is controlled by, or
17 is under the common control with Defendant, and the past and present shareholders, directors,
18 officer, agents, employers, members, consultants, benefit plans, successors and assigns of any
19 of the foregoing, and any individual or entity that could be jointly liable with any of the
20 foregoing.

21 25. "Settlement" means the disposition of the Action pursuant to this Agreement.

22 26. "Settlement Administrator" means Phoenix Settlement Administrators.

23 27. "Settlement Administration Costs" means the fees and expenses reasonably
24 incurred by the Settlement Administrator as a result of the procedures and processes expressly
25 required by this Agreement, which are estimated at Two Thousand, Five Hundred Dollars
26 (\$2,500.00) and shall be paid from the Gross Settlement Amount. Any portion of the Settlement
27 Administration Costs not used or approved by the Court shall be added to the Net Settlement
28 Amount.

1 **B. RECITALS**

2 1. Plaintiff was formerly employed by Defendant from approximately April 9, 2019
3 though approximately September 2020 at Tacos El Pariente restaurant in Salinas, California.

4 2. On June 24, 2021, Plaintiff filed a Notice of Violations pursuant to the California
5 Private Attorneys General Act (“PAGA”) with the Labor and Workforce Development Agency
6 (“LWDA”) and served the same on Defendants.

7 3. On June 25, 2021, Plaintiff filed the Action in Monterey County Superior Court,
8 asserting seventeen causes of action against Defendants, including a representative cause of
9 action for violation of the PAGA (the “PAGA Claims”). The remaining causes of action in the
10 Action are asserted by Plaintiff in her individual capacity and arise from alleged violations of
11 California Labor Code and the California Fair Employment and Housing Act (“FEHA”).

12 4. Beginning in or around May 2022, Defendants’ counsel shared information and
13 documents with Plaintiff relating to Defendants’ financial condition and alleged limitations on
14 Defendants’ ability to fund a substantial settlement and/or judgment. Over the course of
15 approximately four months, the Parties engaged in informal settlement discussions, while
16 simultaneously engaging in written discovery in the Action. During this time, Defendant
17 presented information and documents affirming their asserted financial condition, including
18 their lack of assets and financial hardships impacting the Tacos El Pariente business, which
19 information was corroborated by the independent investigation of Plaintiff’s counsel.

20 5. On September 9, 2022, the Parties agreed to the key terms of a settlement of the
21 Lawsuit, including the PAGA Claims and Plaintiff’s individual claims under the FEHA.

22 6. Through this agreement, the Parties desire to compromise, settle and release any
23 and all PAGA claims predicated on the alleged Labor Code violations to Plaintiff individually
24 and all allegedly Aggrieved Employees as set forth in the Action.

25 7. This Agreement represents a compromise and settlement of highly disputed
26 claims. Nothing in this Agreement is intended or will be construed as an admission by Defendant
27 that the claims in the Actions of Plaintiff or the Aggrieved Employees have merit or that
28

Defendant bears any liability to Plaintiff or the Aggrieved Employees on those claims or any other claims, or as an admission by Plaintiff that Defendants' defenses in the Actions have merit.

Based on these Recitals that are a part of this Agreement, the Parties agree as follows:

C. TERMS OF AGREEMENT

1. Settlement Consideration and Settlement Payments by Defendant.

a) Settlement Consideration. In full and complete settlement of the PAGA Claims, and in exchange for the releases set forth below, Defendant will pay the Gross Settlement Amount of Thirty Thousand Dollars (\$30,000.00). The Parties agree that this is a non-reversionary Settlement and that no portion of the Gross Settlement Amount shall revert to Defendant. Except as provided for in any individual settlement with Plaintiff, Defendant shall not be required to pay more or less than the Gross Settlement Amount.

b) Number of Aggrieved Employees and Pay Periods. There were 42 Aggrieved Employees that collectively worked 748 Pay Periods ("Pay Periods") during the PAGA Period.

c) Settlement Payment. Defendant shall pay, via wire transfer, the Gross Settlement Amount to the Settlement Administrator in one or more payments as described in Paragraph 8 below.

2. Release by Plaintiff on Behalf of the LWDA. As of the Funding Date, in exchange for the consideration set forth in this Agreement, the Plaintiffs, individually and as the representatives acting as proxies or agents of the LWDA, a State of California Executive Branch Agency, in this Action, agree to release Released Parties for the Released PAGA Claims. The express purpose of this Agreement and the Judgment to be entered by the Court following approval of this settlement is to forever bar Plaintiffs, the LWDA, and any other individual or entity acting on behalf of or purporting to act on behalf of the LWDA (including all PAGA Claim Employees) from asserting any of the Released PAGA Claims in any future litigation. It is the intent of the Parties that, to the greatest extent provided by law, including under the holding of *Arias v. Superior Court*, 46 Cal. 4th 969, 986 (2009), the ability of Plaintiffs, the State of California or any allegedly Aggrieved Employee to bring a PAGA claim on behalf of the LWDA

1 based on the Released PAGA Claims is completely and forever foreclosed. Any Party to this
2 Agreement may use the Agreement to assert that this settlement and the judgment to be entered
3 by the Court following approval by this settlement bars any later-filed action asserting any of
4 the Released PAGA Claims against any of the Released Parties at any time during the PAGA
5 Period.

6 **3. Nullification of Settlement Agreement.** If this Settlement Agreement is not
7 approved by the Court, fails to become effective, or is reversed, withdrawn, or in any way
8 prevents or prohibits Defendant from obtaining a complete resolution of the Released PAGA
9 Claims, or if Defendant fails to fully fund the Gross Settlement Amount:

10 a) This Settlement Agreement shall be void *ab initio* and of no force or effect,
11 and shall not be admissible in any judicial, administrative or arbitral proceeding for any purpose
12 or with respect to any issue, substantive or procedural; and

13 b) None of the Parties to this Settlement will be deemed to have waived any
14 claims, objections, defenses or arguments in the Actions.

15 **4. Tax Liability.** The Parties make no representations as to the tax treatment or legal
16 effect of the payments called for in this Agreement. The Aggrieved Employees are not relying
17 on any statement or representation by the Parties in this regard. Aggrieved Employees
18 understand and agree that they will be responsible for the payment of any taxes and penalties
19 assessed on their respective share of the Aggrieved Employee Payments and will be solely
20 responsible for any penalties or other obligations resulting from their personal tax reporting of
21 the Aggrieved Employees Payments.

22 **5. Circular 230 Disclaimer.** Each Party to this Agreement (for purposes of this
23 section, the “acknowledging party” and each Party to this Agreement other than the
24 acknowledging party, an “other party”) acknowledges and agrees that: (1) no provision of this
25 Agreement, and no written communication or disclosure between or among the Parties or their
26 attorneys and other advisers, is or was intended to be, nor shall any such communication or
27 disclosure constitute or be construed or be relied upon as, tax advice within the meaning of
28 United States Treasury Department circular 230 (31 CFR part 10, as amended); (2) the

1 acknowledging party (a) has relied exclusively upon his, her or its own, independent legal and
2 tax counsel for advice (including tax advice) in connection with this Agreement, (b) has not
3 entered into this Agreement based upon the recommendation of any other Party or any attorney
4 or advisor to any other Party, and (c) is not entitled to rely upon any communication or disclosure
5 by any attorney or adviser to any other party to avoid any tax penalty that may be imposed on
6 the acknowledging party, and (3) no attorney or adviser to any other Party has imposed any
7 limitation that protects the confidentiality of any such attorney's or adviser's tax strategies
8 (regardless of whether such limitation is legally binding) upon disclosure by the acknowledging
9 party of the tax treatment or tax structure of any transaction, including any transaction
10 contemplated by this Agreement.

11 **6. Settlement Administrator.** The Settlement Administrator shall be responsible
12 for: establishing and administering the QSF; calculating, processing and mailing payments to
13 Plaintiff's Counsel, LWDA and Aggrieved Employees; printing and mailing the Notice of
14 PAGA Settlement to the Aggrieved Employees as directed by the Court; calculating, and
15 distributing tax forms for the Aggrieved Employee Payments; providing declaration(s) as
16 necessary in support of approval of this Settlement; and other tasks as the Parties mutually agree
17 or the Court orders the Settlement Administrator to perform. The Settlement Administrator shall
18 keep the Parties timely apprised of the performance of all Settlement Administrator
19 responsibilities.

20 **7. Employee Data.** No later than ten (10) calendar days after the Effective Date,
21 Defendant shall provide the Settlement Administrator with the Employee Data. The Settlement
22 Administrator shall maintain the Employee Data as private and confidential except to carry out
23 its duties to administer the Settlement. In no event will this information ever be shared with or
24 provided to Plaintiff or Plaintiff's Counsel unless necessary to ensure Plaintiff's Counsel's
25 ability to fulfill any obligations associated with this Settlement.

26 **8. Funding of the Gross Settlement Amount.** Defendant shall pay a minimum of
27 Twenty-Five Thousand Dollars (\$25,000.00) into the QSF within ten (10) calendar days of the
28 Court's approval of this Settlement. The remaining Five-Thousand Dollars (\$5,000.00) shall be

1 paid into the QSF within thirty (30) calendar days of the initial payment:

2 **9. Allocation of the Gross Settlement Amount.**

3 a) Calculation of Individual Payments to the Aggrieved Employees. Using
4 the Employee Data, the Settlement Administrator shall add up the total number of Pay Periods
5 for all Aggrieved Employees during the PAGA Period. The respective Pay Periods for each
6 Aggrieved Employee will be divided by the total Pay Periods for all Aggrieved Employees,
7 resulting in the "PAGA Payment Ratio" for each Aggrieved Employee. Each Aggrieved
8 Employee's PAGA Payment Ratio will then be multiplied by the Aggrieved Employee Payment
9 to calculate each Aggrieved Employee's estimated share of the Aggrieved Employee Payment.

10 b) Allocation of Individual Aggrieved Employee Payments. For tax purposes,
11 individual Aggrieved Employee Payments shall be allocated and treated 100% as penalties and
12 interest. The individual Aggrieved Employee Payments shall not be subject to wage
13 withholdings and shall be reported on IRS Form 1099s.

14 c) Mailing. Individual Aggrieved Employee Payments shall be mailed by
15 regular First-Class U.S. Mail to the Aggrieved Employees' last known mailing address no later
16 than fifteen (15) calendar days after the Funding Date. Upon receipt of the Employee Data, the
17 Settlement Administrator will perform a search based on the National Change of Address
18 Database to update and correct any known or identifiable address changes. No later than fourteen
19 (14) calendar days after receiving the Employee Data from Defendant, the Settlement
20 Administrator shall mail Individual Aggrieved Employee Payments to all Aggrieved Employees
21 via regular First-Class U.S. Mail. The Settlement Administrator shall exercise its best judgment
22 to determine the current mailing address for each Aggrieved Employee. The address identified
23 by the Settlement Administrator as the current mailing address shall be presumed to be the best
24 mailing address for each Aggrieved Employee.

25 d) Undeliverable Aggrieved Employee Payments. Any Individual Aggrieved
26 Employee Payments returned to the Settlement Administrator as non-delivered on or before the
27 check cashing expiration deadline shall be re-mailed to any forwarding address provided. If no
28 forwarding address is provided, the Settlement Administrator shall promptly attempt to

1 determine a correct address by lawful use of skip-tracing, or other search using the name, address
2 and/or Social Security number of the Aggrieved Employee involved, and shall then perform a
3 re-mailing, if another mailing address is identified by the Settlement Administrator. In addition,
4 if any Individual Aggrieved Employee Payment, which is addressed to any Aggrieved Employee
5 who is currently employed by Defendant, is returned to the Settlement Administrator as non-
6 delivered and no forwarding address is provided, the Settlement Administrator shall notify
7 Defendant. Defendant will request that the currently employed Aggrieved Employee provide a
8 corrected address and transmit to the Administrator any corrected address provided by the
9 Aggrieved Employee. Aggrieved Employees who received a re-mailed Individual Aggrieved
10 Employee Payment shall have their check expiration deadline extended fifteen (15) days from
11 the original check expiration deadline.

12 e) Check Expiration Deadline. Any checks issued the Aggrieved Employees
13 shall remain valid and negotiable for one hundred and eighty (180) days from the date of their
14 issuance. If an Aggrieved Employee does not cash his or her settlement check within 90 days,
15 the Settlement Administrator will send a letter to such persons, advising that the check will
16 expire after the 180th day, and invite that Aggrieved Employee to request reissuance in the event
17 the check was destroyed, lost or misplaced. In the event an individual Aggrieved Employee
18 Payment check has not been cashed within one hundred and eighty (180) days or the extended
19 deadline defined in paragraph 9(d) above, the Settlement Administrator shall cause the aggregate
20 sum represented by those uncashed checks to be sent to the Center for Community Advocacy, a
21 non-profit organization that supports and builds leadership within Central California
22 communities to advocate for improved housing, health, and economic conditions and
23 opportunities for farmworkers and other low-income working families. Neither Plaintiff's
24 Counsel, Defendants' counsel, Plaintiff, nor Defendant have any pecuniary interest in, or
25 association with, the Center for Community Advocacy that would present a conflict of interest.

26 f) LWDA Payment. The Settlement Administrator shall transmit the LWDA
27 Payment to the LWDA as one lump sum payment, if by check, certified mail return receipt
28 requested to Plaintiff's Counsel, within fifteen (15) calendar days of the Funding Date.

1 g) Plaintiff's Counsel Award. Defendant understands a motion by Plaintiff's
2 Counsel for attorneys' fees not to exceed one-third of the Gross Settlement Amount currently
3 estimated to be Ten Thousand Dollars and Zero Cents (\$10,000.00), plus costs and expenses
4 supported by declaration not to exceed Two Thousand, Five Hundred Dollars (\$2,500.00), from
5 the Gross Settlement Amount will be filed. Any portion of the requested Plaintiff's Counsel
6 Award that is not awarded to Plaintiff's Counsel shall be part of the Net Settlement Amount and
7 shall be distributed to the LWDA and the Aggrieved Employees as provided in this Agreement.
8 The Settlement Administrator shall distribute and pay the Plaintiff's Counsel Award to
9 Plaintiff's Counsel from the Gross Settlement Amount no later than fifteen (15) calendar days
10 after the Funding Date. Plaintiff's Counsel shall be solely and legally responsible to pay all
11 applicable taxes on the payment made pursuant to this paragraph. The Settlement Administrator
12 shall issue an IRS Form 1099 — MISC to Plaintiff's Counsel for the payments made pursuant
13 to this paragraph. In the event that the Court reduces or does not approve the requested Plaintiff's
14 Counsel Award, Plaintiff and Plaintiff's Counsel shall not have the right to revoke the
15 Settlement, or to appeal such order, and the Settlement will remain binding.

16 h) Settlement Administration Costs. The Settlement Administrator shall be
17 paid for the costs of administration of the Settlement from the Gross Settlement Amount. The
18 estimate of the Settlement Administration Costs is \$2,500.00. The Settlement Administrator
19 shall be paid the Settlement Administration Costs no later than fifteen (15) calendar days after
20 the Funding Date.

21 **10. Approval Motion.** Plaintiff's Counsel and Plaintiff shall draft and file with the
22 Court a Motion for Settlement Approval and Entering Judgment Finally Approving Settlement.

23 **11. Notice of Settlement to LWDA.** In connection with the Motion for Settlement
24 Approval, Plaintiff's Counsel shall submit this Agreement to the LWDA pursuant to California
25 Labor Code section 2699(1)(2). Plaintiff's Counsel shall within ten (10) days after the entry of
26 the judgment or order approving this Settlement, submit the order approving the Settlement to
27 the LWDA pursuant to California Labor Code section 2699(1)(3).
28

1 **12. Review of Motion for Settlement Approval.** Plaintiff's Counsel will provide an
2 opportunity for Counsel for Defendant to review the Motion for Settlement Approval, including
3 the Order Granting Approval of the Settlement, and Judgment Finally Approving Settlement
4 before filing with the Court. The Parties and their counsel will cooperate with each other and
5 use their best efforts to affect the Court's approval of the Motion for Approval of the Settlement,
6 and entry of Judgment.

7 **13. Cooperation.** The Parties and their counsel will cooperate with each other and
8 use their best efforts to implement the Settlement.

9 **14. Interim Stay of Proceedings.** The Parties agree to stay all proceedings in the
10 Actions, except such proceedings necessary to implement and complete the Settlement.

11 **15. Amendment or Modification.** This Agreement may be amended or modified
12 only by a written instrument signed by counsel for all Parties or their successors-in-interest.

13 **16. Entire Agreement.** This Agreement and any attached Exhibits, provided,
14 however, that the individual settlement agreement between Plaintiff and Defendant remains in
15 full force and effect with regard to any disputes not settled and resolved in this Agreement,
16 constitute the entire Agreement among these Parties, and no oral or written representations,
17 warranties or inducements have been made to any Party concerning this Agreement or its
18 Exhibits other than the representations, warranties and covenants contained and memorialized
19 in this Agreement and its Exhibits.

20 **17. Authorization to Enter into Settlement Agreement.** Counsel for all Parties
21 warrant and represent they are expressly authorized by the Parties whom they represent to
22 negotiate this Agreement and to take all appropriate action required or permitted to be taken by
23 such Parties pursuant to this Agreement to effectuate its terms, and to execute any other
24 documents required to effectuate the terms of this Agreement. The persons signing this
25 Agreement on behalf of Defendant represents and warrants that he/she is authorized to sign this
26 Agreement on behalf of Defendant. Plaintiff represents and warrants that she is authorized to
27 sign this Agreement and that she has not assigned any claim, or part of a claim, covered by this
28 Settlement to a third-party.

1 **18. No Right of Aggrieved Employees to Object or Opt-Out.** The Parties agree
2 there is no statutory right for any Aggrieved Employee to object, opt out or otherwise exclude
3 himself or herself from the Settlement. Except as otherwise stated, the Parties will vigorously
4 defend against any attempt by any Aggrieved Employee or by any entity or agency to intervene
5 in this matter or object to/opt-out of this settlement. The Parties further agree there is no right
6 or opportunity for any Aggrieved Employee to appeal the approval of the Settlement by the
7 Court. The Parties will jointly defend against any appeal filed with respect to the Final Order.

8 **19. Limited Disclosure:** The Plaintiffs/PAGA Representatives and PAGA Counsel
9 will not make any public disclosure of the Settlement or Memorandum of Understanding other
10 than to seek approval from the Court of the Settlement. PAGA Counsel will take all steps
11 necessary to ensure the Plaintiffs/PAGA Representatives are aware of and will encourage the
12 Plaintiffs/PAGA Representatives to adhere to, the restriction against any public disclosure of
13 the Settlement the contents of the Memorandum of Understanding or long form settlement
14 documents until after the Settlement is approved by the Court. Following approval of the
15 Settlement, the Plaintiffs/PAGA Representatives and PAGA Counsel will not have any
16 communications with the media other than to direct the media to the public records of the actions
17 on file with the Court. PAGA Counsel will take all steps necessary to ensure the
18 Plaintiffs/PAGA Representatives are aware of, and will encourage the Plaintiffs/PAGA
19 Representatives to adhere to, the restriction against any media comment on the Settlement and
20 its terms. PAGA Counsel further agree to not use the Settlement of these Actions or any of its
21 terms for any marketing purposes or on their websites.

22 **20. Binding on Successors and Assigns.** This Agreement shall be binding upon, and
23 inure to the benefit of, the successors or assigns of the Parties, as previously defined.

24 **21. California Law Governs.** All terms of this Agreement and the Exhibits and any
25 disputes shall be governed by and interpreted according to the laws of the State of California.

26 **22. Counterparts.** This Agreement may be executed in one or more counterparts. All
27 executed counterparts and each of them shall be deemed to be one and the same instrument
28

1 provided that counsel for the Parties to this Agreement shall exchange among themselves copies
2 or originals of the signed counterparts.

3 **23. This Settlement Is Fair, Adequate and Reasonable.** The Parties believe this
4 Settlement is a fair, adequate and reasonable settlement of these Actions and have arrived at this
5 Settlement after extensive, non-collusive arms-length negotiations, taking into account all
6 relevant factors, present and potential.

7 **24. Jurisdiction of the Court.** The Parties agree that the Court shall retain jurisdiction
8 with respect to the interpretation, implementation and enforcement of the terms of this
9 Agreement and all orders and judgments entered in connection therewith, and the Parties and
10 their counsel submit to the jurisdiction of the Court for purposes of interpreting, implementing
11 and enforcing the settlement and all orders and judgments entered in connection with this
12 Agreement. Should either Party be required to enforce the terms of this Settlement, the
13 prevailing party shall be entitled to recover reasonable attorneys' fees and costs upon noticed
14 motion. The Parties intended this Agreement to be binding and enforceable, pursuant to Code
15 of Civil Procedure § 664.6.

16 **25. Invalidity of Any Provision.** Before declaring any provision of this Agreement
17 invalid, the Court shall first attempt to construe the provisions valid to the fullest extent possible
18 consistent with applicable precedents so as to define all provisions of this Agreement valid and
19 enforceable.

20 **26. No Admissions by the Parties.** Plaintiff has claimed and continues to claim that
21 the Released PAGA Claims have merit and give rise to liability on the part of Defendant.
22 Defendant claims that the Released PAGA Claims have no merit and do not give rise to liability.
23 This Agreement is a compromise of disputed claims. Nothing contained in this Agreement and
24 no documents referred to and no action taken to carry out this Agreement may be construed or
25 used as an admission by or against the Defendant or Plaintiff or Plaintiff's Counsel as to the
26 merits or lack thereof of the claims asserted. Other than as may be specifically set forth herein,
27 each Party shall be responsible for and shall bear its/his own attorneys' fees and costs.
28

27. **Plaintiff's Individual Settlement.** Plaintiff is entering into a separate, confidential, individual settlement agreement, which shall provide for an individual settlement payment to Plaintiff in exchange for a broad release, including a waiver of Civil Code section 1542 by Plaintiff. The release, waiver and discharge of all claims, includes, but will not be limited to, Plaintiff's claims in the Action for alleged violations of the California Fair Employment and Housing Act. The Individual Settlement Agreement shall be confidential, but may be submitted to the Court for an in-camera review for purposes of approval of this Settlement.

IT IS SO AGREED, FORM AND CONTENT, BY PLAINTIFF:

Dated: January 26, 2023

MARIA ELENA CAMPOS

IT IS SO AGREED, FORM AND CONTENT, BY DEFENDANTS:

Dated: January 26, 2023

JOSE ASCENSION TREJO, individually and dba
TACOS EL PARIENTE and TACOS EL PARIENTE #2

IT IS SO AGREED AS TO FORM BY COUNSEL:

Dated: January 26, 2023

FITZPATRICK & SWANSTON

By: /s/ B. James Fitzpatrick

B. James Fitzpatrick
Attorneys for Plaintiff,
Maria Elena Campos

Dated: January 26, 2023

JRG ATTORNEYS AT LAW

By: /s/ Anais Mora

Stephan A. Barber
Anais Mora
Attorneys for Defendants

1 **27. Plaintiff's Individual Settlement.** Plaintiff is entering into a separate,
2 confidential, individual settlement agreement, which shall provide for an individual settlement
3 payment to Plaintiff in exchange for a broad release, including a waiver of Civil Code section
4 1542 by Plaintiff. The release, waiver and discharge of all claims, includes, but will not be
5 limited to, Plaintiff's claims in the Action for alleged violations of the California Fair
6 Employment and Housing Act. The Individual Settlement Agreement shall be confidential, but
7 may be submitted to the Court for an in-camera review for purposes of approval of this
8 Settlement.

9 IT IS SO AGREED, FORM AND CONTENT, BY PLAINTIFF:

10 Dated: January 26, 2023

11 _____
12 MARIA ELENA CAMPOS

13 IT IS SO AGREED, FORM AND CONTENT, BY DEFENDANTS:

14 Dated: January 26, 2023

15 Jose A Trejo
16 JOSE ASCENSION TREJO, individually and dba
TACOS EL PARIENTE and TACOS EL PARIENTE #2

17 IT IS SO AGREED AS TO FORM BY COUNSEL:

18 Dated: January 26, 2023

FITZPATRICK & SWANSTON

19
20 By: /s/ B. James Fitzpatrick

21 B. James Fitzpatrick
22 Attorneys for Plaintiff,
Maria Elena Campos

23 Dated: January 26, 2023

JRG ATTORNEYS AT LAW

24
25 By: /s/ Anais Mora

26 Stephan A. Barber
27 Anais Mora
28 Attorneys for Defendants

1 **PROOF OF SERVICE**

2 I am employed in the County of Monterey, State of California. I am over the age of 18
3 and not a party to the within action; my business address is FITZPATRICK & SWANSTON,
4 555 S. Main Street, Salinas, California 93901.

5 On the date written below, I served the foregoing document(s), described as
6 **DECLARATION OF LAURA L. FRANKLIN IN SUPPORT OF PLAINTIFF'S**
7 **MOTION FOR APPROVAL PURSUANT TO THE PRIVATE ATTORNEY**
8 **GENERAL ACT**

9 on the interested parties in this action as indicated below and by the following means:

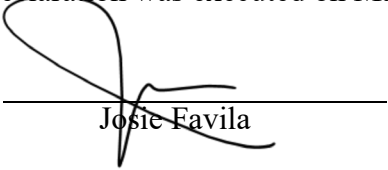
10 Larry W. Lee (SBN: 228175)
11 Howard Magee
12 DIVERSITY LAW GROUP, P.C.
13 515 South Figueroa Street, Suite 1250
14 Los Angeles, California 90071
15 Telephone: (213) 488-6555
16 Facsimile (213) 488-6554
17 lwlee@diversitylaw.com
18 himagee@diversitylaw.com

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318 Cayuga Street
Salinas, CA 93901
Telephone: (831) 754-2444
Facsimile: (831) 269-7143
anais@jrgattorneys.com
Attorneys for Defendants

19 Attorneys for Plaintiff

20 xx **(BY ELECTRONIC SERVICE)** Pursuant to CCP § 1010.6 and Cal.
21 Rules of Court, Rule 2.251, I caused the document(s) to be served
22 through the Odyssey eFileCA portal (www.california.tylerhost.net),
23 addressed to the person(s) at the e-mail address(es) listed above. I did
24 not receive within a reasonable time after e-service, any electronic
25 message or other indication that e-service was unsuccessful.

26 I declare under penalty of perjury under the laws of the State of California that the
27 foregoing is true and correct, and that this declaration was executed on May 11, 2023, at
28 Salinas, California.


Josie Favila