

Edwin Aiwarzian (SBN 232943)
Joanna Ghosh (SBN 272479)
Matthew Richard Soto (SBN 353499)
LAWYERS for JUSTICE, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203
Tel: (818) 265-1020 / Fax: (818) 265-1021

Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN MATEO**

DANILO CORTEZ FLORES;
individually, and on behalf of other
aggrieved employees pursuant to the
California Private Attorneys General
Act,

Plaintiff,

vs.

ESPOSTO'S, INC., a California
corporation; ESPOSTO'S FINE
FOODS, INC., a California corporation;
WILLIAM ESPOSTO, individually; and
DOES 1 through 100, inclusive,

Defendants.

Case No.: 21-CIV-05152

Honorable V. Raymond Swope
Department 23
Courtroom 8A

**DECLARATION OF EDWIN AIWAZIAN IN
SUPPORT OF PLAINTIFF'S MOTION FOR
APPROVAL OF PRIVATE ATTORNEYS
GENERAL ACT (CAL. LAB. CODE § 2698, ET
SEQ.) SETTLEMENT AGREEMENT AND
AWARD OF ATTORNEYS' FEES AND COSTS,
GENERAL RELEASE FEE, AND
SETTLEMENT ADMINISTRATION COSTS**

[Notice of Motion and Motion for Approval of
Private Attorneys General Act (Cal. Lab. Code §
2698, *Et Seq.*) Settlement Agreement and Award of
Attorneys' Fees and Costs, General Release Fee,
and Settlement Administration Costs; Declaration
of Plaintiff (Danilo Cortez Flores); and [Proposed]
Order and Judgment filed concurrently herewith]

Date: September 23, 2024
Time: 2:00 p.m.
Department: 23

Complaint Filed: September 21, 2021
Trial Date: None Set

DECLARATION OF EDWIN AIWAZIAN

I, Edwin Aiwarzian, hereby declare as follows:

1. I am an attorney licensed to practice law in the State of California. I am a member of Lawyers *for* Justice, PC, attorneys of record for Plaintiff Danilo Cortez Flores (“Plaintiff”). The facts set forth in this declaration are within my personal knowledge or based on information and belief and, if called as a witness, I could and would competently testify thereto.

ADEQUACY OF LAWYERS for JUSTICE, PC

EDUCATION

2. In May of 2004, I graduated from Pepperdine University School of Law with a Juris Doctor degree. I have extensive formal education and training in dispute resolution and negotiation from the Straus Institute for Dispute Resolution as part of its Masters in Dispute Resolution degree program. In addition, I have previously served as a pro bono mediator for the Los Angeles County Superior Court. In October of 2000, I obtained a Litigation Paralegal Certificate from UCLA Extension Program. During the summer of 2000, I studied Legal Writing at Harvard University. In April of 1999, I obtained a Bachelor of Arts degree in Communication with a concentration in Natural Sciences from Pepperdine University.

JUDICIAL EXTERNSHIPS

3. From approximately September 2002 to approximately December 2002, I served as a Judicial Extern to the Honorable Kim McLane Wardlaw of the United States Court of Appeals for the Ninth Circuit. From approximately June 2002 to approximately August 2002, I served as a Judicial Extern to the Honorable Earl Johnson, Jr. of the California Court of Appeal for the Second Appellate District.

EXAMPLES OF RESULTS IN REPRESENTATIVE AND CLASS ACTION CASES

4. What follows are just a few examples of the type of results Lawyers for Justice, PC (“LFJ”) has achieved on behalf of its clients:

a) LFJ, in association with co-counsel therein, represented the plaintiffs in a wage-and-hour class action against a major property management company involving allegations of misclassification of various “manager” positions. On September 20, 2010, the

1 court granted final approval of the class action settlement. The Los Angeles County Superior
2 Court Case Number is BC400414.

3 b) LFJ, in association with co-counsel therein, represented the plaintiffs in a
4 wage-and-hour class action against a national retailer of household items involving allegations
5 of misclassification of the “Assistant Store Manager” position. On October 28, 2010, the court
6 granted final approval of the class action settlement. The Los Angeles County Superior Court
7 Case Number is BC413498.

8 c) LFJ, in association with co-counsel therein, represented the plaintiffs in a
9 wage-and-hour class action against a national property management company involving
10 allegations of misclassification of the “Property Manager” position. On May 23, 2012, the court
11 granted final approval of the class action settlement. The Los Angeles County Superior Court
12 Case Number is BC430918.

13 d) LFJ, in association with co-counsel therein, represented the plaintiffs in a
14 wage-and-hour class action against a national retailer involving allegations of misclassification
15 of the “Store Manager” position. On June 10, 2011, the court granted plaintiffs’ motion for class
16 certification. On August 26, 2013, the court granted final approval of the class action settlement.
17 The Los Angeles County Superior Court Case Number is BC424012.

18 e) LFJ, in association with co-counsel therein, represented the plaintiff in a
19 wage-and-hour class and PAGA representative action against a bank, involving allegations of
20 misclassification of the “Assistant Branch Manager” position. On August 27, 2013, the court
21 granted final approval of the class and PAGA representative action settlement. The Kern County
22 Superior Court Case Number is S-1500-CV-273194-LHB.

23 f) LFJ, in association with co-counsel therein, represented the plaintiff in a
24 wage-and-hour class and PAGA representative action against a national wholesale distributor
25 of plumbing and builder supplies, involving allegations of misclassification of multiple salaried
26 “manager” positions. On May 22, 2014, the court granted final approval of the class and PAGA
27 representative action settlement. The Sacramento County Superior Court Case Number is 34-
28 2012-00136285.

1 g) LFJ, in association with co-counsel therein, represented the plaintiff in a
2 wage-and-hour class action against a multinational corporation that provides global workplace
3 solutions, involving allegations of misclassification of the “Operations Manager” position. On
4 September 16, 2014, the court granted plaintiff’s motion for class certification. The Los Angeles
5 County Superior Court Case Number is BC478769.

6 h) LFJ, in association with co-counsel therein, represented the plaintiff in a
7 wage-and-hour class and PAGA representative action against a national retailer of household
8 items, on behalf of hourly-paid or non-exempt employees. On May 27, 2015, the court granted
9 final approval of the class and PAGA representative action settlement. The San Francisco
10 County Superior Court Case Number is CGC-13-532344.

11 i) LFJ, in association with co-counsel therein, represented the plaintiff in a
12 wage-and-hour class and PAGA representative action involving allegations of misclassification
13 of the salaried residential “Property Manager” position. On September 17, 2015, the court
14 granted plaintiff’s motion for class certification. On October 20, 2017, the court granted final
15 approval of the class and PAGA representative action settlement. The Los Angeles County
16 Superior Court Case Number is BC474784.

17 j) LFJ, in association with co-counsel therein, represented the plaintiffs in a
18 wage-and-hour class and PAGA representative action against a national retailer of upscale
19 hardware and home furnishings, on behalf of non-exempt employees. On April 28, 2016, the
20 court granted final approval of the class and PAGA representative action settlement. The Los
21 Angeles County Superior Court Case Numbers are BC516795 and JCCP4794, and the Judicial
22 Council Coordination Proceeding Number is 4794.

23 k) LFJ, in association with co-counsel therein, represented the plaintiffs in a
24 wage-and-hour class action against a national retailer of apparel and fashion accessories, on
25 behalf of non-exempt employees. On August 5, 2016, the court granted final approval of the
26 class action settlement. The Los Angeles County Superior Court Case Number is BC488069.

27 l) LFJ, in association with co-counsel therein, represented the plaintiffs in a
28 wage-and-hour class action against a national retailer of apparel, accessories, and home

1 products, involving allegations of misclassification of the “Department Manager” position. On
2 August 12, 2016, the court granted the plaintiffs’ motion for class certification in part and
3 certified a class. On August 6, 2019, the court granted final approval of the class action
4 settlement. The Alameda County Superior Court Case Number is RG13680477.

5 m) LFJ, represented the plaintiff in a PAGA representative action against a
6 real estate and property management company, on behalf of non-exempt employees. On
7 November 4, 2016, the court granted approval of the PAGA representative action settlement.
8 The Orange County Superior Court Case Number is 30-2015-00775439-CU-OE-CXC.

9 n) LFJ, in association with co-counsel therein, represented the plaintiffs in a
10 wage-and-hour class and PAGA representative action against a full-service bank, on behalf of
11 non-exempt employees. On November 18, 2016, the court granted final approval of the class
12 and PAGA representative action settlement. The San Francisco County Superior Court Case
13 Number is CJC-13-004839 and the Judicial Council Coordination Proceeding Number is 4839.

14 o) LFJ, represented the plaintiffs in a wage-and-hour class and PAGA
15 representative action against a foodservice distributor, on behalf of non-exempt employees. On
16 January 26, 2017, the court granted final approval of the class and PAGA representative action
17 settlement. The San Bernardino County Superior Court Case Number is CIVDS1507260.

18 p) LFJ, on behalf of the plaintiff and respondent in a PAGA representative
19 action, successfully opposed in the trial court, and briefed and argued an appeal with respect to
20 the employer’s motion to compel arbitration, which resulted in a published opinion by the
21 California Court of Appeal in favor of employees. Roberto Betancourt v. Prudential Overall
22 Supply (Cal. App. 4th Dist., Mar. 7, 2017) 9 Cal.App.5th 439, review denied, cert. denied (U.S.
23 Supreme Court Docket No. 17-254). The Riverside County Superior Court Case Numbers are
24 RIC1503952 and RICJCCP5046, and the Judicial Council Coordination Proceeding Number is
25 5046.

26 q) LFJ, in association with co-counsel therein, represented the plaintiffs in a
27 wage-and-hour class and PAGA representative action against a consumer packaging company,
28 on behalf of non-exempt employees. On March 10, 2017, the court granted final approval of the

1 class and PAGA representative action settlement. The Los Angeles County Superior Court Case
2 Number is BC590429.

3 r) LFJ, in association with co-counsel therein, represented the plaintiffs in a
4 wage-and-hour class and PAGA representative action against a manufacturer of food service
5 industry supplies on behalf of non-exempt employees. On April 14, 2017, the court granted final
6 approval of the class and PAGA representative action settlement. The Orange County Superior
7 Court Case Number is 30-2015-00810013-CU-OE-CXC.

8 s) LFJ, in association with co-counsel therein, represented the plaintiffs in a
9 wage-and-hour class and PAGA representative action against a lumber and hardware company
10 on behalf of non-exempt employees. On April 26, 2017, the court granted final approval of the
11 class and PAGA representative action settlement. The Orange County Superior Court Case
12 Number is 30-2014-00747750-CU-OE-CXC.

13 t) LFJ, represented the plaintiff in a wage-and-hour class and PAGA
14 representative action against a property management company, on behalf of non-exempt
15 employees. On June 14, 2017, the court granted final approval of the class and PAGA
16 representative action settlement. The Los Angeles County Superior Court Case Number is
17 BC586234.

18 u) LFJ, represented the plaintiff in a wage-and-hour class and PAGA
19 representative action against a food company on behalf of non-exempt employees. On June 30,
20 2017, the court granted final approval of the class and PAGA representative action settlement.
21 The Sacramento County Superior Court Case Number is 34-2015-00175871.

22 v) LFJ, represented the plaintiffs in a wage-and-hour class and PAGA
23 representative action against a chocolate company on behalf of non-exempt employees. On July
24 19, 2017, the court granted final approval of the class and PAGA representative action
25 settlement. The Alameda County Superior Court Case Number is RG15764300.

26 w) LFJ, represented the plaintiff in a PAGA representative action, against the
27 parent company of several restaurants, on behalf of hourly-paid, non-exempt employees. On
28

October 18, 2017, the court granted approval of the PAGA representative action settlement. The Los Angeles County Superior Court Case Number is BC569664.

x) LFJ, represented the plaintiffs in a wage-and-hour class and PAGA representative action against a manufacturer of plastic containers on behalf of non-exempt employees. On October 31, 2017, the court granted final approval of the class and PAGA representative action settlement. The Los Angeles County Superior Court Case Number is BC577233.

y) LFJ, in association with co-counsel therein, represented the plaintiffs in a wage-and-hour class and PAGA representative action against a bank on behalf of non-exempt employees. On December 11, 2017, the court granted final approval of the class and PAGA representative action settlement. The Los Angeles County Superior Court Case Number is BC569646.

z) LFJ, in association with co-counsel therein, represented the plaintiffs in a wage-and-hour class and PAGA representative action against a property management company on behalf of hourly-paid and non-exempt employees. On January 4, 2018, the court granted final approval of the class and PAGA representative action settlement. The Los Angeles County Superior Court Case Number is JCCP4819 and the Judicial Council Coordination Proceeding Number is 4819.

aa) LFJ, in association with co-counsel therein, represented the plaintiffs in a wage-and-hour class and PAGA representative action against a global provider of flexible office space solutions. On February 15, 2018, the court granted final approval of the class and PAGA representative action settlement. The Los Angeles County Superior Court Case Number is BC498401.

bb) LFJ, in association with co-counsel therein, represents the plaintiff in a wage-and-hour class action against a container manufacturer, on behalf of non-exempt employees. On October 15, 2018, the court granted the plaintiff's motion for class certification. The Tulare County Superior Court Case Number is VCU264528.

cc) LFJ, represented the plaintiffs in a wage-and-hour class and PAGA representative action against a behavioral health service provider on behalf of non-exempt employees. On November 13, 2018, the court granted final approval of the class and PAGA representative action settlement. The Alameda County Superior Court Case Number is RG16811450.

dd) LFJ, in association with co-counsel therein, represented the plaintiff in a PAGA representative action against a global provider of products and services to the energy industry, on behalf of hourly-paid and non-exempt employees. On November 19, 2018, the court granted approval of the PAGA representative action settlement. The Kern County Superior Court Case Number is S-1500-CV-280215-SDC.

ee) LFJ, in association with co-counsel therein, represents the plaintiff in a wage-and-hour class action against a parking company on behalf of non-exempt employees. On September 3, 2019, the court granted the plaintiff's motion for class certification and certified a class. The Santa Clara County Superior Court Case Number is 16CV292208 and the Judicial Council Coordination Proceeding Number is 4886.

ff) LFJ, in association with co-counsel therein, represents the plaintiffs in a wage-and-hour class and PAGA representative action against a bank on behalf of non-exempt employees. On September 27, 2019, the court granted the plaintiffs' motion for class certification in part and certified a class. The Alameda County Superior Court Case Number is RG15757606 and the Judicial Council Coordination Proceeding Number is 4921.

gg) LFJ, in association with co-counsel therein, represented the plaintiffs in a wage-and-hour class and PAGA representative action against a national retailer of apparel and fashion accessories, on behalf of non-exempt employees. On October 9, 2019, the court granted the plaintiffs' motion for class certification in part and certified a class. On May 14, 2021, the court granted final approval of the class and PAGA representative action settlement. The Sacramento County Superior Court Case Number is 34-2015-00175330-CU-OE-GDS.

hh) LFJ, in association with co-counsel therein, represents the plaintiff in a wage-and-hour class and PAGA representative action against a medical equipment supplier on

1 behalf of non-exempt employees. On February 13, 2020, the court granted the plaintiff's motion
2 for class certification and certified a class. The San Bernardino County Superior Court Case
3 Number is CIVDS1505744.

4 ii) LFJ, in association with co-counsel therein, on behalf of the plaintiff and
5 respondent in a PAGA representative action, successfully opposed in the trial court, and briefed
6 and argued an appeal with respect to the employer's motion to compel arbitration, resulting in a
7 notable decision from the California Supreme Court clarifying the law regarding PAGA claims,
8 ZB, N.A. v. Superior Court (2019) 8 Cal.5th 175. On February 21, 2020, the court granted
9 approval of the PAGA representative action settlement. The San Diego County Superior Court
10 Case Number is 37-2016-00005578-CU-OE-CTL.

11 jj) LFJ, in association with co-counsel therein, represented the plaintiff in a
12 wage-and-hour class and PAGA representative action against a large national drug testing
13 laboratory on behalf of non-exempt employees. On February 21, 2020, the court granted the
14 plaintiff's motion for class certification and certified a class. On October 28, 2022, the court
15 granted final approval of the class and PAGA representative action settlement. The San Diego
16 County Superior Court Case Number is 37-2018-00019611-CU-OE-CTL.

17 kk) LFJ, in association with co-counsel therein, represents the plaintiffs in a
18 wage-and-hour class and PAGA representative action against a national retailer of sportswear,
19 footwear, and camping equipment on behalf of non-exempt employees. On March 16, 2020,
20 the court granted in part the plaintiff's motion for class certification and certified a class. The
21 Riverside County Superior Court Case Numbers are RIC1507504 and RICJCCP4930, and the
22 Judicial Council Coordination Proceeding Number is 4930.

23 ll) LFJ, in association with co-counsel therein, represented the plaintiffs in a
24 wage-and-hour class and PAGA representative action against a plastic packaging company on
25 behalf of non-exempt employees. On June 8, 2020, the court granted in part the plaintiffs'
26 motion for class certification and certified a class. On November 8, 2021, the court granted
27 approval of the partial settlement of the action. On April 22, 2024, the court granted approval
28

of the PAGA settlement and entered an order dismissing the action. The San Bernardino County Superior Court Case Number is CIVDS1507361.

mm) LFJ, in association with co-counsel therein, represented the plaintiffs in a wage-and-hour class action against manufacturer and supplier of power products and services on behalf of non-exempt employees. On July 31, 2020, the court granted in part the plaintiffs' motion for class certification and certified a class. On August 27, 2021, the court granted final approval of the class action settlement. The San Diego County Superior Court Case Number is 37-2015-00025968-CU-OE-CTL.

nn) LFJ, represents the plaintiff in a wage-and-hour class action against a nutritional products manufacturer on behalf of non-exempt production line employees. On December 13, 2021, the court granted the plaintiff's motion for class certification in part and certified a class. The Solano County Superior Court Case Number is FCS051001.

oo) LFJ, represents the plaintiffs in a wage-and-hour class action against a manufacturer and distributor of commercial dish and glass cleaning machines and supplies for the restaurant and hospitality industries, on behalf of hourly-paid or non-exempt employees. On July 13, 2023, the court granted the plaintiffs' motion for class certification and certified a class. The Los Angeles County Superior Court Case Number is BC707670.

pp) LFJ, represents the plaintiffs in a wage-and-hour class action against a chain of restaurants on behalf of non-exempt employees. On July 22, 2024, the court granted in part the plaintiffs' motion for class certification and certified a class. The San Francisco Superior Court Case Number is CGC-20-582809.

THE SETTLEMENT REACHED IN THE ACTION

5. Marked and attached hereto as "EXHIBIT 1" and "EXHIBIT 2" respectively, is the Private Attorneys General Act Settlement Agreement and Release and Amendment No. 1 to Private Attorneys General Act Settlement Agreement and Release (together, the "Settlement," "Agreement," or "Settlement Agreement"), entered into between Plaintiff Danilo Cortez Flores ("Plaintiff") for himself and on behalf of the State of California with respect to Aggrieved Employees pursuant to the Private Attorneys General Act, and Esposto's, Inc., Esposto's Fine

1 Foods, Inc., and William Esposto (collectively, the “Defendants”). Plaintiff and Defendants
2 (together, the “Parties”) have also drafted and agreed to the form and content of the proposed
3 informational cover letter (“Cover Letter”) for mailing to Aggrieved Employees when
4 Individual Settlement Shares are distributed to them, in substantially the form attached as
5 “EXHIBIT A” to the [Proposed] Order and Judgment Granting Approval of Private Attorneys
6 General Act (Cal. Labor Code § 2698, Et Seq.) Settlement Agreement and Award of Attorneys’
7 Fees and Costs, General Release Fee, and Settlement Administration Costs. The Court is
8 respectfully requested to approve the proposed Cover Letter.

9 6. The Settlement pertains to the following allegedly aggrieved employees: all
10 current and former hourly-paid or non-exempt non-union individuals employed by and worked
11 for Defendants Esposto’s Inc. and Esposto’s Fine Foods, Inc. in the State of California during
12 the PAGA Period (“Aggrieved Employees”). The “PAGA Period” means the period between
13 July 16, 2020, to the date that the final approval order is signed by the Court. Based on
14 information provided by Defendants, as of March 6, 2024, there are approximately Two
15 Hundred Thirty (230) Aggrieved Employees, and that during the period of July 16, 2020 through
16 December 31, 2021, the Aggrieved Employees worked approximately Five Thousand Twenty-
17 Eight (5,028) Pay Periods.

18 7. Plaintiff has satisfied the prerequisites under California Labor Code section
19 2699.3(a), including, and not limited to, providing the California Labor and Workforce
20 Development Agency (“LWDA”) and the employer with written notice of the specific
21 provisions of the California Labor Code that are alleged to have been violated, including the
22 facts and theories to support the alleged violations, by way of written correspondence on behalf
23 of Plaintiff Danilo Cortez Flores that was dated July 16, 2021 (“PAGA Notice”). The PAGA
24 Notice was sent by U.S. Certified Mail to the employer and submitted to the LWDA by way of
25 online submission on the LWDA’s website. Aside from confirmation of receipt of the PAGA
26 Notice, the LWDA did not respond to the PAGA Notice. A true and correct copy of the PAGA
27 Notice is attached hereto as “EXHIBIT 3.”

28 ///

8. Defendants have agreed to pay the gross sum of Three Hundred Thousand Dollars and Zero Cents (\$300,000.00) (“Total Settlement Amount”), subject to possible increase under Section 3(a)(5) of the Settlement Agreement, to settle this matter. The Settlement Agreement provides that the “Net Settlement Amount” will be the Total Settlement Amount less the following amounts: (1) Attorneys’ Fees and Costs in the amount of up to \$120,000.00 for attorneys’ fees and up to \$25,000.00 for reimbursement of litigation costs and expenses to Lawyers for Justice, PC (“Plaintiff’s Counsel”); (2) General Release Fee in the amount of \$7,500.00 to Plaintiff; and (3) Settlement Administration Costs of up to \$6,000.00 to the PAGA Settlement Administrator. Plaintiff’s Counsel only seeks an award of reimbursement of litigation costs and expenses in the amount of \$17,301.21 (i.e., \$7,698.79 less than the maximum amount allocated), and assuming that the requested Attorneys’ Fees and Costs, General Release Fee, and Settlement Administration Costs, are approved by the Court, the Net Settlement Amount is estimated to be approximately \$149,198.79. The Net Settlement Amount will be distributed to the LWDA and the Aggrieved Employees pursuant to California Labor Code section 2699(i). Seventy-five percent (75%) of the Net Settlement Amount will be distributed to the LWDA, which is estimated to be \$111,899.09 (“LWDA Payment”), and twenty-five percent (25%) of the Net Settlement Amount, which is estimated to be \$37,299.70 (“Employees’ portion”), will be distributed to the Aggrieved Employees on a pro-rata basis, based on the number of pay periods they each worked during the PAGA Period (“Pay Periods”). The parties have agreed to retain Phoenix Class Action Administration Solutions (“Phoenix” or “PAGA Settlement Administrator”) to handle the administration of the Settlement, and the Court is respectfully requested to appoint Phoenix to serve as the PAGA Settlement Administrator. The Settlement Administration Costs are estimated not to exceed \$6,000.00 and will be paid out of the Total Settlement Amount, subject to approval by the Court.

THE LITIGATION AND WORK PERFORMED BY PLAINTIFF’S COUNSEL

9. The effectiveness of Plaintiff’s Counsel, Lawyers for Justice PC, in prosecuting this case has translated into tangible monetary benefits for Plaintiff, Aggrieved Employees, and the State of California in the following respects: (1) their recoveries over a reasonably short

1 period of time as opposed to waiting additional years for the same, or possibly, a worse, result;
2 (2) a guaranteed result that compares favorably with other similar representative action
3 settlements; and (3) significant savings in fees and costs which would have only increased
4 significantly had the case progressed through trial and/or appeals.

5 10. In the course of litigation and after engaging in significant investigations, informal
6 discovery, and the exchange of information, data, and documents, the Parties participated in
7 extensive settlement discussions and negotiations to try to resolve the above-captioned lawsuit.
8 These efforts included participating in a formal full-day mediation on February 7, 2022,
9 conducted by David Rotman, Esq., a well-respected mediator experienced in mediating complex
10 labor and employment matters. With the aid of the mediator, the Parties reached the Settlement
11 described herein. In the course of mediation and settlement negotiations, the Parties discussed
12 all aspects of the case, including the risks and delays of further litigation and proceeding with
13 trial, as well as the law relating to representative PAGA actions, off-the-clock theory, meal and
14 rest periods, arbitration agreements, reporting time pay, Industrial Welfare Commission Wage
15 Orders, and wage-and-hour enforcement, the evidence produced and analyzed, and the
16 possibility of bifurcation of discovery and/or trial and appeals, among other things. During all
17 settlement discussions, the Parties conducted their negotiations at arm's length in an adversarial
18 position.

19 11. Prior to reaching the Settlement, the Parties investigated the veracity, strength,
20 and scope of the PAGA claim and allegations, and were preparing for trial. Plaintiff conducted
21 significant investigation, informal discovery, and exchange of information, documents, and data
22 regarding the facts of the case, including and not limited to, the review, consideration, and
23 analysis of a large volume of information, documents, and data obtained from Plaintiff,
24 Defendants, and other sources. The documents and data that were reviewed and analyzed by
25 Plaintiff's Counsel included, and were not limited to the employment records of Plaintiff,
26 Defendants' Employee Handbook, a time and pay data sampling of Aggrieved Employees and
27 Plaintiff's arbitration agreement, and Defendants' acknowledgments (such as but not limited to
28 the – Employee Handbook Acknowledgment), operations and employment practices, policies

(including but not limited to Defendants' Meal Periods Policy, Rest Period Policy, and Overtime Policy) and procedures, among other documents. As such, counsel for the Parties undertook significant litigation, and invested time conducting investigation and reviewing and analyzing relevant information, documents, and data to evaluate the PAGA claim and related allegations, including, and not limited to, calculating the potential monetary recovery under PAGA. Other work performed by Plaintiff's Counsel included, but was not limited to: meeting and conferring with Defendants' counsel regarding the pleadings, case management, mediation, arbitration, and settlement negotiations, among other issues; case strategy and analysis; researching, drafting, reviewing, and revising pleadings, court filings, motion-related papers (e.g., with respect to settlement approval motion papers), briefs for settlement negotiations and mediation, and the settlement agreement; preparing for and participating in settlement negotiations and the mediation; and appearing for court proceedings. Counsel for the Parties have also invested time to research the applicable law, which is evolving as it relates to representative PAGA actions, off-the-clock theory, meal and rest periods, arbitration agreements, reporting time pay, Industrial Welfare Commission Wage Orders, and wage-and-hour enforcement, Plaintiff's claims and allegations, and Defendants' defenses, as well as facts discovered.

12. Based on investigation and information discovered, Plaintiff's Counsel believes that there is sufficient evidence to support the allegations that Defendants violated the California Labor Code. While Plaintiff's Counsel believes that the PAGA claim has merit and that Plaintiff will ultimately succeed in this litigation and prevail at trial, Plaintiff and Plaintiff's Counsel also recognize Defendants' defenses, the costs of further litigation, and multiple risks to recovery. For example, although wage-and-hour actions are amenable to resolution as to a group of employees, some courts have also found that, for various reasons, the issues raised by Plaintiff, including, and not limited to, the issues of non-compliant meal periods, non-compliant rest periods, and unreimbursed business expenses, raise individualized issues and/or are not suitable for adjudication as to a group of employees.

13. Plaintiff and Plaintiff's Counsel have considered the uncertainty and risk of the outcome of further litigation, including the difficulties and delays inherent in such litigation and

1 arbitration. In order to prevail on the PAGA claim, Plaintiff would have to prove that Defendants
2 engaged in the alleged California Labor Code violations and demonstrate that Defendants'
3 conduct warrants the imposition of penalties. Plaintiff's core allegation is that Defendants have
4 violated the California Labor Code by failing to pay all wages, failing to provide compliant meal
5 and rest periods and associated premiums, failing to timely pay wages during employment and
6 upon termination of employment, failing to provide complete and accurate wage statements,
7 failing to keep complete and accurate payroll records, and failing to reimburse necessary
8 business-related expenses and costs.

9 14. From the inception of this litigation, Defendants indicated that they would
10 aggressively litigate this case and contended that they would ultimately succeed in the action.
11 Defendants maintained several defenses to Plaintiff's allegations, which, if successfully argued
12 and proven, had the potential to eliminate or substantially reduce recovery. Throughout this
13 litigation, Defendants maintained, and continue to maintain, that they did not engage in a
14 uniform policy and systematic scheme of wage abuse against any of their employees, and
15 continue to have, legally-compliant employment policies and practices throughout the time
16 period at issue. Defendants deny that they ever violated any provision of the California Labor
17 Code. Defendants further deny, and continue to deny, that the lawsuit is appropriate for
18 representative adjudication for any purpose other than the Settlement.

19 15. Importantly, Defendants also contended that the claims of Plaintiff and other
20 Aggrieved Employees are subject to enforceable arbitration agreements that included grievance
21 and arbitration procedures. Defendants contended that, taken together, these agreements would
22 have claim preclusive impact, or otherwise, could effectively be used to require Aggrieved
23 Employees to engage in individual arbitration of their individual claims on which the PAGA
24 claim is predicated. Although the parties disagree on whether or not Defendants' various
25 agreements are enforceable and their impact, there is more uncertainty regarding uncertainty
26 regarding PAGA claims due to decisions of the high courts and recent amendment of the PAGA
27 statute. The decisions of the high court include, and are not limited to, the U.S. Supreme Court's
28 decision in *Viking River Cruises, Inc. v. Moriana*, (2022) 142 S. Ct. 1906, 2022 U.S. LEXIS

2940 and the California Supreme Court’s decision in *Adolph v. Uber Technologies* (2023) 14 Cal.5th 1104. The decision by the California Supreme Court in *Adolph v. Uber Technologies* confirmed that PAGA representative claims are viable and can continue to be prosecuted, however it also suggests, that trial courts will stay the representative/non-individual PAGA claims pending arbitration of a plaintiff’s individual PAGA claims. The *Adolph v. Uber Technologies* also suggests that, if a plaintiff is determined to not be an “aggrieved employee” for PAGA purposes, issue preclusion could apply and, once reduced to a final judgment, trial courts are bound by the arbitrator’s determination and the plaintiff loses standing to pursue non-individual PAGA claims. Furthermore, the recent amendment of the PAGA statute enacted on July 1, 2024, adopting, inter alia, modified standing requirements, codifying a manageability requirement, capping civil penalties that can be assessed against an employer if an employer meets certain conditions, and allowing an employer to cure violations to avoid the assessment of civil penalties if an employer meets certain conditions, has created uncertainty regarding the future of claims for civil penalties under PAGA. As such, at the time that the Parties reached the settlement, and also now, there is uncertainty regarding the PAGA claim.

16. Even if Defendants failed on their defenses, Plaintiff would inevitably face other challenges in court. For example, Defendants challenged Plaintiff’s standing as an aggrieved employee and denied that any of Defendants’ other employees, with respect to whom Plaintiff seeks civil penalties, were aggrieved. Aside from challenges relating to standing, Defendants would have likely sought bifurcation of discovery and/or trial of the PAGA claim — multiple courts have taken such an approach, for example, limiting discovery or trial of the issues to plaintiff. Defendants also contended that an important feature of the PAGA statute is that a court has discretion to reduce the penalties to be assessed against the employer pursuant to California Labor Code section 2699(e)(1)-(2). As discussed above, Defendants denied and continue to deny that they ever violated any provision of the California Labor Code. However, assuming, arguendo, that any violations occurred, Defendants argued that the violations would not be viewed as subsequent violations giving rise to heightened penalties. Defendants also argued that trial courts are unlikely to assess cumulative penalties for the maximum number of

possible, separate California Labor Code violations, because it would be unjust, arbitrary, oppressive, and/or confiscatory—especially where certain conduct may be regulated by multiple provisions of the California Labor Code that are interrelated and work in tandem.

17. Counsel for the Parties invested time reviewing, analyzing, and considering relevant information, documents, and data regarding Plaintiff's and Aggrieved Employees' employment with Defendants, and this information made it possible to calculate the potential value and strength of the PAGA claim. Accordingly, the Parties have conducted adequate investigation and review of information to be sufficiently apprised of the nature and extent of the PAGA claim asserted in this lawsuit, and to enable both sides to fully evaluate the Settlement for its fairness, adequacy, and reasonableness. The parties have also considered the settlement negotiations and the recommendations of the mediator David Rotman, Esq., who is highly experienced in mediation complex labor and employment matters. The Parties have agreed that this case is well-suited for settlement given the legal issues relating to the PAGA claim, as well as the costs, risks, and delays to both sides that would attend further litigation. The Settlement takes into account the strengths and weaknesses of each side's position, the facts and circumstances of the case, and the uncertainty of how the case might have concluded as litigation continued, at trial, and/or upon appeal.

18. As set forth more fully in the accompanying Motion, Plaintiff's Counsel seeks attorneys' fees in the amount of \$120,000.00, which represents approximately forty percent (40%) of the Total Settlement Amount, as provided by the Settlement Agreement. Pursuant to the contingency-fee agreements entered into by and between Plaintiff and Plaintiff's Counsel, Plaintiff has agreed to a contingency fee of at least forty percent (40%) of the recovery. The attorneys' fees sought are commensurate with: (1) the risk that Plaintiff's Counsel took in commencing the case; (2) the time, effort, and expense that Plaintiff's Counsel dedicated to the case; (3) the skill and determination that Plaintiff's Counsel has shown; (4) the results that Plaintiff's Counsel has achieved in the case; (5) value of the settlement that Plaintiff's Counsel has achieved in the case; and (6) the other cases that Plaintiff's Counsel has turned down in order to devote its time and efforts to this case.

LITIGATION COSTS AND EXPENSES INCURRED BY PLAINTIFF'S COUNSEL

19. Plaintiff's Counsel seeks reimbursement of \$17,301.21 for litigation costs and expenses incurred in this case as reflected in the Case Cost Detail attached hereto as "Exhibit 4." These costs and expenses were reasonable and necessary in the prosecution of this matter and to obtain the Settlement, and the amount sought for reimbursement is less than the maximum amount (\$25,000.00) allocated under the Settlement Agreement for reimbursement of litigation costs and expenses. The cost savings of \$7,698.79 will be part of the Net Settlement Amount. It should be noted that Plaintiff's Counsel has borne all of the risks and costs of litigation to date and will not receive any compensation until a recovery is obtained in this case.

GENERAL RELEASE FEE TO PLAINTIFF

20. For his broader individual waiver and release of claims with a California Civil Code Section 1542 waiver (set forth in Section 8(b) of the Settlement Agreement), the Settlement provides a General Release Fee to Plaintiff in the amount of \$7,500.00 to be paid out of the Total Settlement Amount, subject to approval by the Court. The requested General Release Fee is fair and appropriate. It is also worth noting that Plaintiff has undertaken significant efforts and work to spearhead the pursuit of this matter. By initiating and pursuing this matter, Plaintiff stepped into the shoes of the State of California and undertook the responsibilities of serving in representative capacities. Plaintiff has spent a substantial amount of time and effort discussing his employment with his counsel, gathering and producing relevant documents and information, and providing the facts and evidence necessary to attempt to prove the allegations. Plaintiff was available whenever his counsel needed him and actively tried to obtain and provide information that would facilitate the pursuit of the PAGA claim. Accordingly, it is appropriate and just for Plaintiff to receive a General Release Fee, in addition to the Individual Settlement Share that he will receive as an Aggrieved Employee.

///

///

///

///

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.


Edwin Aiwanian

EXHIBIT 1

**PRIVATE ATTORNEYS GENERAL ACT SETTLEMENT AGREEMENT AND
RELEASE**

This Private Attorneys General Act Settlement Agreement and Release (“Settlement Agreement” or “Settlement”) is entered into by and between Danilo Cortez Flores (“Plaintiff”), for himself and as a representative of the State of California and the Aggrieved Employees (as defined in Section 3(a)(5) below) and Esposto’s, Inc., Esposto’s Fine Foods, Inc., and William Esposto (“Defendants”), subject to approval by the Court. The term “Party” or “Parties” as used herein shall refer to Plaintiff, Defendants, or both, as may be appropriate.

1. **Recitals.** This Settlement Agreement is made with reference to the following facts:

(a) Plaintiff is a former employee of Defendants. Plaintiff was employed by Defendants from approximately March 2019 to approximately January 2021;

(b) On July 16, 2021 Lawyers *for* Justice, PC (“Plaintiff’s Counsel”), submitted a letter to the California Labor and Workforce Development Agency (“LWDA”) on behalf of Plaintiff, to notify the LWDA pursuant to the Private Attorneys General Act of 2004, Labor Code section 2698, *et seq.* (“PAGA”) of Plaintiff’s intent to seek civil penalties under PAGA for Defendants’ alleged violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 551, 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802 and Industrial Welfare Commission Wage Orders, including *inter alia*, Wage Orders 1-2001, 5-2001, thereby initiating LWDA Case Number LWDA-CM-838324-21 (the “PAGA Notice”);

(c) On September 21, 2021, Plaintiff filed his Complaint for Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, Et Seq. (“Operative Complaint”), commencing a representative action under PAGA against Defendants, entitled *Danilo Cortez Flores v. Esposto’s Inc.; Esposto’s Fine Foods, Inc.; William Esposto*, San Mateo County Superior Court Case No. 21-CIV-05152 (the “Action”). The Operative Complaint asserts a single cause of action for civil penalties under PAGA, for violations of multiple provisions of the California Labor Code and applicable Industrial Welfare Commission Wage Orders;

(e) On February 7, 2022, the Parties mediated the Action with David A. Rotman, Esq. and, with the aid of the mediator’s evaluation, the Parties ultimately reached the Settlement described herein to resolve the Action in its entirety;

(f) There has been no determination on the merits of the Action or the PAGA Notice but, in order to avoid additional cost and the uncertainty of litigation, the Parties desire to resolve the Released Claims (as defined in Section 8(a) below).

2. **No Admission of Wrongdoing.** The Parties agree that neither this Settlement Agreement nor the furnishing of the consideration for this Settlement Agreement shall be deemed or construed at any time for any purpose as an admission by the Released Parties of wrongdoing or evidence of any liability or unlawful conduct of any kind.

3. **Consideration.**

(a) In consideration for Plaintiff signing this Settlement Agreement and complying with its terms, Defendants shall pay the maximum gross sum of Three-Hundred

Thousand Dollars and No Cents (\$300,000.00) (the “Total Settlement Amount”) to resolve the Action and Released Claims (as defined herein), which will be paid as follows:

(1) Attorneys’ fees in the amount of forty percent (40%) of the Total Settlement Amount, which is One-Hundred and Twenty Thousand Dollars and No Cents (\$120,000.00), and reimbursement of litigation costs and expenses in the amount of up to Twenty Five Thousand Dollars (\$25,000.00) (collectively, “Attorneys’ Fees and Costs”) to Plaintiff’s Counsel, which Defendants will not contest.

(2) A general release fee of up to the amount of Seven-Thousand and Five-Hundred Dollars and No Cents (\$7,500.00) (“General Release Fee”) to Plaintiff, which Defendants will not contest.

(3) Costs and expenses of administration of the Settlement up to the amount of Six Thousand Dollars (\$6,000.00) (“Settlement Administration Costs”) to Phoenix Settlement Administrators(the “PAGA Settlement Administrator”).

(4) The amounts stated in Sections 3(a)(1) – 3(a)(3) above, once approved by the Court, shall be paid from the Total Settlement Amount. The balance remaining after these deductions is referred to as the “Net Settlement Amount.”

(5) Seventy-five percent (75%) of the Net Settlement Amount will be distributed to the LWDA (“LWDA Payment”); and the remaining twenty-five percent (25%) will be distributed to the Aggrieved Employees, defined solely for purposes of this Settlement as all current and former hourly-paid or non-exempt non-union individuals employed by Defendant in the State of California during the PAGA Period (the “Aggrieved Employees”). The period July 16, 2020 through the date that the final approval order is signed by the Court is the “PAGA Period.” The Aggrieved Employees are estimated to consist of approximately one hundred and four (104) individuals who worked approximately 5,028 Pay Periods through December 31, 2021. If the actual number of Pay Periods for the period of July 16, 2020 through December 31, 2021 is more than ten percent (10%) above 5,028, the Total Settlement Amount will be increased by the percentage that the actual number exceeds the 10% threshold. The 25% portion of the Net Settlement Amount payable to Aggrieved Employees is referred to as the “Employees’ Portion.”

(b) Because this is a settlement of PAGA claims for civil penalties only, no portion of the Settlement is allocated to unpaid wages. One Hundred Percent (100%) of the payments for Attorneys’ Fees and Costs, General Release Fee, and the Net Settlement Amount to be paid to the LWDA and Aggrieved Employees as described in Section 3(a) above will be treated and reported for tax purposes as non-wage payments and the PAGA Settlement Administrator will be responsible for issuing IRS Forms 1099 as required.

4. **Court Approval is Required.** Plaintiff understands and agrees that the State of California and Aggrieved Employees, including Plaintiff, would not receive the consideration specified in Section 3(a) above, except for Plaintiff’s execution of this Settlement Agreement, and the fulfillment of the promises contained herein, as well as Court approval of the Settlement. If this Settlement Agreement is not approved by the Court, it shall be null and void.

5. Disbursal of Settlement Funds.

(a) Subject to Section 4 above, Defendants shall remit to the PAGA Settlement Administrator the sums described more fully in Section 3(a) above, after all of the following have occurred: (i) the Settlement Agreement is fully executed by all Parties and their counsel; and (ii) the Court has entered an order approving the Settlement Agreement.

(b) Upon complete distribution of the Total Settlement Amount by the PAGA Settlement Administrator in accordance with this Settlement Agreement, the PAGA Settlement Administrator will notify the Parties of distribution of the entire Total Settlement Amount.

6. Approval and Implementation of the PAGA Settlement.

(a) The Parties are aware that some courts have approved a PAGA settlement and entered an order approving the settlement and judgment and thereafter closed the case, while others have approved a PAGA settlement and entered only an order approving the settlement with later instructions to file a request for dismissal of the action. The Parties agree to cooperate and take any and all steps required by the Court in the Action to implement the settlement and terminate the Action pursuant to the settlement (i.e., to terminate the Action by way of judgment or dismissal).

(b) The Parties further agree to cooperate in the drafting and/or filing of any further documents and/or filings reasonably necessary to be prepared and/or filed, and to take all steps that may be requested by the Court in order to obtain approval and implementation of this Settlement Agreement, and the payments described in Section 3(a) above.

(c) The Parties shall seek to obtain Court approval of this Settlement Agreement by way of an unopposed motion to be filed by Plaintiff's Counsel. Plaintiff's Counsel shall provide a draft of all documents to be submitted in connection with the motion to approve this Settlement Agreement to Scott T. Shibayama of Vision Law Corporation ("Defendants' Counsel") for review and approval prior to filing.

(d) The Parties expressly acknowledge that the Court's approval of the Settlement Agreement is a condition precedent to any payments described in this Settlement Agreement. Therefore, the Parties further acknowledge that, should the Court not grant approval of this Settlement Agreement and/or should the Court refuse to grant judgment or dismissal of the Action and close the Action based on the Settlement, the entirety of this Settlement Agreement shall be null and void.

7. Payment of PAGA Settlement Sum / Notice to Recipients.

(a) Subject to Court approval of this Settlement Agreement, payment of the sums described in Section 3(a) above shall be made by Defendants by transmitting the required sums to a qualified settlement account established by the PAGA Settlement Administrator for administration of this Settlement, within fourteen (14) calendar days of the Court's order granting approval of this Settlement Agreement. If the date by which payment by Defendants is due falls on a Saturday, Sunday or legal holiday in the State of California, then the due date shall be extended the next following day which is not a Saturday, Sunday or legal holiday in the State of California.

(b) Each Aggrieved Employee will be entitled to a *pro rata* share of 25% of the Net Settlement Amount (i.e., the Employees' Portion) based upon the number of pay periods they each worked during the PAGA period ("Pay Periods"), based on Defendants' payroll records. Specifically, to calculate each Aggrieved Employee's share of the Employees' Portion ("Individual Settlement Share"), the PAGA Settlement Administrator shall: (i) for each Aggrieved Employee, divide the number of Pay Periods he or she individually worked by the total aggregate number of Pay Periods worked by all Aggrieved Employees, and then (ii) multiply this amount by the Employees' Portion to arrive at each Aggrieved Employee's Individual Settlement Share.

(1) One Hundred Percent (100%) of all Individual Settlement Shares are to be considered penalties and the PAGA Settlement Administrator will not undertake any deductions, withholding, or remittances for local, state, or federal taxes. Aggrieved Employees' Individual Settlement Shares will be reported on an IRS Form 1099, as required by the IRS.

(c) The PAGA Settlement Administrator shall distribute each Individual Settlement Share by way of check, along with a cover letter ("Cover Letter") agreed to by the Parties and approved by the Court, in substantially the form attached hereto as "Exhibit A", in the following manner:

(1) No later than fourteen (14) calendar days after the Court's order granting approval of the Settlement, Defendants shall provide the PAGA Settlement Administrator with a list of all Aggrieved Employees (the "Aggrieved Employees List"), containing the following information for each Aggrieved Employee: (i) first and last name; (ii) last known mailing address; (iii) last known telephone number; (iv) Social Security number; (v) start and end dates of employment; and (vi) such other information necessary for the PAGA Settlement Administrator to calculate Pay Periods.

(2) The PAGA Settlement Administrator shall conduct one (1) National Change of Address ("NCOA") search for all individuals identified on the Aggrieved Employees List.

(3) No later than thirty (30) calendar days after the PAGA Settlement Administrator receives the Aggrieved Employees List and Total Settlement Amount, the PAGA Settlement Administrator shall mail the agreed-upon Cover Letter and Individual Settlement Share checks (together, the "PAGA Settlement Package") to all Aggrieved Employees by first-class United States mail. For each PAGA Settlement Package that is returned undeliverable within thirty (30) calendar days of the initial mailing, the PAGA Settlement Administrator shall promptly attempt to locate an alternate, updated address for the Aggrieved Employee at issue, by using a skip-trace search and shall attempt one (1) re-mailing of the PAGA Settlement Package.

(4) The Individual Settlement Share checks issued to Aggrieved Employees shall remain valid for ninety (90) calendar days, and thereafter, shall be canceled. Funds associated with canceled checks shall be transmitted to the State of California Controller's Office Unclaimed Property division in the name(s) of the Aggrieved Employee(s) who did not negotiate their check(s)..

(d) No later than fourteen (14) calendar days after the PAGA Settlement Administrator receives the Aggrieved Employees List and Total Settlement Amount, the PAGA Settlement Administrator shall transmit the LWDA Payment to the LWDA.

(e) No later than fourteen (14) calendar days after the PAGA Settlement Administrator receives the Aggrieved Employees List and Total Settlement Amount, the PAGA Settlement Administrator shall transmit the Attorneys' Fees and Costs to Plaintiff's Counsel, unless instructed otherwise by Plaintiff's Counsel.

(f) No later than fourteen (14) calendar days after the PAGA Settlement Administrator receives the Aggrieved Employees List and Total Settlement Amount, the PAGA Settlement Administrator shall transmit the General Release Fee to Plaintiff.

(g) No later than fourteen (14) calendar days after the PAGA Settlement Administrator receives the Aggrieved Employees List and Total Settlement Amount, the PAGA Settlement Administrator shall transmit the Settlement Administration Costs to itself, only after the PAGA Settlement Packages have been mailed to all Aggrieved Employees.

8. **Release of Claims by Plaintiff, Aggrieved Employees, and the State of California.**

(a) Upon the date the Court has entered an order approving the Settlement Agreement and full funding of the Total Settlement Amount, and except as to the rights and obligations created by this Settlement Agreement, Plaintiff and the State of California with respect to Aggrieved Employees, will be deemed to have knowingly and voluntarily released and forever discharged Defendants, including Defendants' parent corporation, affiliates, subsidiaries, divisions, predecessors, insurers, successors and assigns, and their current and former employees, attorneys, officers, directors and agents thereof, both individually and in their business capacities, and their employee benefit plans and programs and the trustees, administrators, fiduciaries and insurers of such plans and programs (collectively, the "Released Parties"), to the full extent permitted by law, of and from the Action and from any and all claims, arising during the PAGA Period, for civil penalties under California Labor Code section 2698, *et seq.* ("PAGA") as well as any interest, fees, and costs available under PAGA, based on the factual allegations in the Operative Complaint and PAGA Notice, including but not limited to, for failure to pay minimum, regular, and overtime wages, failure to provide compliant meal periods and associated premiums, failure to provide compliant rest periods and associated premiums, failure to timely pay wages during employment, failure to timely pay wages upon termination, failure to provide compliant and accurate wage statements, failure to maintain complete and accurate payroll records, failure to reimburse necessary business-related expenses and costs, and for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 551, 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802 and Industrial Welfare Commission Wage Orders, including *inter alia*, Wage Orders 1-2001 and 5-2001 (collectively, the "Released Claims").

(b) Upon the date the Court has entered an order approving the Settlement Agreement and full funding of the Total Settlement Amount, and except as to the rights and obligations created by this Settlement Agreement, Plaintiff, individually and on behalf of his heirs, executors, administrators, representatives, attorneys, successors and assigns, will be deemed to have knowingly and voluntarily released and forever discharged Released Parties, to the full extent permitted by law, from any and all claims of every nature whatsoever, known or unknown, suspected or unsuspected, which Plaintiff has or may have as of the date the Court has entered an order approving the Settlement Agreement. This broader release includes, but is not limited to, all claims arising directly or indirectly from Plaintiff's employment with Defendants and the termination of that employment, including without limitation claims arising under federal, state,

or local laws and claims for unpaid wages, penalties, liquidated damages, breach of contract, breach of the implied covenant of good faith and fair dealing, infliction of emotional distress, wrongful or retaliatory discharge, harassment, discrimination, defamation, impairment of economic opportunity, and violations of public policy, the Fair Labor Standards Act, the California Labor Code, the California Fair Employment and Housing Act, the California Business and Professions Code, the California Constitution, the Civil Rights Act of 1866, Title VII of the Civil Rights Act of 1964, and the Americans with Disabilities Act of 1990. With respect to those claims released by Plaintiff in an individual capacity, Plaintiff acknowledges and waives any and all rights and benefits available under California Civil Code Section 1542, which provides:

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

Plaintiff understands and agrees that claims or facts in addition to or different from those which are now known or believed by him to exist may hereafter be discovered. It is Plaintiff's intention to, upon the date the Court has entered an order approving the Settlement Agreement and full funding of the Total Settlement Amount, settle fully and release all claims he now has against the Released Parties, whether known or unknown, suspected or unsuspected. Notwithstanding the above, the general release by Plaintiff shall not extend to claims for workers' compensation benefits, claims for unemployment benefits, or other claims that may not be released by law.

9. **Governing Law and Interpretation.**

(a) This Settlement Agreement shall be governed and conformed in accordance with the laws of the State of California. Should any non-material provision of this Settlement Agreement be declared illegal or unenforceable by any court of competent jurisdiction and cannot be modified to be enforceable such provision immediately shall become null and void, leaving the remainder of this Settlement Agreement in full force and effect.

(b) In the event of a breach of any provision of this Settlement Agreement, any Party reserves the right to institute an action specifically to enforce any term or terms of this Settlement Agreement or seek damages for breach. In an action to enforce any term or terms of this Settlement Agreement or to seek damages for breach of this Settlement Agreement, the prevailing Party in that action shall be entitled to recover reasonable attorney's fees and costs from the non-prevailing Party.

10. **Amendment.** This Settlement Agreement may not be modified, altered or changed except in writing and signed by both Parties' counsel, wherein specific reference is made to this Settlement Agreement, subject to approval by the Court.

11. **Miscellaneous.**

(a) The Parties agree to stay all proceedings in the Action, including with respect to California Code of Civil Procedure section 583.310, except such proceedings necessary to implement and complete the Settlement, pending approval of the Settlement.

(b) This Settlement Agreement may be signed in counterparts, each of which shall be deemed an original, but all of which, taken together shall constitute the same instrument. A signature made on a faxed or electronically transmitted copy of the Settlement Agreement or a signature transmitted by facsimile or electronic mail shall have the same effect as the original signature.

(c) The section headings used in this Settlement Agreement are intended solely for convenience of reference and shall not in any manner amplify, limit, modify or otherwise be used in the interpretation of any of the provisions hereof.

(d) This Settlement Agreement was the result of negotiations between the Parties and their respective counsel under the auspices of mediator David A. Rotman, Esq. In the event of vagueness, ambiguity or uncertainty, this Settlement Agreement shall not be construed against the Party preparing it but shall be construed as if both Parties prepared it jointly, and the Parties may present their disputes to the mediator to resolve any vagueness, ambiguity, or uncertainty.

(e) If Plaintiff or Defendants fail to enforce this Settlement Agreement or to insist on performance of any term, that failure does not mean a waiver of that term or of the Settlement Agreement. The Settlement Agreement remains in full force and effect anyway.

HAVING ELECTED TO EXECUTE THIS SETTLEMENT AGREEMENT, TO FULFILL THE PROMISES, AND TO RECEIVE THE CONSIDERATION SET FORTH ABOVE, PLAINTIFF AND DEFENDANTS, FREELY AND KNOWINGLY, AND AFTER DUE CONSIDERATION, ENTER INTO THIS SETTLEMENT AGREEMENT.

IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this Settlement Agreement as of the date set forth below:

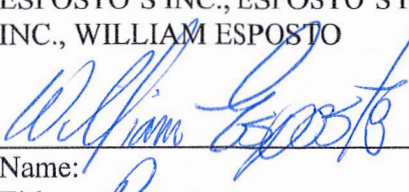
Date: 08/15/2023, 2023


Notary Assn/Sign: 23-06-18 00:08:54 UTC - 172.58.89.51
id:230712-3004-4401-4294-AD0001930161

DANILO CORTEZ FLORES
Individually and On Behalf of
the State of California and Aggrieved Employees

ESPOSTO'S INC., ESPOSTO'S FINE FOODS,
INC., WILLIAM ESPOSTO

Date: 8/22, 2023


Name: _____
Title: Pres

[additional signatures next page]

Approved as to form and content.

Date: 8/23, 2023

LAWYERS FOR JUSTICE, PC



Annabel Blanchard
Attorneys for Plaintiff Danilo Cortez Flores

Date: August 24, 2023

VISION LAW CORPORATION

Scott Shibayama

Digitally signed by Scott Shibayama
DN: cn=Scott Shibayama, o=Vision Law
Corporation, ou,
email=scott@visionlaw.com, c=US
Date: 2023.08.24 11:27:56 -07'00'

Scott T. Shibayama
*Attorneys for Defendant Esposto's Inc., Esposto's
Fine Foods, William Esposto*

Exhibit A

<<Mailing Date>>

To: <<First Name>><<Last Name>>
<<Street Address>>
<<City>> <<State>> <<Zip>>

Re: Settlement Payment from *Danilo Cortez Flores v. Esposto's Inc.; Esposto's Fine Foods, Inc.; William Esposto*, San Mateo County Superior Court Case No. 21-CIV-05152

Dear <<First Name>><<Last Name>>:

Please find enclosed a check in the amount of <<amount of payment>> ("Individual Settlement Share"). This check is your payment from the settlement in the lawsuit entitled *Danilo Cortez Flores v. Esposto's Inc.; Esposto's Fine Foods, Inc.; William Esposto*, San Mateo County Superior Court Case No. 21-CIV-05152 ("Action").

The lawsuit was filed on September 21, 2021 by Danilo Cortez Flores ("Plaintiff") against his former employer, on behalf of the State of California, with respect to himself and other alleged aggrieved employees, to seek recovery of civil penalties pursuant to the Private Attorneys General Act of 2004, California Labor Code § 2698, *et seq.* ("PAGA"), for multiple alleged violations of the California Labor Code and Industrial Welfare Commission Wage Orders, including, *inter alia*, for failure to properly pay regular, minimum and overtime wages, failure to provide compliant meal and rest periods and associated premiums, failure to pay wages during employment and upon termination, failure to provide compliant wage statements, failure to maintain requisite payroll records, and failure to reimburse business expenses. Prior to filing the lawsuit, on July 16, 2021, Plaintiff submitted a letter to the California Labor and Workforce Development Agency ("LWDA"), pursuant to PAGA, to provide notice of his intent to seek civil penalties under PAGA for Defendant's alleged violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 551, 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802 and Industrial Welfare Commission Wage Orders, including *inter alia*, Wage Orders 1-2001, and 5-2001, thereby initiating LWDA Case Number LWDA-CM-838324-21 (the "PAGA Notice").

Defendants deny all of Plaintiff's allegations and deny any wrongdoing of any kind associated with Plaintiff's allegations.

A settlement was reached between Plaintiff and Defendants Esposto's, Inc., Esposto's Fine Foods, Inc., and William Esposto ("Defendants").

On <<Date>>, the settlement was approved by the Court, with a portion to be paid to the LWDA and a portion to be paid to all current and former hourly-paid or non-exempt non-union individuals employed by Defendant in the State of California during the PAGA Period ("Aggrieved Employees"). The period July 16, 2020 through the date the final approval order is signed by the Court is the "PAGA Period".

You are receiving a portion of the settlement (the enclosed Individual Settlement Share) because you have been identified as an Aggrieved Employee. Your Individual Settlement Share is based on the total number of pay periods that you worked for Defendant in California during the PAGA Period. The Individual Settlement Share is considered to be 100% penalties, which will be reported on an IRS Form 1099. You are responsible for paying any and all taxes that may be due as a result of any payment issued to you under the settlement and should consult a tax advisor regarding the tax consequences of such payment.

Under the settlement, as of <<date of entry of order by the Court approving the Settlement>> and full funding of the Total Settlement Amount, the Released Parties were fully released and forever discharged from any and all Released Claims.

"Released Parties" means Defendant, including Defendant's parent corporation, affiliates, subsidiaries, divisions, predecessors, insurers, successors and assigns, and their current and former employees, attorneys, officers, directors and agents thereof, both individually and in their business capacities, and their employee benefit plans and programs and the trustees, administrators, fiduciaries and insurers of such plans and programs.

"Released Claims" means any and all claims, arising during the PAGA Period, for civil penalties under California Labor Code section 2698, *et seq.* ("PAGA") as well as any interest, fees, and costs available under PAGA, based on the factual allegations in the Operative Complaint and PAGA Notices, including but not limited to, for failure to pay minimum, regular, and overtime wages, failure to provide compliant meal periods and associated premiums, failure to provide compliant rest periods and associated premiums, failure to timely pay wages during employment, failure to timely pay wages upon termination, failure to provide compliant and accurate wage statements, failure to maintain complete and accurate payroll records, failure to reimburse necessary business-related expenses and costs, and for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 551, 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802 and Industrial Welfare Commission Wage Orders, including *inter alia*, Wage Orders 1-2001, and 5-2001.

The enclosed check is valid for 90 days from the original date of issuance and mailing, and if it is not cashed, deposited, or otherwise negotiated within the 90-day timeframe, it will be cancelled, and the funds associated with the cancelled check will be transmitted to the State Controller's Unclaimed Property Division.

Do not call or write the Court, Office of the Clerk of the Court, Defendant, or Defendant's counsel to ask questions about the settlement or to ask tax-related questions. If you have any such questions, you may contact [PAGA Settlement Administrator] at [toll-free phone number].

EXHIBIT 2

**AMENDMENT NO. 1 TO PRIVATE ATTORNEYS GENERAL ACT SETTLEMENT
AGREEMENT AND RELEASE**

Plaintiff Danilo Cortez Flores (“Plaintiff”) and Defendants Esposto’s Inc., Esposto’s Fine Foods, Inc., and William Esposto (collectively, the “Defendants”) (collectively with Plaintiff, the “Parties”), pursuant to Section 10 of the Private Attorneys General Act Settlement Agreement and Release entered into on or around August 24, 2023 (“Original Agreement”), hereby agree to amend the terms of the Original Agreement, as stated herein. Other than expressly set forth herein, the terms and conditions of the Original Agreement shall remain in full force and effect. The amendment stated herein is incorporated by this reference:

A. Section 3(a)(5) of the Original Agreement is hereby amended to state as follows:

Seventy-five percent (75%) of the Net Settlement Amount will be distributed to the LWDA (“LWDA Payment”); and the remaining twenty-five percent (25%) will be distributed to the Aggrieved Employees, defined solely for purposes of this Settlement as all current and former hourly-paid or non-exempt non-union individuals employed by and worked for Defendants Esposto’s Inc. and Esposto’s Fine Foods, Inc. in the State of California during the PAGA Period (the “Aggrieved Employees”). The period July 16, 2020 through the date that the approval order is signed by the Court is the “PAGA Period.” The Aggrieved Employees are estimated to consist of approximately one hundred and four (104) individuals who worked approximately 5,028 Pay Periods through December 31, 2021. If the actual number of Pay Periods for the period of July 16, 2020 through December 31, 2021 is more than ten percent (10%) above 5,028, the Total Settlement Amount will be increased by the percentage that the actual number exceeds the 10% threshold. The 25% portion of the Net Settlement Amount payable to Aggrieved Employees is referred to as the “Employees’ Portion.”

B. Section 7(a) of the Original Agreement is hereby amended to state as follows:

Subject to Court approval of this Settlement Agreement, payment of the sums described in Section 3(a) above shall be made by Defendants by transmitting the required sums to a qualified settlement account established by the PAGA Settlement Administrator for administration of this Settlement, within thirty (30) calendar days of the Court’s order

granting approval of this Settlement Agreement. If the date by which payment by Defendants is due falls on a Saturday, Sunday or legal holiday in the State of California, then the due date shall be extended the next following day which is not a Saturday, Sunday or legal holiday in the State of California.

C. Section 7(c)(1) of the Original Agreement is hereby amended to state as follows:

No later than thirty (30) calendar days after the Court's order granting approval of the Settlement, Defendants shall provide the PAGA Settlement Administrator with a list of all Aggrieved Employees (the "Aggrieved Employees List"), containing the following information for each Aggrieved Employee: (i) first and last name; (ii) last known mailing address; (iii) last known telephone number; (iv) Social Security number; (v) start and end dates of employment; and (vi) such other information necessary for the PAGA Settlement Administrator to calculate Pay Periods.

D. Section 7(c)(3) of the Original Agreement is hereby amended to state as follows:

No later than fourteen (14) calendar days after the PAGA Settlement Administrator receives the Aggrieved Employees List and Total Settlement Amount, the PAGA Settlement Administrator shall mail the agreed-upon Cover Letter and Individual Settlement Share checks (together, the "PAGA Settlement Package") to all Aggrieved Employees by first-class United States mail. For each PAGA Settlement Package that is returned undeliverable within thirty (30) calendar days of the initial mailing, the PAGA Settlement Administrator shall promptly attempt to locate an alternate, updated address for the Aggrieved Employee at issue, by using a skip-trace search and shall attempt one (1) re-mailing of the PAGA Settlement Package.

///

///

///

///

///

///

E. **Exhibit A.** Exhibit A to the Original Agreement, which consisted of the Cover Letter to be mailed to the Aggrieved Employees, is hereby replaced with the revised Covered Letter attached hereto as “**Exhibit A.**”

**IT IS SO AGREED ON BEHALF OF PLAINTIFF AND APPROVED AS TO FORM
BY THE UNDERSIGNED COUNSEL OF RECORD:**

Dated: August 23, 2024

LAWYERS *for* JUSTICE, PC

By: 

Joanna Ghosh
Matthew Richard Soto
Attorneys for Plaintiff

**IT IS SO AGREED ON BEHALF OF DEFENDANT AND APPROVED AS TO
FORM BY THE UNDERSIGNED COUNSEL OF RECORD:**

Dated: August 26, 2024

VISION LAW CORPORATION
Scott
Shibayama
By: 

Scott T. Shibayama
Attorneys for Defendants

Digitally signed by Scott Shibayama
DN: cn=Scott Shibayama, o=Vision
Law Corporation, ou,
email=scott@visionlaw.com, c=US
Date: 2024.08.26 14:03:54 -07'00'

Exhibit A

<<Mailing Date>>

To: <<First Name>><<Last Name>>
<<Street Address>>
<<City>> <<State>> <<Zip>>

Re: Settlement Payment from *Danilo Cortez Flores v. Esposto's Inc.; Esposto's Fine Foods, Inc.; William Esposto*,
San Mateo County Superior Court Case No. 21-CIV-05152

Dear <<First Name>><<Last Name>>:

Please find enclosed a check in the amount of <<amount of payment>> ("Individual Settlement Share"). This check is your payment from the settlement in the lawsuit entitled *Danilo Cortez Flores v. Esposto's Inc.; Esposto's Fine Foods, Inc.; William Esposto*, San Mateo County Superior Court Case No. 21-CIV-05152 ("Action").

The lawsuit was filed on September 21, 2021 by Danilo Cortez Flores ("Plaintiff") against his former employer, on behalf of the State of California, with respect to himself and other alleged aggrieved employees, to seek recovery of civil penalties pursuant to the Private Attorneys General Act of 2004, California Labor Code § 2698, *et seq.* ("PAGA"), for multiple alleged violations of the California Labor Code and Industrial Welfare Commission Wage Orders, including, *inter alia*, for failure to properly pay regular, minimum and overtime wages, failure to provide compliant meal and rest periods and associated premiums, failure to pay wages during employment and upon termination, failure to provide compliant wage statements, failure to maintain requisite payroll records, and failure to reimburse business expenses. Prior to filing the lawsuit, on July 16, 2021, Plaintiff submitted a letter to the California Labor and Workforce Development Agency ("LWDA"), pursuant to PAGA, to provide notice of his intent to seek civil penalties under PAGA for Defendants' alleged violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 551, 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802 and Industrial Welfare Commission Wage Orders, including *inter alia*, Wage Orders 1-2001, and 5-2001, thereby initiating LWDA Case Number LWDA-CM-838324-21 (the "PAGA Notice").

Defendants deny all of Plaintiff's allegations and deny any wrongdoing of any kind associated with Plaintiff's allegations.

A settlement was reached between Plaintiff and Defendants Esposto's, Inc., Esposto's Fine Foods, Inc., and William Esposto ("Defendants").

On <<Date>>, the settlement was approved by the Court, with a portion to be paid to the LWDA and a portion to be paid to all current and former hourly-paid or non-exempt non-union individuals who were employed by and worked for Defendants Esposto's Inc. and Esposto's Fine Foods, Inc. in the State of California during the PAGA Period ("Aggrieved Employees"). The period July 16, 2020 through the date the final approval order is signed by the Court is the "PAGA Period".

You are receiving a portion of the settlement (the enclosed Individual Settlement Share) because you have been identified as an Aggrieved Employee. Your Individual Settlement Share is based on the total number of pay periods that you worked for Defendants Esposto's Inc. and Esposto's Fine Foods, Inc. in California during the PAGA Period. The Individual Settlement Share is considered to be 100% penalties, which will be reported on an IRS Form 1099. You are responsible for paying any and all taxes that may be due as a result of any payment issued to you under the settlement and should consult a tax advisor regarding the tax consequences of such payment.

Under the settlement, as of <<date of entry of order by the Court approving the Settlement>> and full funding of the Total Settlement Amount, the Released Parties were fully released and forever discharged from any and all Released Claims.

"Released Parties" means Defendants, including Defendants' parent corporation, affiliates, subsidiaries, divisions, predecessors, insurers, successors and assigns, and their current and former employees, attorneys, officers, directors and agents thereof, both individually and in their business capacities, and their employee benefit plans and programs and the trustees, administrators, fiduciaries and insurers of such plans and programs.

"Released Claims" means any and all claims, arising during the PAGA Period, for civil penalties under California Labor Code section 2698, *et seq.* ("PAGA") as well as any interest, fees, and costs available under PAGA, based on the factual allegations in the Operative Complaint and PAGA Notice, including but not limited to, for failure to pay minimum, regular, and overtime wages, failure to provide compliant meal periods and associated premiums, failure to provide compliant rest periods and associated premiums, failure to timely pay wages during employment, failure to timely pay wages upon termination, failure to provide compliant and accurate wage statements, failure to maintain complete and accurate payroll records, failure to reimburse necessary business-related expenses and costs, and for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 551, 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802 and Industrial Welfare Commission Wage Orders, including *inter alia*, Wage Orders 1-2001 and 5-2001.

The enclosed check is valid for 90 days from the original date of issuance and mailing, and if it is not cashed, deposited, or otherwise negotiated within the 90-day timeframe, it will be canceled, and the funds associated with the canceled check will be transmitted to the State Controller's Unclaimed Property Division.

Do not call or write the Court, Office of the Clerk of the Court, Defendants, or Defendants' counsel to ask questions about the settlement or to ask tax-related questions. If you have any such questions, you may contact [PAGA Settlement Administrator] at [toll-free phone number].

EXHIBIT 3

July 16, 2021

BY ONLINE SUBMISSION

California Labor & Workforce Development Agency
PAGAfilings@dir.ca.gov

Re: ESPOSTO'S, INC.; ESPOSTO'S FINE FOODS, INC.; WILLIAM ESPOSTO

Dear Representative:

We have been retained to represent Danilo Cortez Flores against Esposto's, Inc and Esposto's Fine Foods, Inc. (including any and all affiliates, subsidiaries, parents, directors, officers, agents, and executive employees) and William Esposto (collectively referred to as "Esposto's") for violations of California wage-and-hour laws. Mr. Flores seeks penalties for violations of the California Labor Code, which are recoverable under California Labor Code section 2698, et seq., the Labor Code Private Attorneys General Act of 2004 ("PAGA") and all other remedies available under PAGA.

At all times herein relevant, William Esposto was and is the President of Esposto's, Inc. and Esposto's Find Foods, Inc.. Mr. Esposto, acting either individually or as officer, owner, director, agent, manager, member, operator or executive employee of Esposto's, Inc. and/or Esposto's Fine Foods, Inc. caused and continues to cause *all* of the wage and hour violations alleged herein against the "aggrieved employees," as defined herein, including without limitation violations of Labor Code Section 558 and 1197.1

Mr. Flores seeks these remedies on behalf of the State of California and "aggrieved employees," as defined herein. This letter is sent in compliance with the reporting requirements of California Labor Code section 2699.3.

Esposto's employed Mr. Flores as an hourly-paid, non-exempt employee from approximately March 2019 to approximately December 2020, in the State of California.

The "aggrieved employees" that Mr. Flores may seek penalties on behalf of are all current and former hourly-paid or non-exempt employees who worked for any of the above-referenced entities within the State of California, including, but not limited to all current and former hourly-paid or non-exempt employees who worked for any of the above-referenced entities within the State of California who earned shift differentials/non-discretionary bonuses/non-discretionary performance pay/non-discretionary incentive pay which was not used to calculate the correct regular rate of pay used to calculate the overtime rate.

Based on the following facts and theories, Esposto's has violated and/or continues to violate, among other provisions of the California Labor Code and applicable wage law, California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 551, 552, 558, 1174(d), 1194, 1197,

1197.1, 1198, 2800 and 2802, and IWC Wage Orders including *inter alia*, Wage Orders , 1-2001, 5-2001, and any other applicable IWC Wage Order.

Esposto's required aggrieved employees to perform work before their scheduled shifts, after their scheduled shifts, during off-the-clock meal breaks, and/or during rest breaks and failed to compensate aggrieved employees for this time. Such work included, but was not limited to, responding to work related inquiries, performing the daily duties of the job position, communicating with managers using personal cell phones, donning and doffing uniforms and other personal protective equipment, undergoing health screening, and/or cleaning.

California Labor Code sections 510 and 1198 require employers to pay time-and-a-half or double time overtime wages, and make it unlawful to work employees for hours longer than eight hours in one day and/or over forty hours in one week without paying the premium overtime rates at one-and-one-half times or double the regular rate of pay, including additional remuneration. During the relevant time period, Mr. Flores and other aggrieved employees worked in excess of 8 hours in a day and 40 hours in a week. Therefore, Mr. Flores and other aggrieved employees were entitled to receive certain wages for overtime compensation, but they were not paid for all overtime hours worked.

California Labor Code sections 226.7 and 512 require employers to pay an employee one additional hour of pay at the employee's regular rate for each meal or rest period that is not provided. During the relevant time period, Esposto's required Mr. Flores and other aggrieved employees to work during meal and rest periods and failed to compensate them properly for non-compliant meal and rest periods including, *inter alia*, short, late, interrupted, and missed meal and rest periods. Esposto's also required aggrieved employees to stay on work premises during rest periods.

California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and if an employee quits his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours' notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. During the relevant time period, Esposto's failed to pay Mr. Flores and other aggrieved employees all wages due to them within any time period specified by California Labor Code sections 201 and 202, including earned and unpaid minimum, overtime, and premium wages as discussed above.

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. During the relevant time period, Esposto's failed to pay Mr. Flores and other aggrieved employees all wages due to them within any time period specified by California Labor

Code section 204, including earned and unpaid minimum, overtime, and premium wages as discussed above.

California Labor Code section 226 requires employers to make, keep and provide complete and accurate itemized wage statements to their employees. During the relevant time period, Esposto's did not provide Mr. Flores and other aggrieved employees with complete and accurate itemized wage statements. The wage statements they received from Esposto's were in violation of California Labor Code section 226(a). The violations include, but are not limited to, the failure to include the total hours worked by Mr. Flores and other aggrieved employees, including time spent working off-the-clock and during meal and rest periods as discussed above.

California Labor Code sections 551 and 552 require that every person employed in any occupation of labor is entitled to one day's rest in a seven-day workweek, that no employer of labor shall cause his employees to work more than six days in a workweek, and that an employer shall pay a civil penalty in the amounts of fifty dollars (\$50) for each aggrieved employee per pay period for the initial violation and one hundred dollars (\$100) for each aggrieved employee per pay period for each subsequent violation. During the relevant time period, Mr. Flores and the aggrieved employees were required to regularly and/or consistently work in excess of six (6) days in a workweek. During the relevant time period, Mr. Flores and the aggrieved employees were required to work in excess of thirty (30) hours in a week and/or six (6) hours in any one (1) day thereof, during workweeks in which they were required to work in excess of six (6) days. During the relevant time period, Mr. Flores and the aggrieved employees were required to work in excess of six (6) days in a workweek without accumulating or being provided the opportunity to take at least one (1) day of rest, and when Mr. Flores and the aggrieved employees accumulated days of rest, they were not actually provided the opportunity to take the equivalent of one (1) day's rest in seven (7) during each calendar month.

California Labor Code sections 1174(d) requires an employer to keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept with rules established for this purpose by the commission, but in any case shall be kept on file for not less than two years. During the relevant time period, Esposto's failed to keep accurate and complete payroll records showing the actual hours worked daily and the wages earned by Mr. Flores and other aggrieved employees, including earned and unpaid minimum, overtime, and premium wages as discussed above.

California Labor Code sections 1194, 1197, and 1197.1 provide the minimum wage to be paid to employees, and the payment of a lesser wage than the minimum so fixed is unlawful. During the relevant time period, Esposto's did not provide Mr. Flores and other aggrieved employees with the minimum wages to which they were entitled for work performed "off-the-clock."

California Labor Code section 1198 provides that "The employment of any employee ... under conditions of labor prohibited by the [Industrial Wage Orders] is unlawful." The applicable Industrial Wage Orders, including *inter alia*, Wage Orders 1-2001 and 5-2001, require that for each workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall

be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay. Further, if an employee is required to report for work a second time in any one workday and is furnished less than two (2) hours of work on the second reporting, said employee shall be paid for two (2) hours at the employee's regular rate of pay. During the relevant time period, Esposto's failed to pay Mr. Flores and other aggrieved employees half the usual or scheduled day's work in an amount no less than two (2) hours nor more than four (4) hours at the employee's regular rate of pay for workdays in which Mr. Flores and the other aggrieved employees reported to work and were furnished less than half the usual or scheduled day's work. During the relevant time period, Esposto's failed to pay Mr. Flores and other aggrieved employees for two (2) hours at the employee's regular rate of pay on days in which Mr. Flores and the other aggrieved employees were required to report for work a second time in one workday and were furnished less than two (2) hours of work upon the second reporting.

California Labor Code sections 2800 and 2802 require an employer to reimburse its employee for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her obedience to the directions of the employer. During the relevant time period, Mr. Flores and other aggrieved employees incurred necessary business-related expenses and costs that were not fully reimbursed by Esposto's. These costs include, but are not limited to, the use of personal phones for business-related purposes, purchasing personal protective equipment, and purchasing/maintaining clothes that conformed with Esposto's uniform/dress code policy. .

Therefore, on behalf of all aggrieved employees, Mr. Flores seeks all applicable penalties arising out of the above-referenced wage, hour, and payroll practices, or which could be assessed and collected by the Labor and Workforce Development Agency, for violation of the California Labor Code pursuant to PAGA, including civil penalties pursuant to Labor Code section 558.

///

///

///

///

///

///

///

///

///

///

If you have any questions or require additional information, please do not hesitate to contact us.

With kind regards,

A handwritten signature in blue ink, appearing to read 'Edwin Aiwanian', written in a cursive style.

Edwin Aiwanian, Esq.

Cc: (By U.S. Certified Mail / Return Receipt Requested)

Esposto's, Inc.
c/o Agent for Service of Process
William Esposto
360 Shaw Road, Unit C
South San Francisco, CA 94080

Esposto's Fine Foods, Inc.
c/o Agent for Service of Process
William Esposto
360 Shaw Road, Unit C
South San Francisco, CA 94080

William Esposto
360 Shaw Road, Unit C
South San Francisco, CA 94080

EXHIBIT 4

LAWYERS for JUSTICE PC CASE COST DETAIL
Flores v. Esposto's Inc. (PAGA)

<u>Date</u>	<u>Payee</u>	<u>Expense Description</u>	<u>Amount</u>
3/4/2021	U.S. Postmaster	Postage	7.00
7/16/2021	Labor & Workforce Development Agency	PAGA Filing Fee	75.00
7/16/2021	U.S. Postmaster	Postage	22.50
9/22/2021	One Legal	Attorney Service	29.05
9/22/2021	San Mateo Superior Court	Complaint Filing Fee	435.00
1/5/2022	Legal Document Server, Inc.	Attorney Service	14.75
1/6/2022	Legal Document Server, Inc.	Attorney Service	11.00
1/6/2022	Legal Document Server, Inc.	Attorney Service	14.75
1/6/2022	David A. Rotman	Mediation Fee	13,250.00
4/4/2022	Legal Document Server, Inc.	Attorney Service	151.00
4/5/2022	Legal Document Server, Inc.	Attorney Service	11.00
4/6/2022	Legal Document Server, Inc.	Attorney Service	14.75
4/6/2022	Legal Document Server, Inc.	Attorney Service	11.00
4/10/2022	Codici	Analysis of Sampling of Time Records	3,000.00
6/29/2022	Legal Document Server, Inc.	Attorney Service	14.75
7/5/2022	Legal Document Server, Inc.	Attorney Service	165.50
1/24/2023	Legal Document Server, Inc.	Attorney Service	15.50
7/24/2023	Legal Document Server, Inc.	Attorney Service	11.95
7/26/2023	Legal Document Server, Inc.	Attorney Service	15.57
10/24/2023	Legal Document Server, Inc.	Attorney Service	15.57
2/22/2024	Legal Document Server, Inc.	Attorney Service	15.57
Total:			<u>17,301.21</u>