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 CROSSROADS FSU (01544)

SUPERIOR COURT OF CALIFORNIA
 COUNTY OF SAN BERNARDINO

ISABELLA CARO, on behalf of herself and all
 others similarly situated and the general public,

Plaintiff,

v.

EM KMR LLC dba CHICK-FIL-A/ COLONIES
 CROSSROADS FSU (01544); and DOES 1 to
 100,

Defendants.

) Case No. CIVSB 2126991
) Hon. Donald Alvarez
) Dept. S-23
)
) CLASS ACTION
)
) **STIPULATION OF CLASS AND PAGA**
) **REPRESENTATIVE ACTION**
) **SETTLEMENT AND RELEASE**

) Action filed: September 17, 2021
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STIPULATION OF CLASS AND PAGA REPRESENTATIVE ACTION SETTLEMENT AND RELEASE

I. INTRODUCTION

1. This Stipulation of Class and PAGA Representative Action Settlement and Release (hereinafter “Settlement Agreement”) is made and entered into by and between the following Parties: Plaintiff Isabella Caro (“Plaintiff”) and Defendant EM KMR LLC dba CHICK-FIL-A/ COLONIES CROSSROADS FSU (01544) (“Defendant”). This Settlement Agreement sets forth the Parties’ class and PAGA representative action settlement to resolve all of the claims that are or could have been asserted in the action entitled *Caro v. EM KMR LLC dba Chick-Fil-A/Colonies Crossroads FSU (01544)*., Case No. CIVSB 2126991, pending in the San Bernardino County Superior Court.

2. This Settlement Agreement is subject to the terms and conditions set forth below and to the approval of the Court. As detailed below, if the Court does not enter an order granting Final Approval of Settlement, or if the associated judgment does not become final for any reason, this Settlement Agreement shall be deemed null and void and shall be of no force or effect whatsoever.

II. DEFINITIONS

3. The following definitions are applicable to this Settlement Agreement. Definitions contained elsewhere in this Settlement Agreement also shall be applicable.

4. “Action” means *Caro v. EM KMR LLC dba Chick-Fil-A/Colonies Crossroads FSU (01544)*, Case No. CIVSB 2126991, pending in the San Bernardino County Superior Court.

5. “Class Counsel” means JANELLE CARNEY – ATTORNEY AT LAW, APC.

6. “Class Counsel Award” means the total amount to be paid to Class Counsel, including Class Counsel Fees and Class Counsel Expenses.

7. “Class Counsel Expenses” means the amount of reasonable litigation expenses Class Counsel incurred in connection with the Action, not to exceed \$15,000.00, including their pre-filing investigation, filing of the Action and all related litigation activities, this Settlement, and all post-Settlement compliance procedures.

8. “Class Counsel Fees” means an amount not to exceed Thirty-Five Thousand Dollars (\$35,000.00) (33.33% of the Gross Settlement Amount) to compensate Class Counsel for

1 attorney's fees incurred in connection with the Action, including pre-filing investigation, filing of
2 the Action and all related litigation activities, this Settlement, and all post-Settlement compliance
3 procedures.

4 9. "Class Information" means information regarding Class Members and PAGA
5 Representative Action Members that Defendant will in good faith compile from their electronic
6 human resources records and provide to the Settlement Administrator in a secure manner on a
7 confidential basis. The Class Information shall include each Class Members / PAGA
8 Representative Action Members' full name; last known mailing address to the extent available in
9 Defendant's electronic human resources records; Social Security Number; and Class Members'
10 number of Qualifying Workweeks.

11 10. "Class" or "Class Members" means all current and former non-exempt hourly
12 individuals who were under the age of 18 at the time of hire by Defendant on or after September
13 17, 2017 through August 31, 2022, who 1) did not later sign arbitration agreements after turning
14 18 or 2) did not have a parent or other legal guardian co-sign arbitration agreements.

15 11. "Class Period" means the period from September 17, 2017 through August 31,
16 2022.

17 12. "Class Representative Enhancement" means the amount to be paid to Plaintiff in
18 recognition of her efforts and work in prosecuting the Action on behalf of Class Members and
19 PAGA Representative Action Members. Defendant agrees to pay Plaintiff a Class Representative
20 Enhancement of up to Ten Thousand Dollars (\$10,000), subject to the Court finally approving
21 this Settlement Agreement and subject to the exhaustion of any and all appeals.

22 13. "Court" means the Superior Court of the State of California, for the County of San
23 Bernardino.

24 14. "Defendant" means EM KMR LLC dba Chick-Fil-A/Colonies Crossroads FSU
25 (01544).

26 15. "Defendant's Counsel" means Fisher & Phillips, LLP.

27 16. "Effective Date" means the date Defendant funds the Gross Settlement Amount
28 pursuant to Paragraph 43.

1 17. “Final Approval” means the Court order granting final approval of the Settlement
2 Agreement.

3 18. “Gross Settlement Amount” means the maximum amount of One Hundred Five
4 Thousand Dollars (\$105,000.00) to be paid by Defendant under this Settlement Agreement, if all
5 conditions herein are met, to settle the Action, inclusive of the total settlement value for all
6 damages, restitution, penalties, taxes and interest, all payments to Participating Class Members
7 and PAGA Representative Action Members, the Class Counsel Award, Settlement
8 Administration Costs to the Settlement Administrator, PAGA Payment, and the Class
9 Representative Enhancement to Plaintiff, except that Defendant shall pay the employer’s share of
10 the payroll taxes separately from and in addition to the Gross Settlement Amount. The Gross
11 Settlement Amount shall also include any interest that accrues in the escrow account created by
12 the Settlement Administrator.

13 19. “Individual Settlement Share” means each Participating Class Member’s share of
14 the Net Settlement Amount calculated in accordance with the calculations described in Paragraph
15 54. Payment of an Individual Settlement Share shall be referred to as an “Individual Settlement
16 Payment.”

17 20. “Net Settlement Amount” means the Gross Settlement Amount minus the: (1)
18 Class Representative Enhancement to Plaintiff, (2) Settlement Administration Costs to the
19 Settlement Administrator, (3) Class Counsel Award, and (4) PAGA Payment. The Net Settlement
20 Amount will be distributed to Participating Class Members.

21 21. “Notice of Settlement” or “Notices of Settlement” means the notice (substantially
22 in the form attached hereto as **Exhibit 1**) that the Court orders to be sent to all Class Members
23 advising them of their rights under this Settlement Agreement.

24 22. “Operative Complaint” means the Second Amended Complaint filed February 16,
25 2022, attached hereto as **Exhibit 2**.

26 23. “PAGA Payment” means an amount of up to \$5,000.00, the amount attributable to
27 Plaintiff’s claims pursuant to the California Private Attorneys General Act of 2004, Cal. Labor
28 Code § 2698 *et seq.* (“PAGA”).

1 24. “PAGA Period” means the period from April 29, 2021, until August 31, 2022.

2 25. “PAGA Representative Action Members” means all current and former non-
3 exempt hourly employees of Defendant who were under the age of 18 at the time of hire, on or
4 after April 29, 2021 through August 31, 2022, who 1) did not later sign arbitration agreements
5 after turning 18 or 2) did not have a parent or other legal guardian co-sign arbitration agreements.

6 26. “PAGA Settlement Share” means each PAGA Representative Class Member’s
7 share of the 25 percent portion of the PAGA Payment, calculated in accordance with the
8 calculations described in Paragraph 57. Payment of a PAGA Settlement Share shall be referred to
9 as a “PAGA Settlement Payment.”

10 27. “Participating Class” or “Participating Class Members” means all Class Members
11 who do not submit a valid letter requesting to be excluded from the class action portion of the
12 Settlement (*i.e.*, opt-out), consistent with the terms set forth in this Settlement Agreement.

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

15 29. “Plaintiff” means the named Plaintiff in the Action, Isabella Caro.

16 30. “Preliminary Approval” means the Court order granting preliminary approval of
17 the Settlement Agreement without material change to the Settlement Agreement.

18 31. “Qualified Settlement Account” means the account established by the Settlement
19 Administrator, into which the Gross Settlement Amount shall be deposited.

20 32. “Qualifying Workweeks” means the number of weeks in which a Class Member
21 was directly employed by, and worked for, Defendant as a non-exempt hourly employee in
22 California during the Class Period, excluding weeks when the Class Member did not work or was
23 on leave for the entire week. Each Qualifying Workweek runs from Sunday to Saturday.

24 33. “Response Deadline” means the date forty-five (45) calendar days after the
25 Settlement Administrator mails the Notice of Settlement to Class Members and the last date on
26 which Class Members may: (a) postmark written requests to be excluded from the class action
27 portion of this Settlement, or (b) mail to the Settlement Administrator a Notice of Objection to
28 the Settlement and serve on counsel for the Parties. If the 45th day falls on a Sunday or federal

1 holiday, the Response Deadline will be extended to the next day on which the U.S. Postal Service
2 is open.

3 34. "Settlement" means the Parties' agreement to compromise the Action, the terms of
4 which are set forth in this Settlement Agreement.

5 35. "Settlement Administrator" means ILYM.

6 36. "Settlement Administration Costs" means the expense payable from the Gross
7 Settlement Amount to the Settlement Administrator for administering this Settlement. The
8 Settlement Administration Costs are estimated to be Seven Thousand Two-Hundred Dollars
9 (\$7,200.00).

10 37. "Settlement Agreement" means this Stipulation of Class and PAGA
11 Representative Action Settlement and Release.

12 III. RECITALS

13 38. Procedural History. This Action is a class and PAGA representative action filed on
14 September 17, 2021, in San Bernardino Superior Court. The Caro action's PAGA statute of
15 limitations is limited by the prior release in the matter of Ruvalcaba v. EM KMR LLC, San
16 Bernardino Superior Court Case No. CIVDS 2008937. The Ruvalcaba PAGA only settlement
17 release runs from March 17, 2019 to April 28, 2021.

18 39. Mediation. On March 24, 2022, the Parties participated in a private mediation with
19 Steve Pearl, an experienced and neutral mediator. The Parties were able to reach a settlement
20 after mediation with the help of the mediator.

21 IV. TERMS OF AGREEMENT

22 Plaintiff, individually and on behalf of Class Members and PAGA Representative Action
23 Members, and Defendant agree as follows:

24 40. Terms of Agreement Subject to Court Approval. All terms set forth in this
25 Settlement Agreement are subject to Court approval. The Parties stipulate to class certification
26 only for purposes of the Settlement. Plaintiff shall apply to the Court for approval of the
27 Settlement Agreement and for class certification solely for purposes of effectuating this
28 Settlement. If, for any reason, the Settlement is not approved, the stipulation to certification will

1 be void. The Parties further agree that certification for purposes of the Settlement is not an
2 admission that class certification is proper under the standard applied to contested certification
3 motions and that this Settlement will not be admissible in this, or any other, legal process as
4 evidence that (i) a class should be certified, (ii) representative treatment is appropriate, or
5 (iii) Defendant is liable to Plaintiff or any of the Class Members or PAGA Representative Action
6 Members.

7 41. Retention of Settlement Administrator. No later than seven (7) calendar days after
8 Preliminary Approval, the Parties shall retain the Settlement Administrator. The Settlement
9 Administrator shall be responsible for administration of this Settlement.

10 42. Settlement Administration Costs. The Settlement Administrator shall be paid for
11 the costs of administration of the Settlement and distribution of all payments from the Gross
12 Settlement Amount. The estimate of the Settlement Administration Costs is Seven Thousand One
13 Hundred Seventy-Seven Dollars and Twenty Cents (\$7,177.20). If the Settlement Administration
14 Costs exceed Seven Thousand One Hundred Seventy-Seven Dollars and Twenty Cents
15 (\$7,177.20), such cost will be deducted from the Net Settlement Amount. These costs, which
16 shall be paid from the Gross Settlement Amount, shall be used to administer the settlement,
17 including, *inter alia*, preparing the required tax reporting on Individual Settlement Payments and
18 PAGA Settlement Payments, issuing 1099 and W-2 IRS Forms, distributing the Notice of
19 Settlement, calculating Individual Settlement Payments, calculating PAGA Settlement Payments,
20 processing exclusion requests, resolving disputes, distributing the Net Settlement Amount as
21 directed by the Court and as set forth herein, providing necessary reports and declaration, and
22 posting notice of final judgment on the Settlement Administrator's website.

23 a. No fewer than ten (10) calendar days before the Final Approval hearing,
24 the Settlement Administrator shall provide the Court and all counsel for the Parties with a
25 statement detailing the Settlement Administration Costs. The Parties agree to cooperate in the
26 settlement administration process and to make all reasonable efforts to control and minimize the
27 costs and expenses incurred in the administration of the Settlement. An IRS Form 1099 shall be
28 issued to the Settlement Administrator.

1 b. Any portion of the Settlement Administration Costs that are not used or
2 which are not awarded by the Court will not revert to Defendant, but instead will be part of the
3 Net Settlement Amount for distribution to Participating Class Members.

4 43. Funding and Allocation of the Class Settlement Amount. The Settlement is non-
5 reversionary. Defendant shall transfer the Gross Settlement Amount to a Qualified Settlement
6 Fund ("QSF") established by the Settlement Administrator within thirty (30) calendar days after
7 the Effective Date, which is the occurrence of the latest of: (a) if no objection is filed and no
8 appeal is filed, the date the Court enters an order granting Final Approval of the Settlement; (b) if
9 an objection is filed, 60 days after the Court enters an order granting Final Approval of the
10 Settlement, (c) if an objection is filed and not withdrawn, and if any timely appeals are filed, the
11 resolution of any such appeals in a way that does not materially alter the terms of the settlement;
12 or (d) if an objection is filed but is withdrawn, the date on which the Court renders a final
13 judgment affirming Final Approval.

14 a. The QSF will be controlled by the Settlement Administrator subject to the
15 terms of this Settlement and the Court's order(s). Interest, if any, earned on monies in the QSF
16 will be added to the Gross Settlement Amount.

17 b. The Settlement Administrator shall serve as Trustee of the QSF and shall
18 act as a fiduciary with respect to the handling, management, and distribution of the Gross
19 Settlement Amount, including the handling of tax related issues and payments. The Settlement
20 Administrator shall act in a manner as necessary to qualify the settlement fund as a QSF and to
21 maintain the qualification.

22 44. Class Representative Enhancement. In exchange for a general release, and in
23 recognition of his efforts and work in prosecuting the Action on behalf of Class Members,
24 Defendant agrees not to oppose any application or motion for a Class Representative
25 Enhancement to Plaintiff of up Seven Thousand Five-Hundred Dollars (\$7,500.00). The
26 Settlement Administrator shall issue an IRS Form 1099 for the Class Representative
27 Enhancement. Plaintiff shall be solely and legally responsible to pay any and all applicable taxes
28 on the payment made pursuant to this Paragraph and shall hold Defendant harmless from any

1 claim or liability for taxes, penalties, or interest arising as a result of the payments. Any reduction
2 in the amount of the Class Representative Enhancement by the Court will not revert to
3 Defendant, but shall be returned to the Net Settlement Amount to be distributed to Participating
4 Class Members.

5 45. Payment of Class Counsel Award. Defendant agrees not to oppose any application
6 or motion by Class Counsel for an award of Class Counsel Fees not to exceed Thirty-Five
7 Thousand Dollars (\$35,000.00) (1/3 of the Gross Settlement Amount), and Class Counsel
8 Expenses not to exceed Fifteen Thousand Dollars (\$15,000). The Class Counsel Award shall be
9 paid out of the Gross Settlement Amount. Any portion of the Class Counsel Award not awarded
10 to Class Counsel will not revert to Defendant, but instead shall be returned to the Net Settlement
11 Amount for distribution to Participating Class Members. Class Counsel shall be solely and
12 legally responsible to pay all applicable taxes on the payment made pursuant to this Paragraph.
13 IRS Form 1099 shall be provided to Class Counsel for the payments made pursuant to this
14 Paragraph.

15 46. PAGA Payment. Subject to Court approval, \$5,000.00 from the Gross Settlement
16 Amount shall be designated for satisfaction of Plaintiff's and PAGA Representative Action
17 Members' claims pursuant to the PAGA. Pursuant to the PAGA, Seventy-Five Percent (75%), or
18 \$3,750.00, of this amount shall be paid to the LWDA and Twenty-Five Percent (25%), or
19 \$1,250.00, shall be evenly distributed to PAGA Representative Action Members on a per capita
20 basis as PAGA Settlement Payments. If the PAGA Payment is adjusted by the Court, it shall be
21 adjusted by using funds from the Gross Settlement Amount and in no event shall increase the
22 Gross Settlement Amount.

23 47. Notice Procedure. The Settlement Administrator shall be responsible for the
24 following notice procedure.

25 a. Delivery of the Class Information. Within ten (10) calendar days after the
26 Court serves the Preliminary Approval order, Defendant shall provide the Class Information to
27 the Settlement Administrator The Class Information shall remain confidential and shall not be
28 disclosed to anyone, except pursuant to express written authorization by ten (10) calendar days of

1 receiving the Class Information, the Settlement Administrator shall send the Notice of Settlement
2 to all Class Members via regular First Class U.S. Mail, using the most current mailing addresses
3 identified in the Class Information as updated using the National Change of Address Database.

4 b. Undeliverable Notices. Any Notices of Settlement returned to the
5 Settlement Administrator as non-delivered on or before the Response Deadline shall be sent to
6 the forwarding address affixed thereto. If no forwarding address is provided, the Settlement
7 Administrator shall promptly attempt to determine a correct address using a skip-trace, or other
8 search using the name, address and/or Social Security number of the Class Member involved, and
9 shall re-mail the Notice of Settlement. If, after performing a skip-trace search, the Notice of
10 Settlement is still returned to the Settlement Administrator as non-deliverable, the Settlement
11 Administrator will have no further obligation to undertake efforts to obtain an alternative address.

12 48. Request for Exclusion Procedure. The Notice of Settlement shall provide Class
13 Members with instructions on how to exclude themselves, or “opt-out,” in part, from the class
14 action (i.e., non-PAGA) portion of the Settlement.

15 a. Class Members who wish to opt-out of the class action portion of the
16 Settlement shall notify the Settlement Administrator in writing that they want to exclude
17 themselves, *i.e.*, opt-out, from the class action portion Settlement. The request to opt-out sent to
18 the Settlement Administrator must be postmarked no later than the Response Deadline. Class
19 Members shall be permitted to rescind their opt-out statements in writing by submitting a
20 rescission statement to the Settlement Administrator not later than one (1) business day before
21 the Court’s Final Approval hearing, orally at the Final Approval hearing, or as otherwise ordered
22 by the Court.

23 b. The proposed order granting Preliminary Approval of the Settlement will
24 provide, and the Notice of Settlement will instruct Class Members, that, to be valid, a written
25 request to opt-out of the class action portion of the Settlement must include the Class Member’s
26 name and signature and state the following: I wish to opt-out of the class action portion of the
27 Settlement of the lawsuit *Caro v. EM KMR LLC dba Chick-Fil-A/Colonies Crossroads FSU*
28 *(01544)*, Case No. CIVSB 2126991. I understand that by requesting exclusion, I will not be

1 eligible to receive any payment or other benefit for Class Members from the class action portion
2 of the Settlement involving EM KMR (or words to a similar effect) except that I cannot opt out
3 of the PAGA portion of the settlement.

4 c. A Class Member who does not properly and timely submit a request to opt-
5 out in the manner and by the deadline specified above will automatically receive his or her
6 Individual Settlement Share, in addition to his or her PAGA Settlement Share, and will be bound
7 by all terms and conditions of the Settlement Agreement, including its release of the Released
8 Class Claims and Released PAGA Claims, if the Settlement Agreement is approved by the Court,
9 and be bound by the Final Approval order, regardless of whether he or she has objected to the
10 Settlement Agreement.

11 d. A Class Member who properly and timely submits a request to opt-out of
12 the class action portion of the Settlement will not be entitled to any Individual Settlement Share
13 and will not release the Released Class Claims in Paragraph 63, but will receive a PAGA
14 Settlement Share, will release the Released PAGA Claims, and will not have any right to object,
15 appeal, or comment on the terms of the Settlement Agreement.

16 e. Counsel for the Parties shall not encourage any Class Member from
17 objecting to or opting out of the Settlement.

18 49. Objections. For a Class Member to object to the class action portion of the
19 Settlement, a Class Member must mail to the Settlement Administrator by the Response Deadline
20 a notice of objection, signed by the Class Member, stating: (i) the Class Member's name;
21 (ii) current address; (iii) telephone number; (iv) dates of employment with Defendant; (v) last 4-
22 digits of his or her Social Security number; and (vi) the basis of the objection, including the
23 reasons why the objector believes that the Court should find that the proposed Settlement is not
24 in the best interests of the Class and the reasons why the Settlement should not be approved. The
25 Class Member must serve a copy of his or her objection on counsel for the Parties by the
26 Response Deadline. The postmark date of the filing and service shall be deemed the exclusive
27 means for determining that the notice of objection is timely. Class Members shall be permitted to
28 withdraw their objections in writing by submitting a withdrawal statement to the Settlement

1 Administrator not later than one (1) business day before the Court's Final Approval hearing,
2 orally at the Final Approval hearing, or as otherwise ordered by the Court. Class Members who
3 do not make and mail written objections in the manner and by the deadline specified above, or at
4 the Final Approval hearing, shall be deemed to have waived any objections and shall be
5 foreclosed from making any objections (whether by appeal or otherwise) to the Settlement.

6 50. Disputed Information on Notice of Settlement. If a Class Member disputes the
7 number of Qualifying Workweeks attributed to him or her in the Notice of Settlement, he or she
8 must submit such a dispute to the Settlement Administrator on or before the Response Deadline.
9 The Class Member may produce evidence to the Settlement Administrator showing that such
10 information is inaccurate. Absent evidence rebutting Defendant's records, Defendant's records
11 will be presumed determinative. However, if a Class Member produces evidence to the contrary,
12 Defendant will evaluate the evidence submitted by the Class Member and the parties will meet
13 and confer as to the final decision as to the number of Qualifying Workweeks.

14 51. The Settlement Terms Bind All Class Members Who Do Not Opt-Out. Any Class
15 Member who does not affirmatively opt-out of the class action portion of the Settlement by the
16 procedures described in Paragraph 48 shall be bound by all of its terms, including those
17 pertaining to the Released Class Claims, as well as any judgment that may be entered by the
18 Court after it grants Final Approval of the Settlement. After the Court grants Final Approval of
19 the Settlement, all PAGA Representative Action Members will be bound by the terms of this
20 Settlement Agreement, irrespective of whether they opted-out of the class action portion of the
21 Settlement.

22 52. No PAGA Opt-Out. No PAGA Representative Action Member may opt-out of or
23 be excluded from participating in the settlement of the PAGA Released Claims. All PAGA
24 Representative Action Members will release the PAGA Released Claims effective when the
25 Court grants Final Approval. If the Court grants Final Approval of the Settlement, the occurrence
26 of the Effective Date shall forever bar Plaintiff, the LWDA, and any other representative, proxy,
27 or agent thereof, including but not limited to any and all PAGA Representative Action Members,
28 from pursuing any action pursuant to the PAGA against the Released Parties for the PAGA

1 Released Claims.

2 53. Certification Reports Regarding Requests for Exclusion and Disputes. The
3 Settlement Administrator shall provide Defendant's Counsel and Class Counsel a weekly report
4 which certifies: (a) the number of Class Members who have submitted a valid or defective letter
5 or communication requesting exclusion from, *i.e.*, to opt-out of, the class action portion of the
6 Settlement; (b) whether any Class Member has submitted a challenge to any information
7 contained in their Notice of Settlement; and (c) the number of returned, undeliverable and/or re-
8 mailed Notice of Settlements. Additionally, the Settlement Administrator will provide to counsel
9 for both Parties any updated, non-confidential reports regarding the administration of the
10 Settlement Agreement as needed or requested.

11 54. Individual Settlement Share Calculations. The Settlement Administrator shall
12 determine the eligibility for, and the amounts of, any Individual Settlement Shares or Individual
13 Settlement Payments that Participating Class Members may receive under the terms of this
14 Settlement Agreement. Any unresolved disputes concerning the administration of the Settlement
15 Agreement will be resolved by the Court, under the laws of the State of California.

16 a. Each Class Member who does not timely request to opt-out will receive a
17 share of the Net Settlement Amount ("Individual Settlement Share"), less employee's and
18 employer's withholdings and taxes associated with the wage portion of the Individual Settlement
19 Shares, based on the Class Member's number of Qualifying Workweeks. Specific calculations of
20 Individual Settlement Shares shall be made as follows:

21 i. The Settlement Administrator shall calculate the total aggregate
22 number of weeks that all Class Members were employed by, and worked for, Defendant as non-
23 exempt hourly individuals who were hired under the age of 18 on or after September 17, 2017
24 through August 31, 2022, who 1) did not later sign arbitration agreements after turning 18 or 2)
25 did not have a parent or other legal guardian co-sign arbitration agreements, excluding weeks
26 when the Class Members did not work or were on leave for the entire week ("Total
27 Workweeks").

28 ii. The value of each individual Qualifying Workweek shall then be

determined by dividing the Net Settlement Amount by the Total Workweeks, resulting in the “Workweek Value.” Each Individual Settlement Share shall then be determined by multiplying the individual Participating Class Member’s number of Qualifying Workweeks by the Workweek Value.

iii. If any Class Members submit timely and valid Requests for Exclusion, the Settlement Administrator shall reallocate their Individual Settlement Payment amounts to the Net Settlement Amount for distribution to Participating Class Members pursuant to the terms of this Settlement Agreement. The Settlement Administrator shall provide the final Individual Settlement Payment calculations to Defendant. The Settlement Administrator shall withhold any legally mandated withholdings or deductions (*e.g.*, payroll taxes, etc.) from the Individual Settlement Payment for each Participating Class Member and remit tax withholdings to the applicable tax authorities (not including Defendant’s share of payroll taxes for the Individual Settlement Payments).

55. Allocation of Individual Settlement Shares. 1/3 of each Individual Settlement Share shall be allocated as wages and 2/3 of each Individual Settlement Share shall be allocated as penalties and interest. Individual Settlement Shares will be paid out to Participating Class Members subject to reduction for all employer’s and employee’s share of withholdings and taxes associated with the wage-portion of the Individual Settlement Shares.

56. PAGA Settlement Share Calculations. Each PAGA Representative Action Member, regardless of whether he or she timely requests to opt-out of the class action portion of the Settlement (*i.e.*, the Released Class Claims), will receive a portion of the PAGA Settlement Share allocated on a per capita basis. Individual PAGA Settlement Shares are calculated by dividing 25 percent of the PAGA Payment (\$1,250.00) by the total number of PAGA Representative Class Members. PAGA Settlement Shares shall be allocated 100 percent (100%) as 1099 payments for penalties.

57. Payment of Settlement Amounts. The Settlement Administrator shall have the authority and obligation to make all payments, credits, and disbursements, calculated in accordance with the methodology set out in this Settlement Agreement and orders of the Court.

1 a. No person shall have any claim against Defendant, Defendant's Counsel,
2 Plaintiff, Participating Class Members, Class Counsel, or the Settlement Administrator based on
3 distributions and payments made in accordance with this Settlement Agreement.

4 b. With respect to Participating Class Members whose Notices of Settlement
5 are undeliverable, as provided in Paragraph 47(c), settlement checks shall be sent to the last
6 address obtained by the Settlement Administrator with respect to the Participating Class Member.
7 If the settlement checks are not negotiated within the timeframe set forth in Paragraph 59, the
8 corresponding funds shall be handled as provided in Paragraph 59.

9 58. Distribution Timing. Within thirty (30) calendar days of the Effective Date, the
10 Settlement Administrator shall issue payments to: (1) Participating Class Members; (2) PAGA
11 Representative Action Members; (3) the LWDA; (4) Plaintiff; (5) Class Counsel; and (6) itself,
12 for Court-approved services performed in connection with the Settlement.

13 59. Non-Negotiated Settlement Checks. Any checks issued by the Settlement
14 Administrator to Participating Class Members and PAGA Representative Class Members shall be
15 negotiable for one hundred and eighty (180) calendar days from the date of their issuance. The
16 total amount of funds returned as undeliverable and the funds which correspond with the
17 settlement checks that are not negotiated within one hundred and eighty (180) calendar days after
18 issuance shall be tendered, with interest, to the State Controller's Unclaimed Property Fund in the
19 name of the Class Member.

20 60. Settlement Administrator's Final Report(s). Not less than ten (10) calendar days
21 after the Response Deadline, the Settlement Administrator shall provide Defendant's Counsel a
22 report showing: (i) the names of Participating Class Members; and (ii) the Individual Settlement
23 Payments owed to each Participating Class Member. The Settlement Administrator shall provide
24 Defendant's Counsel and Class Counsel the final number of Class Members who have submitted
25 objections or valid letters requesting exclusion from the Settlement and the sum of their
26 Qualifying Workweeks. Upon completion of administration of the Settlement, the Settlement
27 Administrator shall provide written certification of such completion to counsel for all Parties and
28 the Court, if requested by the Parties.

61. Defendant's Right to Revoke. If, after the Response Deadline and before the Final Approval hearing, ten percent (10%) or more of the Class Members opt-out, Defendant shall have the right, in its sole discretion, to void and revoke the Settlement Agreement and the stipulation to class certification. Defendant shall have ten (10) calendar days after the Response Deadline to notify Class Counsel in writing of its intent to revoke the Settlement Agreement.

62. Plaintiff's Right to Void. At mediation, Defendant represented that as of the date of mediation, there were approximately 3,300 workweeks and a total of approximately 84 Class Members who were directly employed by Defendant performed work from September 17, 2017 through August 31, 2022, who 1) did not later sign arbitration agreements after turning 18 or 2) did not have a parent or other legal guardian co-sign arbitration agreements. This serves as the basis for Plaintiff accepting the Settlement. If the number of work weeks from September 17, 2017 through August 31, 2022 exceeds 3,300 by more than five percent (5%), Plaintiff shall have the right to void the Settlement Agreement. Alternatively, the parties will meet and confer and if the actual number of workweeks worked through August 31, 2022, should exceed 3,300 by more than ten percent (10%), then the parties agree that the Gross Settlement Amount shall be increased by the percentage difference beyond ten percent (10%) between the certified amount of 3,300 and the actual number of workweeks.

63. Class Release. Upon the Final Approval by the Court of this Settlement Agreement and payment of amounts set forth herein, and except as to such rights or claims as may be created by this Settlement Agreement, each and every Participating Class Member, on behalf of themselves and their heirs and assigns, hereby releases Defendant EM KMR LLC dba Chick-Fil-A/Colonies Crossroads FSU (01544), its present, former, or future parent and/or subsidiary corporations, and each of the foregoing's present, former, or future owners, members, officers, directors, shareholders, partners, employees, insurers, successors, predecessors, contractors, assigns, and managing agents and any and all agents, legal representatives, and/or attorneys of all of the foregoing entities or individuals (collectively the "Released Parties") from the following rights or claims (the "Released Class Claims"):

a. Any and all claims, known or unknown, that: were asserted in any and/or

1 all of the complaints in the Action and/or any of Plaintiff's letters to the LWDA (including any
2 subsequently amended complaints or letters); and/or any and all claims, known or unknown, that
3 could have been asserted based on any or all the factual allegations in all of the complaints in the
4 Action and/or any of Plaintiff's letters to the LWDA (including any subsequently amended
5 complaints or letters). This includes but is not limited to claims for or related to: minimum
6 wages, overtime; pay for all hours worked/compensation due for services; off-the-clock work;
7 meal periods; rest periods; meal and/or rest period premiums, including the calculation of the
8 meal and/or rest period premium pay; wage statements; timeliness of wages; payment of wages at
9 termination; maintain accurate and complete records; indemnification of expenditures; unfair
10 competition related to any or all of the foregoing; any unpaid wages or compensation related to
11 any or all of the foregoing; restitution related to any or all of the foregoing; and any penalties,
12 including statutory or civil penalties, related to any or all of the foregoing. This release includes
13 any and all claims pursuant to: California Labor Code sections 201, 201.1, 201.5, 202, 203, 204,
14 205.5, 210, 218, 218.5, 218.6, 219, 226, 226.3, 226.7, 256, 510, 511, 512, 558, 1174, 1174.5,
15 1194, 1197, 1197.1, 1198, 2802; the California Business & Professions Code § 17200; California
16 Code of Regulations Title 8, § 11070; and the California Industrial Welfare Commission Wage
17 Orders 5-2001. The release shall run through August 31, 2022.

18 64. PAGA Release by PAGA Representative Action Members: Upon the Final
19 Approval by the Court of this Settlement Agreement and payment of amounts set forth herein,
20 and except as to such rights or claims as may be created by this Settlement Agreement, each and
21 every PAGA Representative Action Member, on behalf of themselves and their heirs and assigns,
22 and irrespective of whether the PAGA Representative Action Member opted out of the class
23 action portion of the Settlement, hereby releases the Released Parties from the following rights or
24 claims (the "Released PAGA Claims"):

25 a. Any and all claims known or unknown, for civil penalties under California
26 Labor Code section 2698 *et seq.* (PAGA) that: were asserted in any and/or all of the complaints
27 in the Action and/or any of Plaintiff's letters to the LWDA (including any subsequently amended
28 complaints or letters); and/or any and all claims, known or unknown, that could have been

1 asserted based on any or all the factual allegations in any and/or all of the complaints in the
2 Action and/or any of Plaintiff's letters to the LWDA (including any subsequently amended
3 complaints or letters). This release includes, but is not limited to, claims for PAGA civil penalties
4 premised on: California Labor Code sections 201, 201.1, 201.5, 202, 203, 204, 205.5, 210, 218,
5 218.5, 218.6, 219, 226, 226.3, 226.7, 256, 510, 511, 512, 558, 1174, 1174.5, 1194, 1197, 1197.1,
6 1198, and 2802; failure to pay minimum wages and overtime; failure to pay for all hours
7 worked/compensation due for services; off-the-clock work; failure to provide meal periods;
8 failure to authorize and permit rest periods; failure to pay meal or rest period premiums,
9 including the calculation of the meal and/or rest period premium pay; failure to provide accurate
10 itemized wage statements; failure to timely pay wages at termination; failure to maintain accurate
11 and complete records; and indemnification of expenditures. The release shall run through August
12 31, 2022,

13 65. General Release by Plaintiff Only. As of the Effective Date, and with the
14 exceptions set forth herein, Plaintiff shall release the Released Class Claims and Released PAGA
15 Claims against the Released Parties, and Plaintiff makes the additional following General Release
16 in favor of the Released Parties:

17 a. In exchange for the consideration provided in this Agreement, including
18 the Class Representative Enhancement, upon the occurrence of the Effective Date, Plaintiff and
19 his heirs, executors, representatives, administrators, agents, and assigns irrevocably and
20 unconditionally waive and forever release the Released Parties from any and all claims, demands,
21 actions, causes of actions, judgments, rights, fees, damages, debts, obligations, liabilities, and
22 expenses (inclusive of attorneys' fees) of any kind whatsoever, whether known or unknown, that
23 Plaintiff may have or have ever had against the Released Parties, or any of them by reason of any
24 actual or alleged act, omission, transaction, practice, conduct, occurrence, or other matter from
25 the beginning of time up to and including the Effective Date.

26 b. Plaintiff acknowledges that he has had the opportunity to review, and has
27 reviewed, California Civil Code section 1542, which provides:

28 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE

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

6 Plaintiff acknowledges that she may later discover claims or facts in addition to or
7 different from those which he now knows or believes to exist about the subject matter of the
8 Settlement Agreement, and which, if known or suspected at the time of executing the Agreement,
9 may have materially affected its terms. Nevertheless, Plaintiff, being fully informed of Section
10 1542 of the California Civil Code, and understanding its provisions, agrees to waive any rights
11 under Section 1542, and acknowledges that this Settlement Agreement and the general release
12 contained in this Paragraph extends to all claims that she has or may have against the Released
13 Parties, including those which are presently unknown to her.

14 66. Final Approval Hearing and Entry of Judgment. Upon expiration of the deadlines
15 to postmark a letter requesting exclusion from the Settlement, or objections to the Settlement
16 Agreement, and with the Court's permission, a Final Approval hearing shall be conducted to
17 finally determine the fairness of the Settlement, along with the amounts properly payable for
18 (a) Individual Settlement Payments; (b) the PAGA Payment; (c) the Award of Class Counsel
19 Fees and Class Counsel Expenses; (d) the Class Representative Enhancement Payment; and (e)
20 all Settlement Administration Costs. Class Counsel will be responsible for drafting the attorneys'
21 fees and costs application to be heard at the Final Approval hearing.

22 67. Judgment and Continued Jurisdiction. Upon Final Approval of the Settlement by
23 the Court or after the Final Approval hearing, the Parties shall present a judgment of dismissal to
24 the Court for its approval. After entry of the judgment of dismissal, the Court shall retain
25 jurisdiction solely for purposes of addressing: (a) the interpretation and enforcement of the terms
26 of the Settlement, (b) Settlement administration matters, and (c) such post-judgment matters as
27 may be appropriate under Court rules or as set forth in this Settlement Agreement.

28 68. No Solicitation of Settlement Objections or Exclusions. The Parties agree to use
their best efforts to carry out the terms of this Settlement Agreement. At no time shall any of the
Parties or their counsel seek to solicit or otherwise encourage Class Members to submit either a

1 letter requesting exclusion from the Settlement or written objections to the Settlement Agreement
2 or to appeal from the Court's final judgment.

3 69. Nullification of Settlement Agreement. In the event: (i) the Court does not finally
4 approve the Settlement as provided herein; (ii) the Court does not enter a final judgment as
5 provided herein, which becomes final as a result of the occurrence of the Effective Date; or
6 (iii) the Settlement does not become final for any other reason, this Settlement Agreement shall
7 be null and void and any order or judgment entered by the Court in furtherance of the Settlement
8 shall be treated as void from the beginning. In such a case, the Parties shall be returned to their
9 respective statuses as of the date and time immediately before the execution of this Settlement
10 Agreement, and the Parties shall proceed in all respects as if this Settlement Agreement had not
11 been executed. In the event an appeal is filed from the Court's final judgment, or any other
12 appellate review is sought before the Effective Date, administration of the Settlement shall be
13 stayed pending final resolution of the appeal or other appellate review (unless otherwise agreed
14 to by the Parties).

15 70. No Admission. Nothing contained herein, nor the consummation of this Settlement
16 Agreement, is to be construed or deemed an admission of liability, culpability, negligence, or
17 wrongdoing on the part of Defendant or any of the other Released Parties. Each of the Parties
18 hereto has entered into this Settlement Agreement with the intention of avoiding further disputes
19 and litigation with the attendant inconvenience and expenses. This Settlement Agreement is a
20 settlement document and, pursuant to California Evidence Code section 1152 and/or any other
21 similar law, shall be inadmissible in evidence in any proceeding, except an action or proceeding
22 to approve the Settlement, and/or interpret or enforce this Settlement Agreement.

23 71. Notices. Unless otherwise specifically provided herein, all notices, demands or
24 other communications given hereunder shall be in writing and shall be deemed to have been duly
25 given as of the third business day after mailing by United States registered or certified mail,
26 return receipt requested, addressed as follows:

27 ////

28 ////

To Class Counsel:

Janelle Carney
 JANELLE CARNEY-
 ATTORNEY AT LAW, APC
 14758 Pipeline Ave., Suite E, 2nd Floor
 Chino Hills, CA 91709

To Defendant's Counsel:

Lonnie D. Giamela
 Amy J. Choe
 FISHER & PHILLIPS LLP
 444 South Flower Street, Suite 1500
 Los Angeles, California 90071

72. Tax Liability. The Parties make no representations as to the tax treatment or legal effect of the payments called for hereunder, and Participating Class Members are not relying on any statement or representation by the Parties in this regard. Defendant shall pay the employer-side share of payroll taxes separately from and in addition to the Gross Settlement Amount. Each Participating Class Member shall be solely responsible for any and all additional federal, state, and local taxes and/or penalties that may be due from payment of any Individual Settlement Payment made to him/her, whether it is determined that any additional taxes are owed based on the taxation laws in effect on the date of execution of this Settlement Agreement or that may become due at any time in the future because of a change to the laws governing the taxation of such settlement proceeds. Each Participating Class Member will hold the Parties free and harmless from and against any claims resulting from the treatment of such payments as non-taxable damages, including the treatment of such payment as not subject to withholding or deduction for payroll and employment taxes. Each Party to this Settlement Agreement acknowledges and agrees that no provision of this Settlement Agreement, and no written communication or disclosure between or among the Parties or their attorneys and other advisers, is or was intended to constitute or be construed or be relied upon as, tax advice.

73. Exhibits and Headings. The terms of this Settlement Agreement include the terms set forth in any attached exhibits, which are incorporated by this reference as though fully set forth herein. Any exhibits to this Settlement Agreement are an integral part of the Settlement. The descriptive headings of any paragraphs or sections of this Settlement Agreement are inserted for convenience of reference only and do not constitute a part of this Settlement Agreement.

74. Amendment or Modification. Unless otherwise provided herein, this Settlement Agreement may be amended or modified only by a written instrument signed by counsel for all Parties or their successors-in-interest.

1 75. Entire Agreement. This Settlement Agreement, any supplemental written
2 agreement subsequently incorporated, and any attached exhibits constitute the entire Settlement
3 Agreement among these Parties, and no oral or written representations, warranties or
4 inducements have been made to any party concerning this Settlement Agreement or its exhibits
5 other than the representations, warranties, and covenants contained and memorialized in such
6 documents.

7 76. Authorization to Enter Into Settlement Agreement. The signatories hereto
8 represent that they are fully authorized to enter into this Settlement Agreement and bind the
9 Parties hereto to the terms and conditions hereof.

10 77. Opportunity to Consult With Counsel. The Parties are represented by competent
11 counsel and have had an opportunity to consult with counsel before the execution of this
12 Settlement Agreement.

13 78. Mutual Full Cooperation. The Parties and their counsel will cooperate with each
14 other and use their best efforts to affect the implementation of the Settlement. In the event the
15 Parties are unable to reach agreement on the form or content of any document needed to
16 implement the Settlement, or on any supplemental provisions that may become necessary to
17 effectuate the terms of the Settlement, the Parties may seek the assistance of the Court to resolve
18 such disagreement.

19 79. Binding on Successors and Assigns. This Settlement Agreement shall be binding
20 upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors,
21 administrators and successors. The Parties hereto represent, covenant, and warrant that they have
22 not directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or
23 encumber to any person or entity any portion of any liability, claim, demand, action, cause of
24 action or rights herein released and discharged except as set forth herein.

25 80. Participating Class Member and PAGA Representative Action Member
26 Signatories. It is agreed that because the Participating Class Members and PAGA Representative
27 Action Members are so numerous, it is impossible or impractical to have each Participating Class
28 Member and PAGA Representative Action Member execute this Settlement Agreement. The

1 Notices of Settlement will advise all Class Members and PAGA Representative Action Members
2 of the binding nature of the release and, upon Final Approval, such shall have the same force and
3 effect as if this Settlement Agreement were executed by each Participating Class Member and
4 PAGA Representative Action Member.

5 81. California Law Governs. All terms of this Settlement Agreement and the exhibits
6 hereto shall be governed by and interpreted according to the laws of the State of California.

7 82. Counterparts. This Settlement Agreement may be executed in one or more
8 counterparts. All executed counterparts and each of them shall be deemed to be one and the same
9 instrument provided that counsel for the Parties to this Settlement Agreement shall exchange
10 among themselves original signed counterparts.

11 83. Plaintiff's Waiver of Right to be Excluded. Plaintiff agrees that by signing this
12 Settlement Agreement, she is bound by the terms herein stated and further agrees not to request
13 to be excluded from the Class.

14 84. Confidentiality Preceding Preliminary Approval. Plaintiff and Class Counsel agree
15 that the terms of the Settlement (including, but not limited to, the Settlement Amount) and the
16 negotiations leading to the Settlement, shall be kept confidential through preliminary approval,
17 except as necessary to obtain Court approval and effectuate the terms of the settlement. Plaintiff
18 and Class Counsel agree that all documents related to the Settlement shall not be discussed with,
19 publicized or promoted to the public. Any confidentiality agreement entered into regarding
20 information exchanged during settlement negotiations and leading up to the Settlement shall
21 remain in full force and effect. Notwithstanding the foregoing, this provision does not apply to
22 court filings or the notice of settlement that shall be sent to the Class Members by the Settlement
23 Administrator and Plaintiff's counsel is permitted to post the Final Approval order and Judgment
24 on their website, for purposes of notice pursuant to California Rule of Court, Rule 3.771.

25 85. Disposition of Data. The Parties expressly agree that all data and information
26 shared by the Parties in the negotiations leading up to the Settlement is considered confidential
27 settlement communications. The Parties and their counsel expressly agree to destroy all
28 confidential data that was exchanged, including, but not limited to, such data that was designated

1 as confidential by any Party, and not use any copies of such data.

2 **V. DUTIES OF THE PARTIES BEFORE PRELIMINARY APPROVAL AND**
3 **BETWEEN PRELIMINARY AND FINAL APPROVAL**

4 86. Within 30 calendar days after execution of the Parties' Agreement, Plaintiff shall
5 move the Court for Preliminary Approval of the Settlement and obtain entry of an order
6 accomplishing the following: (a) preliminarily approving the Settlement; (b) approving as to
7 form and content the proposed Notice of Settlement; (c) directing the mailing of the Notice of
8 Settlement; (d) preliminarily appointing Plaintiff and Class Counsel as representatives of the
9 Class Members; (e) preliminarily approving the application for Class Counsel Fees and Class
10 Counsel Expenses payable to Class Counsel; (f) preliminarily approving the Class Representative
11 Enhancement to Plaintiff; (g) preliminarily approving the PAGA Payment; (h) preliminarily
12 approving settlement administration services to be provided by the Settlement Administrator, and
13 its estimated fees and costs of Seven Thousand One Hundred Seventy-Seven Dollars and Twenty
14 Cents (\$7,177.20); and (i) scheduling the Final Approval hearing, which is a fairness hearing on
15 the question of whether the proposed Settlement Agreement should be finally approved as fair,
16 reasonable, and adequate as to the Class Members.

17 87. On or before the date that Plaintiff files the motion for Preliminary Approval,
18 Plaintiff shall also submit to the LWDA a copy of the proposed Settlement pursuant to Labor
19 Code § 2699.

20 88. Class Counsel will file a motion for Final Approval of the Settlement and
21 supporting documents with the Court at least sixteen (16) court days before Final Approval
22 hearing. Supporting documents include: (a) a declaration by the Settlement Administrator of due
23 diligence and proof of mailing of the Notice of Settlement required to be mailed to Class
24 Members by this Settlement Agreement, and of the delivery results of the Settlement
25 Administrator's mailings including tracing and re-mailing efforts; (b) a proposed order granting
26 Final Approval; and (c) a proposed final judgment. The Parties will meet and confer and agree
27 upon the proposed order granting Final Approval and the proposed final judgment.

28 89. Defendant will not oppose Final Approval of the Settlement so long as it is

1 consistent with the terms set forth in this Settlement Agreement.

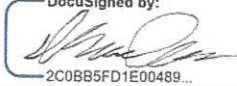
2 90. Class Counsel will submit a proposed order and judgment for Final Approval.
3 Class Counsel will send Defendant's Counsel the proposed order and judgment for review,
4 comments, and changes before filing. Defendant shall have five (5) business days in which to
5 provide their comments. The proposed order and judgment shall include the following findings
6 and orders: (a) approving the Settlement, adjudging the terms thereof to be fair, reasonable and
7 adequate, and directing that its terms and provisions be carried out; (b) approving the payment of
8 the Class Representative Enhancement award to Plaintiff; (c) approving Class Counsel's
9 application for Class Counsel Fees and Class Counsel Expenses; (d) approving the PAGA
10 Payment; and (e) providing that the Court will retain jurisdiction to oversee administration and
11 enforcement of the terms of the Settlement and the Court's orders.

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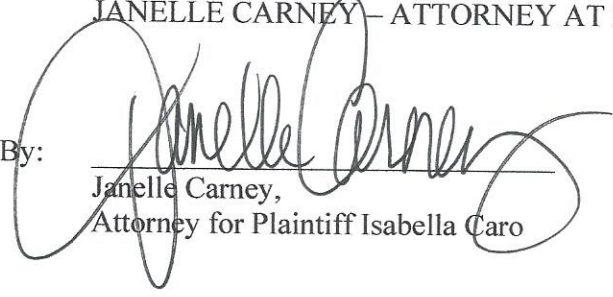
By:

DocuSigned by:

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Plaintiff, Isabella Caro

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10 By:

JANELLE CARNEY - ATTORNEY AT LAW, APC


Janelle Carney,
Attorney for Plaintiff Isabella Caro

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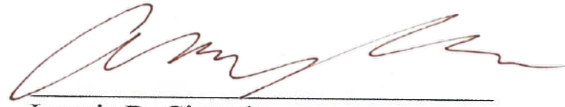
14 By:

Defendant, EM KMR LLC
dba CH1CK-FIL-A/COLONIES
CROSSROADS FSU (01544)

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19 Dated: 8/1, 2022

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21 By:

FISHER & PHILLIPS, LLP


Lonnie D. Giamela
Amy J. Choe,
Attorneys for Defendant, EM KMR LLC
dba CH1CK-FIL-A/COLONIES
CROSSROADS FSU (01544)

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By: _____

Plaintiff, Isabella Caro

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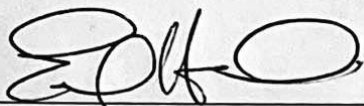
JANELLE CARNEY – ATTORNEY AT LAW, APC

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10 By: _____

Janelle Carney,
Attorney for Plaintiff Isabella Caro

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13 Dated: 8/1, 2022 _____

By: _____


Defendant, EM KMR LLC
dba CHICK-FIL-A/COLONIES
CROSSROADS FSU (01544)

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18 Dated: _____, 2022 _____

FISHER & PHILLIPS, LLP

19
20
21 By: _____

Lonnie D. Giamela
Amy J. Choe,
Attorneys for Defendant, EM KMR LLC
dba CHICK-FIL-A/COLONIES
CROSSROADS FSU (01544)

Exhibit 1

Janelle Carney (201570)
Janelle@JanelleCarneyLaw.com
JANELLE CARNEY – ATTORNEY AT LAW, APC
 14758 Pipeline Ave., Suite E
 Chino Hills, CA 91709
 Telephone: (909) 521-9609/ Fax: (909) 393-0471

Attorney for Plaintiff Isabella Caro

Lonnie D. Giamela (SBN 228435)
E-Mail: lgiamela@fisherphillips.com
Amy J. Choe (SBN 299870)
E-Mail: achoe@fisherphillips.com

FISHER & PHILLIPS LLP
444 South Flower Street, Suite 1500
Los Angeles, California 90071
Telephone: (213) 330-4500/ Facsimile: (213)330-4501

Attorneys for
EM KMR LLC dba CH1CK-FIL-A/COLONIES
CROSSROADS FSU (01544)

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO

ISABELLA CARO, on behalf of herself and all others similarly situated and the general public,

Plaintiff,

V.

EM KMR LLC dba CHICK-FIL-A/ COLONIES
CROSSROADS FSU (01544); and DOES 1 to
100,

Defendants.

) Case No. CIVSB 2126991
) Hon. Donald Alvarez
) Dept. S-23

CLASS ACTION

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

Action filed: September 17, 2021

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

TO: All current and former non-exempt hourly individuals who were under the age of 18 at the time of hire by Defendant on or after September 17, 2017 through August 31, 2022, who 1) did not later sign arbitration agreements after turning 18 or 2) did not have a parent or other legal guardian co-sign arbitration agreements.

**THIS NOTICE MAY AFFECT YOUR RIGHTS.
PLEASE READ THIS NOTICE CAREFULLY.**

YOU ARE HEREBY NOTIFIED THAT A HEARING HAS BEEN SCHEDULED FOR [REDACTED], 2022 AT [REDACTED] BEFORE THE HONORABLE DONALD ALVAREZ, SUPERIOR COURT JUDGE OF THE STATE OF CALIFORNIA, COUNTY OF SAN BERNARDINO, TO CONSIDER A PROPOSED SETTLEMENT OF THE CLAIMS THAT HAVE BEEN BROUGHT ON YOUR BEHALF. THIS DATE AND TIME MAY BE SUBJECT TO CHANGE WITHOUT NOTICE TO YOU. YOU MAY VERIFY THE HEARING DATE ON THE COURT'S WEBSITE AT www.sb-court.org.

I. INTRODUCTION

On September 17, 2021, Plaintiff Isabella Caro filed a lawsuit against Defendant EM KMR LLC dba Chick-Fil-A/Colonies Crossroads FSU (01544) (hereinafter referred to as "Defendant" or "EM KMR") for damages, interest, penalties and other monetary relief. Plaintiff's operative complaint alleges unpaid compensation, failure to provide meal periods and rest breaks, inaccurate wage statements, unfair competition, failure to reimburse for work-related expenses, and violation of the Private Attorneys General Act ("PAGA").

Class Counsel in this matter is Janelle Carney of Janelle Carney – Attorney at Law, APC.

A tentative settlement of the case has been reached with Defendants. The settlement applies to the following settlement classes:

Settlement Class Members: all current and former non-exempt hourly individuals who were under the age of 18 at the time of hire by Defendant on or after September 17, 2017 through August 31, 2022, who 1) did not later sign arbitration agreements after turning 18 or 2) did not have a parent or other legal guardian co-sign arbitration agreements.

PAGA Representative Action Members: all current and former non-exempt hourly employees of Defendant who were under the age of 18 at the time of hire, on or after April 29, 2021 through August 31, 2022, who 1) did not later sign arbitration agreements after turning 18 or 2) did not have a parent or other legal guardian co-sign arbitration agreements.

II. THE REASON YOU HAVE RECEIVED THIS NOTICE

You are a Class Member for purposes of the settlement of this case. Your rights will be affected because the current class representative, Isabella Caro, and EM KMR ("the Parties") have

1 tentatively settled the lawsuit. Pursuant to that tentative settlement, the Court is considering the
2 entry and final approval of the settlement. On [REDACTED], 2022, the Court preliminarily
3 determined that this lawsuit could be settled against EM KMR.

4 You are hereby notified that:

- 5 1. A settlement of the claims on behalf of Class Members has been proposed by class
6 representative Isabella Caro, on the one hand, and EM KMR, on the other.
- 7 2. The proposed Settlement has been submitted to the Court and has received preliminary
8 approval.
- 9 3. You and any Class Members have the right to object to the proposed settlement by
10 following the procedures in Part V of this notice or to opt out of the proposed settlement
11 by following the procedures set forth in Part VI of this notice.
- 12 4. A hearing to finally approve the settlement is scheduled for [REDACTED], 2022 in
13 Courtroom S-23 at the San Bernardino Superior Court, located at 247 W. Third St. San
14 Bernardino, CA 92415-0210, before the Honorable Donald Alvarez. This date and time
15 may be subject to change without notice to you. You may verify the hearing date on the
16 court's website at www.sb-court.org.

17 At the Final Approval hearing, any Class Member who did not opt out may appear and
18 object to the proposed settlement if you mailed a timely objection as set forth in Part V, below.
19 You should read that part carefully. Class Members who do not make objections in the manner
20 provided in Part V of this Notice shall be deemed to have waived such objections.

21 This notice is not to be understood as an expression of any opinion by the Court as to the
22 merits of any claims or defenses asserted by any party in this lawsuit. This notice is sent for the
23 sole purpose of informing you of the pendency of this lawsuit and the terms of the proposed
24 settlement so that you may make appropriate decisions. In the event of any conflicts between this
25 notice and the Settlement Agreement, the terms of the Settlement Agreement shall govern. You
26 may obtain a copy of the Settlement Agreement by contacting Class Counsel, who are identified
27 in Part VII below.

28 **III. NATURE OF THE LAWSUIT**

In this case, Plaintiff sued EM KMR for alleged violations of California's wage and hour laws with respect to Plaintiff, Class Members, and PAGA Representative Action Members. Plaintiff's operative complaint alleges Defendants failed to properly pay all wages owed for time worked, failed to provide legally compliant meal periods and rest breaks or pay a premium in lieu thereof, including at the correct rate of pay, failed to timely pay wages at termination, failed to provide compliant wage statements, failure to reimburse for work-related expenses, and thereby also violated California Business & Professions Code section 17200, et seq. The complaint also seeks penalties under the PAGA, as well as fees and costs. EM KMR denies all of the allegations made by Plaintiff.

1 Plaintiff and EM KMR have tentatively settled this lawsuit. The Settlement has received
2 preliminary approval of the Court and is subject to final approval by the Court after a public
3 hearing. This proposed settlement is described in the next section.

4 As a Class Member, you will receive money from the proposed Settlement if the Court
5 grants final approval and you do not exclude yourself. If you are a PAGA Representative Action
6 Member, you may not opt-out of or be excluded from participating in the settlement of the PAGA
7 Released Claims and you will receive a portion of the PAGA Settlement Share allocated on a per
8 capita basis

9 **IV. SUMMARY OF THE RELIEF GRANTED BY THE PROPOSED SETTLEMENT** 10 **AGREEMENT**

11 For purposes of settlement, and without admitting any liability, EM KMR has agreed to
12 provide certain relief to Class Members and PAGA Representative Action Members. The
13 following is only a summary of the relief contained in the proposed Settlement. The relief granted
14 by the proposed Settlement Agreement is summarized as follows:

- 15 1. EM KMR will pay the total sum of One Hundred Five Thousand dollars (\$105,000.00),
16 less attorneys' fees and costs awarded to Class Counsel, any enhancement awarded to the
17 class representative, the costs of the appointed Settlement Administrator, payment of
18 \$5,000.00 to the California Labor Workforce and Development Agency (LWDA) (75%
19 goes to the LWDA and 25% to PAGA Representative Action Members), and taxes on the
20 portion of the settlement treated as wages (employee side only).
- 21 2. Out of the settlement funds, EM KMR will pay reasonable attorneys' fees in a maximum
22 amount not to exceed Thirty-Five Thousand Dollars (\$35,000.00) (1/3 of the Gross
23 Settlement Amount), and actual costs incurred by Class Counsel (not to exceed \$15,000).
24 All payments for attorneys' fees and costs will be paid from the settlement, which will
25 reduce any payments made to the Participating Class Members. Class Counsel will apply
26 to the court for approval of their attorneys' fees and costs at the hearing scheduled for
27 [REDACTED], 2022 at [REDACTED]. This date and time may be subject to change without notice
28 to you. You may verify the hearing date on the court's website at www.sb-court.org.
3. Class representative Isabella Caro will apply for an enhancement payment in the amount
of \$10,000.00. The enhancement payment is in recognition of the time and efforts she
expended in this case on behalf of the Class Members.
4. The Settlement provides monetary compensation to Class Members for alleged unpaid
compensation, unpaid premiums, interest thereon, as well as PAGA penalties and other
penalties.
5. Any Participating Class Member has the right to object to the proposed settlement by
following the procedures set forth in Part V below or to opt out as set forth in Part VI

below.

6. In exchange for the payments set for above, the Participating Class Member will provide EM KMR with the releases set forth in Section VIII below.

Based upon the equitable formula that has been devised, there will be substantial differences among Class Members as to the amount each individual Participating Class Member will receive in settlement. Monies paid pursuant to the Settlement are taxable; 1/3 of each Individual Settlement Share shall be allocated as wages and 2/3 of each Individual Settlement Share shall be allocated as penalties and interest. Individual Settlement Shares will be paid out to Participating Class Members subject to reduction for the employee's share of withholdings and taxes associated with the wage-portion of the Individual Settlement Shares.

Individual PAGA Settlement Shares are calculated by dividing 25 percent of the PAGA Payment (\$1,250.00) by the total number of PAGA Representative Class Members. PAGA Settlement Shares shall be allocated 100 percent (100%) as 1099 payments for penalties.

V. HEARING AND PROCEDURE FOR OBJECTING TO THE SETTLEMENT AGREEMENT

If you are satisfied with the proposed Settlement Agreement, you do not need to appear at the hearing at which the Court will consider final approval of the Settlement Agreement. If you object to the proposed Settlement Agreement, you MUST take the following steps. Your failure to do so will be deemed a waiver of your objections and will result in a foreclosure of your right to make any objections to the Settlement, whether by appeal or otherwise:

A. So that it is postmarked by [REDACTED], 2022 (45 days), you MUST mail your objection by first class postage to the Settlement Administrator at [list address].

B. You can ask the Court to deny final approval by filing an objection. You cannot ask the Court to order a larger settlement; the Court can only approve or deny the settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue. If that is what you want to happen, you must object. You may object to the proposed settlement in writing. You may also appear at the Final Approval Hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for paying that attorney.

C. All written objections and supporting papers must (a) clearly identify the case name and number (*Caro v. EM KMR LLC dba Chick-Fil-A/Colonies Crossroads FSU (01544)*), Case No. CIVSB 2126991, and (b) be submitted to the Settlement Administrator at [list address].

VI. OPT-OUT PROCEDURE FOR CLASS MEMBERS

You may exclude yourself from the class action portion of the Settlement only by submitting an opt-out notice to the Settlement Administrator at [list address] not later than forty-five (45) calendar days after the date that the Settlement Administrator first mails the Class Notice

– that means that it must be post-marked by [REDACTED], 2022. To be valid, the opt-out notice: (1) must contain your full name; and (2) must be signed by you. The opt-out notice should also state in substance: *“I wish to opt-out of the class action portion of the Settlement of the lawsuit Caro v. EM KMR LLC dba Chick-Fil-A/Colonies Crossroads FSU (01544). I understand that by requesting exclusion, I will not be eligible to receive any payment or other benefit for Class Members from the class action portion of the Settlement involving EM KMR except that I cannot opt out of the PAGA portion of the settlement.”* If you are under eighteen (18) years old you must have a parent or guardian sign the exclusion request.

If the Request for Exclusion does not contain the information listed in (1)-(2) or is not postmarked by the date stated above and returned to the Settlement Administrator at the specified address, it will not be deemed a timely and valid request to opt-out of the Settlement. The date of the postmark on the return mailing envelope shall be the exclusive means used to determine whether the opt-out form has been timely submitted.

Any Class Members who submit a timely and valid opt-out notice from the Settlement will not be entitled to any recovery under the class action portions of the Settlement and will not be bound by the class action terms of the Settlement or have any right to object, appeal, or comment thereon. Class Members who fail to submit a timely and valid opt-out request on or before the Response Deadline shall be Participating Class Members bound by all terms of the Settlement and the Final Approval Order entered in this Action if the Settlement is approved by the Court. Each PAGA Representative Action Member, regardless of whether he or she timely requests to opt-out of the class action portion of the Settlement, will receive a portion of the PAGA Settlement Share allocated on a per capita basis.

If you opt out of the Class, you will no longer be a member of the Class and you will be barred from participating in the class action portion of the Settlement and will not receive the Class Settlement Payment. By opting out of the Class, you will retain whatever individual rights or claims you may have, if any, against Defendants, and you will be free to pursue them on an individual basis, if you choose to do so. **Regardless of whether you opt out of the Settlement, you will still receive a PAGA Settlement Payment and you will still be bound by the PAGA portion of the Settlement.**

VII. CLASS COUNSEL

If you have any questions concerning the proposed Settlement Agreement, or this Notice, you may contact any of the following Class Counsel:

JANELLE CARNEY (SBN 201570)
JANELLE CARNEY – ATTORNEY AT LAW, APC
14758 Pipeline Ave., Suite E, 2nd Floor
Chino Hills, CA 91709
Telephone (909) 521-9609
Email: Janelle@JanelleCarneyLaw.com

VIII CLASS AND PAGA RELEASES

If you do not opt out of the class action portion of the settlement you will agree to provide the following release of claims against EM KMR:

1. **Class Release:** Upon the Final Approval by the Court of this Settlement Agreement and payment of amounts set forth herein, and except as to such rights or claims as may be created by this Settlement Agreement, each and every Participating Class Member, on behalf of themselves and their heirs and assigns, hereby releases Defendant EM KMR dba Chick-Fil-A/Colonies Crossroads FSU (01544), its present, former, or future parent and/or subsidiary corporations, and each of the foregoing's present, former, or future owners, officers, directors, shareholders, partners, employees, insurers, successors, predecessors, contractors, assigns, and managing agents and any and all agents, legal representatives, and/or attorneys of all of the foregoing entities or individuals (collectively the "Released Parties") from the following rights or claims (the "Released Class Claims"):

a. Any and all claims, known or unknown, that: were asserted in any and/or all of the complaints in the Action and/or any of Plaintiff's letters to the LWDA (including any subsequently amended complaints or letters); and/or any and all claims, known or unknown, that could have been asserted based on any or all the factual allegations in all of the complaints in the Action and/or any of Plaintiff's letters to the LWDA (including any subsequently amended complaints or letters). This includes but is not limited to claims for or related to: minimum wages, overtime; pay for all hours worked/compensation due for services; off-the-clock work; meal periods; rest periods; meal and/or rest period premiums, including the calculation of the meal and/or rest period premium pay; wage statements; timeliness of wages; payment of wages at termination; maintain accurate and complete records; unfair competition related to any or all of the foregoing; any unpaid wages or compensation related to any or all of the foregoing; restitution related to any or all of the foregoing; and any penalties, including statutory or civil penalties, related to any or all of the foregoing. This release includes any and all claims pursuant to: 201, 201.1, 201.5, 202, 203, 204, 205.5, 210, 218, 218.5, 218.6, 219, 226, 226.3, 226.7, 256, 510, 511, 512, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198, 2802; the California Business & Professions Code § 17200; California Code of Regulations Title 8, § 11070; and the California Industrial Welfare Commission Wage Orders 5-2001. The release shall run through August 31, 2022.

2. **PAGA Release by PAGA Representative Action Members:** Upon the Final Approval by the Court of this Settlement Agreement and payment of amounts set forth herein, and except as to such rights or claims as may be created by this Settlement Agreement, each and every PAGA Representative Action Member, on behalf of themselves and their heirs and assigns, and irrespective of whether the PAGA Representative Action Member opted out of the class action portion of the Settlement, hereby releases the Released Parties from the following rights or claims (the "Released PAGA Claims"):

a. Any and all claims known or unknown, for civil penalties under California

1 Labor Code section 2698 et seq. (PAGA) that: were asserted in any and/or all of the
2 complaints in the Action and/or any of Plaintiff's letters to the LWDA (including any
3 subsequently amended complaints or letters); and/or any and all claims, known or
4 unknown, that could have been asserted based on any or all the factual allegations in any
5 and/or all of the complaints in the Action and/or any of Plaintiff's letters to the LWDA
6 (including any subsequently amended complaints or letters). This release includes, but is
7 not limited to, claims for PAGA civil penalties premised on: California Labor Code
8 sections 201, 201.1, 201.5, 202, 203, 204, 205.5, 210, 218, 218.5, 218.6, 219, 226, 226.3,
9 226.7, 256, 510, 511, 512, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198, and 2802; failure
10 to pay minimum wages and overtime; failure to pay for all hours worked/compensation
11 due for services; off-the-clock work; failure to provide meal periods; failure to authorize
12 and permit rest periods; failure to pay meal or rest period premiums, including the
13 calculation of the meal and/or rest period premium pay; failure to provide accurate
14 itemized wage statements; failure to timely pay wages at termination; failure to maintain
15 accurate and complete records; and indemnification of expenditures. The release shall
16 run through August 31, 2022.

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**PLEASE DO NOT TELEPHONE OR CONTACT THE COURT OR
THE OFFICE OF THE CLERK FOR INFORMATION REGARDING
THIS SETTLEMENT OR THE CLAIM PROCESS.**

This notice summarizes the proposed settlement. For the precise terms and conditions of the settlement, please see the settlement agreement by accessing the Court docket in this case through the court's website at www.sb-court.org, or by visiting the office of the Clerk of the Court located at San Bernardino Superior Court, located at 247 W. Third St., San Bernardino, CA 92415-0210, Monday through Friday, excluding Court holidays.

EXHIBIT A**[name/ID#]**

EM KMR's records indicate that during the applicable time period, you worked as a non-exempt employee, meaning you worked Qualifying Workweeks. If you disagree with the workweeks figure as set forth above, you must notify the Settlement Administrator in writing by the deadline of , 2022 and attach documentation supporting your dispute. Failure to provide this information and satisfactory supporting documentation of the workweeks you believe you worked for EM KMR during the applicable time period will result in any claim you submit being based solely on EM KMR's records.

ESTIMATED CLASS ACTION INDIVIDUAL SETTLEMENT PAYMENT AMOUNT

Based on the above your estimated payment is \$ ("Individual Settlement Payment"). This estimated amount is only an estimate. The actual amount of your Individual Settlement Payment may increase or decrease based on several factors, including the final amounts approved by the Court and disputes raised by other Class Members. As a result, you may receive a smaller, or larger, payment.

ESTIMATED PAGA SETTLEMENT SHARE AMOUNT

Your estimated PAGA payment is \$ ("PAGA Settlement Share"). This estimated amount is only an estimate. The actual amount of your PAGA Settlement Share may increase or decrease based on several factors, including the final amounts approved by the Court. As a result, you may receive a smaller, or larger, payment.

QUESTIONS

If you have questions, please call or write to ILYM at the telephone number and address shown on page 1 above.

Exhibit 2

1 Janelle Carney (201570)
Janelle@JanelleCarneyLaw.com
2 JANELLE CARNEY – ATTORNEY AT LAW, APC
14758 Pipeline Ave., Suite E
3 Chino Hills, CA 91709
Telephone: (909) 521-9609/ Fax: (909) 393-0471

4 Attorneys for Plaintiff Isabella Caro
5

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

FEB 16 2022

6 BY 
LILIANA MARISCAL, DEPUTY

7
8
9 SUPERIOR COURT OF CALIFORNIA
10 COUNTY OF SAN BERNARDINO
11

12 ISABELLA CARO, on behalf of herself and all
13 others similarly situated and the general public,

14 Plaintiff,

15 v.

16 EM KMR LLC dba CHICK-FIL-A/ COLONIES
17 CROSSROADS FSU (01544); and DOES 1 to
100,

18 Defendants.
19
20
21
22

) Case No. CIVSB2126991
) Hon. Donald Alvarez
) Dept. S-23
)
) CLASS ACTION
)
) SECOND AMENDED COMPLAINT
)
) 1. Violation of B&PC §17200, et seq.
) 2. Failure to Pay All Wages
) 3. Meal Period Violations
) 4. Rest Period Violations
) 5. Work Expense Reimbursement Violations
) 6. Waiting Time Penalty
) 7. Wage Statement Penalty
) 8. Penalties Under PAGA Labor Code
) §2698, et seq.
)
) Action Filed: September 17, 2021
)
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SSECOND AMENDED COMPLAINT

1 Plaintiff, Isabella Caro, on behalf of herself and all others similarly situated and the general
2 public, hereby complains against EM KMR LLC dba Chick-fil-A/ Colonies Crossroads FSU
3 (01544) (hereinafter referred to as "EM KMR" or "Defendant"), and DOES 1 to 100, as follows:

4 **GENERAL ALLEGATIONS**

5 **JURISDICTION**

6 1. This is a civil action seeking recovery of unpaid wages under California Labor Code
7 §§ 200, et seq., 226, 226.7, 510, 512, 1194, 1194.2, 1197, 1198, and 2802. The Plaintiff for herself
8 and on behalf of the general public, and all others similarly situated, brings an action for monetary
9 damages for failure to pay wages as well as for injunctive relief, declaratory relief and restitution
10 for Defendant's violations of Business and Professions Code (B&PC) §17200, et seq., including
11 full restitution of all compensation retained by Defendant, as a result of its unlawful, fraudulent and
12 unfair business practices. Plaintiff seeks all available relief, including full damages, full restitution
13 and/or disgorgement of all revenues, earnings, profits, compensation and benefits retained by
14 Defendant as a result of its unlawful, unfair business practices.

15 **VENUE**

16 2. Venue as to the Defendant is proper in San Bernardino County pursuant to
17 California Code of Civil Procedure (CCP) §§ 395(a) and 395.5, as at least some of the acts
18 complained of herein occurred in the County of San Bernardino. Defendant either owns or
19 maintain offices, transacts business, has an agent or agents within the County of San Bernardino, or
20 otherwise is found within the County of San Bernardino, and Defendant is within the jurisdiction of
21 this Court for purposes of service of process.

22 **PARTIES**

23 3. Isabella Caro is an individual over the age of eighteen (18). At all relevant times
24 herein, Plaintiff Caro was and currently is a resident of the County of San Bernardino, State of
25 California.

26 4. Plaintiff is informed and believes and thereon alleges that at all times mentioned
27 herein, Defendant EM KMR is a limited liability company based in San Bernardino County.
28

1 5. Plaintiff is informed and believes and thereon alleges that at all times mentioned
2 herein, Defendant and each of them listed herein are professional entities licensed to do business in
3 California.

4 6. Plaintiff is informed and believes and thereon alleges that at all relevant times each
5 Defendant was licensed to do business in the State of California, County of San Bernardino with its
6 principal place of business in San Bernardino County, California.

7 7. Plaintiff is informed and believes, and based thereon alleges, that Defendant is a fast
8 food restaurant.

9 8. Further, Defendant operates and maintains its aforementioned fast food restaurant,
10 and is and was the employer of the Plaintiff and Plaintiff Class during the Class Period. During the
11 liability period, Defendant employed Plaintiff and similarly situated non-exempt hourly employees
12 and due to Defendant's uniform payroll practices, failed to pay Plaintiff and Plaintiff Class for all
13 time worked due to requiring its employees to work off the clock, failed to reimburse Plaintiff and
14 Plaintiff Class for uniforms and other out-of-pocket costs, failed to authorize and permit Plaintiff
15 and Plaintiff class to take legally-compliant meal and rest periods, and failed to provide accurate
16 wage statements. On information and belief and based thereon, Plaintiff alleges that Defendant is
17 conducting business in good standing in California.

18 9. Plaintiff is informed and believes and thereon alleges that Defendant and DOES 1 to
19 100, control and operate business and establishments in locations within the State of California,
20 including, but not limited to, the County of San Bernardino, for the purposes of providing fast food
21 restaurants. Thus, each named Defendant and DOES 1 to 100 are subject to B&PC §17200, et seq.
22 (Unfair Competition Law) and the Labor Code as hereinafter alleged.

23 10. Plaintiff does not know the true names or capacities, whether individual, partner, or
24 corporate, of Defendant sued herein as DOES 1 to 100, inclusive, and for that reason, said
25 Defendant is sued under such fictitious names, and Plaintiff will seek from this Court leave to
26 amend this Complaint when such true names and capacities are discovered. Plaintiff is informed
27 and believes and thereon alleges that each Defendant and each fictitious Defendant, whether
28 individual, partners, or corporate, was responsible in some manner for the circumstances alleged

1 herein, and proximately caused Plaintiff and all others similarly situated hereinafter alleged and the
2 general public to be subjected to the unlawful employment practices, wrongs, injuries and damages
3 complained of herein.

4 **PRIVATE ATTORNEY GENERAL ALLEGATIONS**

5 11. Plaintiff on behalf of herself and all others similarly situated, filed this cause of
6 action acting as a private attorney general on behalf of the general public to challenge and remedy
7 the business practices of Defendant alleged herein.

8 12. B&PC §17200, et seq., often referred to as the Unfair Competition Law, prohibits
9 unfair competition, which is defined to include any unlawful, unfair, or fraudulent business act or
10 practices. Defendant has instituted and implemented unlawful wage-and-hour policies, which
11 constitute unfair, unlawful, or fraudulent business acts or practices within the State of California.
12 Any person that has suffered injury may initiate an action to enforce B&PC §17200. The court is
13 authorized to order injunctive relief, declaratory relief, and restitution to affected members of the
14 general public as remedies for any violations of B&PC §17200.

15 13. Plaintiff is entitled to an award of attorneys' fees and costs in prosecuting this action
16 as a private attorney general against Defendant under CCP §1021.5 based in part on the following:

17 a. A successful outcome in this action will result in the enforcement of
18 important rights affecting the public interest by maintaining the integrity of entities that employ
19 employees;

20 b. This action will result in a significant benefit to the general public by ceasing
21 unlawful, unfair and deceptive activity, and by causing the return of ill-gotten gains obtained by
22 Defendant through their failure to properly pay their employees;

23 c. Unless this action is prosecuted, members of the general public will not
24 recover monies wrongfully taken from them, and many employees and consumers would not be
25 aware that they were victimized by Defendant's wrongful acts and practices; and Unless attorneys'
26 fees and costs are awarded against Defendant, the general public will not be made whole.

27 **PLAINTIFF CLASSES**

28 14. The class representative Plaintiff who worked in the position of non-exempt hourly

1 employee, while employed by Defendant within the State of California, is Isabella Caro.

2 **CLASS ACTION ALLEGATIONS**

3 15. Plaintiff brings this action on behalf of herself and all others similarly situated as a
4 class action pursuant to CCP §382. The Classes which Plaintiff seeks to represent are composed of
5 and defined as follows:

6 **Class Definition:**

7 All non-exempt hourly employees of Defendants who worked in California at least one (1)
8 day from September 17, 2017, through the date of the class certification order.

9 **Class 1:**

10 All non-exempt hourly employees of Defendant who worked at least one (1) day in
11 California for Defendant from September 17, 2017, to the date of the class certification order, and
12 who were required to work off-the-clock. ("Off-the-Clock Class").

13 **Class 2:**

14 All non-exempt hourly employees of Defendant who worked at least one (1) day in
15 California for Defendant from September 17, 2017, to the date of the class certification order, and
16 who were not paid premium overtime pay for hours worked over eight (8) in a day or forty (40) in a
17 week. ("Overtime Class")

18 **Class 3:**

19 All non-exempt hourly employees of Defendant who worked at least one (1) day in
20 California from September 17, 2017, through the date of class certification order who were not
21 provided legally-compliant meal periods ("Meal Break Class").

22 **Class 4:**

23 All non-exempt hourly employees of Defendants who worked at least one (1) day in
24 California at any time from September 17, 2021, through the date of class certification, who were
25 not provided with 10-minute rest periods for every 4 hours of work or major fraction thereof.
26 ("Rest Break Class")

27 **Class 5:**

28 All non-exempt hourly employees of Defendant who worked for Defendant at any time
from September 17, 2018, through the date of class certification, who are no longer employed by
Defendant and were not paid all their earned wages. ("Waiting Time Penalty Class"). (This is a

1 derivative class for all classes).

2 **Class 6:**

3 All non-exempt hourly employees of Defendant who worked at least one (1) day in
4 California from September 17, 2020, through the date of class certification order who were
5 provided a paystub (a.k.a. wage statement) from Defendant ("Pay Stub Class"). (This is a stand-
6 alone and derivative class for all classes and sub-classes).

7 **Class 7:**

8 All non-exempt hourly employees of Defendant who worked at least one (1) day in
9 California from September 17, 2017, through the date of class certification order who were
10 required by Defendant to purchase items for the performance of their job duties including but not
11 limited to Chick-fil-A raincoats, and/or other required uniforms. (2802 Class)

12 The members of the classes are so numerous that joinder of all members would be
13 unfeasible and not practicable. The membership of the classes is unknown to Plaintiff at this time;
14 however, it is estimated that the classes number greater than 100 individuals. The identity of such
15 membership is readily ascertainable via inspection of Defendants' employment records.

16 16. There are common questions of law and fact as to Plaintiff and all others similarly
17 situated which predominate over questions affecting only individual members including, without
18 limitation to:

- 19 i. Whether Defendant improperly retained, appropriated or deprived Plaintiff
20 of the use of monies or sums to which Plaintiff was legally entitled;
- 21 ii. Whether Defendant engaged in unfair business practices;
- 22 iii. Whether Defendant, and each of them, were participants in the alleged
23 unlawful conduct;
- 24 iv. Whether Defendant's conduct was willful or reckless;
- 25 v. The effect upon and the extent of injuries suffered by Plaintiff and all others
26 similarly situated and the appropriate amount of compensation;
- 27 vi. The appropriate amount of monetary penalties allowed by Labor Code
28 §§201, et. seq. and 226;
- vii. Whether Defendant violated Labor Code §226 and relevant IWC Wage
Orders;

- viii. Whether Defendant knowingly and intentionally failed to maintain records for Plaintiff and members of the Plaintiff class as required by Labor Code § 1174 and §7 of the IWC Order 5-2001 and its successors;
- ix. Whether Defendant willfully violated provisions of the California Labor Code;
- x. Whether Defendant required Plaintiff and the Class to work off the clock, and/or failed to pay a 7th day premium, including on Sunday when stores were closed;
- xi. Whether Defendant fails to reimburse Plaintiff and the classes for required uniforms and other out-of-pocket costs; and
- xii. Whether Defendant is subject to civil penalties pursuant to Labor Code §§2699, et seq.

17. Plaintiff's claims are typical of the claims of all members of the classes herein. Plaintiff, as representative party, will fairly and adequately protect the interest of the classes by vigorously pursuing this suit through her attorneys who are skilled and experienced in handling matters of this type. Plaintiff has no claims or interests that are antagonistic to any class member.

18. The nature of this action and the nature of laws available to the members of the classes identified herein make use of the class action format a particularly efficient and appropriate procedure to afford relief to Plaintiff for the wrongs alleged herein. Further, this claim involves one large employer, Defendant, and a large number of individual employees (Plaintiff and all others similarly situated) with many relatively small claims with common issues of law and fact. If each employee were required to file an individual lawsuit, the corporate Defendant would necessarily gain an unconscionable advantage since it would be able to exploit and overwhelm the limited resources of each individual Plaintiff with their vastly superior financial and legal resources. Requiring each class member to pursue an individual remedy would also discourage the assertion of lawful claims by employees who would be disinclined to pursue an action against their present and/or former employer for an appreciable and justifiable fear of retaliation and permanent damage to their careers at present and/or subsequent employment. Proof of a common business practice or factual pattern, of which the named Plaintiff experienced, is representative of the class mentioned herein and will establish the right of each of the members of the named class to recovery

1 on the causes of action alleged herein.

2 19. The prosecution of separate actions by the individual class members, even if
3 possible, would create a substantial risk of inconsistent or varying verdicts or adjudications with
4 respect to the individual class members against Defendant herein; and which would establish
5 potentially incompatible standards of conduct for Defendant; and/or (b) legal determinations with
6 respect to individual class members which would, as a practical matter, be dispositive of the
7 interest of the other class members not parties to adjudications or which would substantially impair
8 or impede the ability of the class members to protect their interests. Further, the claims of the
9 individual members of the class are not sufficiently large to warrant vigorous individual
10 prosecution considering all of the concomitant costs and expenses attending thereto.

11 20. Plaintiff and all others similarly situated are entitled to the wages and other monies
12 unlawfully withheld. This action is brought for the benefit of the public.

13 **FIRST CAUSE OF ACTION**

14 **(Violation of B&PC §17200, et seq.)**

15 21. Plaintiff re-alleges and incorporates by reference herein the allegations of all
16 preceding paragraphs as though fully set forth herein.

17 22. Beginning on an exact date unknown to Plaintiff, Defendant has engaged in a
18 pattern and practice of acts of unfair competition in violation of B&PC §17200, including the
19 practices alleged herein.

20 **FAILURE TO PAY FOR ALL TIME WORKED (OFF THE CLOCK)**

21 23. Plaintiff is informed and believes and thereon alleges, that at all times herein
22 mentioned, Defendant engaged in unlawful, unfair, and fraudulent business practices prohibited by
23 California B&PC §17200, by failing to pay for time worked off the clock. Defendant suffered or
24 permitted Plaintiff to work off the clock, including but not limited to, requiring Plaintiff to clock-
out at the end of her scheduled shifts but remain on site assisting any remaining customers.

25 24. Further, Plaintiff is informed and believes and thereon alleges, that Plaintiff and the
26 Class were required to perform work off-the-clock. Specifically, Defendant would require Plaintiff
27 and the Class to work off-the-clock on Sundays for cleaning. Further, Defendant required Plaintiff
28 and the Class to clock out and continue to work off-the-clock during shift hours in excess of eight
(8) in a day or forty (40) in a week, including having to clock out before they reached the tenth

1 (10th) hour of work, in order to avoid needing a second meal break on shifts in excess of ten (10)
2 hours.

3 25. Plaintiff is informed and believe and thereon allege that as part of
4 Defendant's ongoing unfair business practices, Defendant's non-exempt hourly employees
5 were and are employed and scheduled as a matter of established company policy to work,
6 and in fact, worked shifts in excess of eight (8) hours a day, including but not limited to
7 shifts lasting ten (10) hours and twelve (12) hours.

8 26. Defendant's policy is to pay straight time for all hours worked in excess of eight (8)
9 hours per day, both straight time (first eight (8) hours) and overtime (last four (4) hours) pay is paid
10 at the base hourly rate which is lower than required by law due to Defendant's failure to pay daily
11 overtime hours at time-and-a-half of the employees' correct regular rate of pay. The mathematical
12 result of this practice is that employees are underpaid their earned statutory overtime premium
13 wages. Defendant's mathematical scheme is in violation of the Labor Code. Defendant's
14 employees are not paid proper overtime compensation at the correct rate. The "regular rate" means
15 "the hourly rate actually paid for the normal, non-overtime workweek." (See Walling v.
16 Youngerman-Reynolds Hardwood Co., 325 U.S. 419, 424 (1945) ("[T]he regular rate refers to the
17 hourly rate actually paid the employee for the normal, non-overtime workweek for which he is
18 employed.") (emphasis added); United States v. Rosenwasser, 323 U.S. 360, 364 (1945) (defining
19 the "regular rate" is defined as "the hourly rate actually paid for the normal, non-overtime
20 workweek.") (quotation omitted) (emphasis added); Huntington Memorial Hosp. v. Superior Court,
21 (2005) 131 Cal.App.4th 893, 905 (regular rate is the hourly rate paid for a non-overtime
22 workweek); Brunozzi v. Cable Communications, Inc., 851 F.3d 990, 996 (9th Cir. 2017) (To
23 determine the regular rate, "we must first determine what the parties agreed [the employee] is to be
24 paid in a normal, non-overtime workweek.") (emphasis added).) "Wage divided by hours equals
25 regular rate." (Bay Ridge, 334 U.S. at 461 (quotation omitted).) The employer may not "compute
26 the regular rate in a wholly unrealistic and artificial manner so as to negate the statutory purposes."
27 (Walling, 325 U.S. at 424.) The regular rate "must reflect all payments which the parties have
28 agreed shall be received regularly during the workweek, exclusive of overtime payments." (*Id.*)
The regular rate "is not an arbitrary label chosen by the parties; it is an actual fact. Once the parties
have decided upon the amount of wages and the mode of payment the determination of the regular

1 rate becomes a matter of mathematical computation" (Id. at 244-45.) "The regular hourly rate
2 of pay of an employee is determined by dividing his total remuneration for employment (except
3 statutory exclusions) in any workweek by the total number of hours actually worked by him in that
4 workweek for which such compensation was paid." (29 C.F.R. § 778.109.)

5 27. Plaintiff believes and thereon alleges that Defendant fails to include all
6 remuneration into the calculation of the regular rate for overtime, meal and rest period premium
7 payments, including but not limited to, differentials, bonuses, and other pay.

8 **VIOLATION OF MEAL PERIOD PROVISIONS**

9 28. Defendant's improper meal policies are in violation of California law including, but
10 not limited to Labor Code § 226.7, 512, and IWC Wage Order 5-2001. The Plaintiff and the
11 members of the class are entitled to a half hour meal period for every five (5) hours of their shift
12 worked. Defendant violated the meal break provisions and did not provide Plaintiff and the class
13 with duty-free meal periods. Plaintiff and the class were entitled to one (1) hour of pay for each
14 meal break violation at their regular rate of pay. Plaintiff believes and thereon alleges that
15 Defendant failed to pay Plaintiff and the putative class members missed meal period payments at
the regular rate.

16 29. Defendant failed to provide, impeded and/or discouraged Plaintiff and others from
17 taking timely meal breaks of not less than thirty (30) minutes as required by the Labor Code during
18 the relevant class period.

19 **FAILURE TO PERMIT AND AUTHORIZE REST PERIOD BREAKS**

20 30. Plaintiff and other members of the Rest Period Class, during their employment by
21 Defendant, including within the Class Period, were entitled to the benefits of Labor Code § 226.7
22 and Order 5-2001 of the Industrial Welfare Commission. Pursuant to Labor Code Section 226.7
23 and Wage Order 5-2001, Plaintiff and the other members of the Rest Period Class, were entitled to
24 separate rest periods of at least 10 minutes for each four-hour period of work or major fraction
25 thereof, and one hour of additional pay for every shift a rest period was not provided in
26 conformance with this obligation. Plaintiff believes and thereon alleges that Defendant failed to
27 pay Plaintiff and the putative class members missed rest period payments at the regular rate.

28 31. Plaintiff is informed and believes, and thereon alleges that Defendant consistently
compelled Plaintiff and other members of the Rest Period Class employed for shifts of more than

1 four (4) hours, to take only one (1) rest break during their shifts, instead of two (2) rest breaks
2 required for shifts of 10 hours. Plaintiff is further informed and believes, and thereon alleges, that
3 Rest Period Class members employed for shorter shifts, at times, were systematically denied the
4 opportunity to take all legally compliant rest breaks due to understaffing, lack of relief personnel,
5 and heavy workload.

6 **FAILURE TO REIMBURSE**

7 32. Defendants further adopted, implemented and enforced a uniform policy and
8 practice of requiring Plaintiff and the Class to pay for their own Chick-fil-A raincoats, and/or other
9 required uniforms, without reimbursement. Further, Plaintiff and the Class were required to use
10 their personal cell phones for work-related communications without reimbursement for the use of
11 their personal phones. Thus, Defendants are in violation of Labor Code §2802.

12 **FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS**

13 33. Plaintiff is informed and believes and thereon alleges that as part of Defendant's
14 ongoing unfair business practices, Defendant, and each of them, fails to provide its employees with
15 proper and understandable itemized wage statements, as required by Labor Code § 226.

16 34. Plaintiff is informed, and believes, and thereon alleges, that Defendant, and each of
17 them, fail to provide each employee with an itemized statement which states the actual regular rate
18 paid, the actual total hours worked by the employee, the net wages earned, and all applicable hourly
19 rates in effect during the pay period and the corresponding number of hours worked at each hourly
20 rate by the employee.

21 **VIOLATION OF LABOR CODE § 200, ET SEQ.**

22 35. Plaintiff is informed and believes and thereon alleges that as part of Defendant's
23 ongoing unfair business practices, Defendant failed to provide all hourly employees all wages at
24 the time of their separation in violation of Labor Code § 200, et. seq. This is a derivative claim in
25 that all hourly employees who are no longer employed by Defendant who establish liability on any
26 claim alleged in this action are entitled to recover under Labor Code §203.

27 36. Labor Code § 200, et seq. provides that an employer is required to pay an employee
28 all wages (including accrued vacation) within twenty-four (24) hours of the employee's involuntary
separation from employment; within twenty-four (24) hours of his or her voluntary separation if the

1 employee gave at least seventy-two (72) hours' notice, and within seventy-two (72) hours, if the
2 employee voluntarily separated, but did not give at least seventy-two (72) hours' notice.

3 37. Plaintiff is informed and believes and thereon alleges that all employees who have
4 been separated from Defendant did not timely receive a final paycheck detailing the proper amount
5 of wages from Defendant in violation of Labor Code § 200, et. seq.

6 38. Pursuant to Labor Code § 200, et seq. employees that no longer work for
7 Defendant, and who were not timely paid, are entitled to one (1) day of pay in penalties for each
8 day that he or she was paid late, until payment was made, up to a maximum of thirty (30) days.

9 39. Plaintiff seeks restitution for all the aforementioned violations.

10 40. Defendant, and each of them, have engaged in unfair business practices in California
11 by practicing, employing and utilizing the employment practices complained of herein.
12 Defendant's use of such practices constitutes an unfair business practice, unfair competition, and
13 provides an unfair advantage over Defendant's competitors. Plaintiff and the putative class seek
14 full restitution of said monies, as necessary and according to proof, to restore any and all monies
15 withheld and/or acquired by Defendant by means of the unfair business practices complained of
16 herein. Plaintiff seeks, on behalf of all current and former employees of Defendant, restitution of
17 said monies. Plaintiff further seeks, on behalf of the Plaintiff and the putative class, the
18 appointment of a receiver, as necessary, to establish the total restitutionary relief from Defendant.
19 The restitution includes all wages withheld by Defendant as a result of the unfair business
20 practices, including interest thereon. Absent a statutory provision specifically governing the type
21 of claim at issue, the prejudgment interest rate is 10 percent.

22 41. Plaintiff is informed and believes and thereon alleges that at all times herein
23 mentioned, Defendant has engaged in unlawful, deceptive, and unfair business practices prohibited
24 by California B&PC §17200, thereby depriving their employees and the putative class the
25 minimum working condition, standards and conditions due to them under the California labor laws
26 and Industrial Welfare Commission wage orders as specifically described herein. Plaintiff further
27 seeks an order requiring Defendant to identify by full name, telephone number, and last known
28 address employees who worked or still work for Defendant from four (4) years preceding the filing
of the Complaint through the date of judgment; Plaintiff further seeks an order requiring Defendant
to timely pay restitution to all current and former employees, including back wages, and interest.

1 The acts complained of herein occurred, at least in part, within the last four (4) years preceding the
2 filing of the original Complaint.

3 42. By and through its unfair, unlawful, and/or fraudulent business practices and acts
4 described herein, Defendant has obtained valuable services from Plaintiff and all persons similarly
5 situated and has deprived Plaintiff and all persons similarly situated of valuable rights and benefits
6 guaranteed by law, all to their detriment.

7 43. Plaintiff, and all persons similarly situated, and all persons in interest, are entitled to
8 and do seek such relief as may be necessary to restore to them the money and property which
9 Defendant has acquired, or of which Plaintiff and class members have been deprived by means of
10 the herein described unfair, unlawful, and/or fraudulent business practices.

11 44. Plaintiff, and all persons similarly situated, and all persons in interest, are further
12 entitled to and do seek a declaration that the above-described business practices are unfair, unlawful
13 and/or fraudulent, and injunctive relief restraining Defendant from engaging in any of the herein
14 described unfair, unlawful, and/or fraudulent business practices at all times in the future.

15 45. Plaintiff request attorney's fees and costs pursuant to Code of Civil Procedure
16 §1021.5 since this action is brought to vindicate important rights of a large class and the public.

17 18 **SECOND CAUSE OF ACTION**

19 **FAILURE TO PAY MINIMUM WAGE AND/OR STRAIGHT TIME WAGES**

20 **(Plaintiff and the Class Against All Defendants)**

21 43. Plaintiff and the Class incorporate by reference all the aforementioned paragraphs of
22 the amended complaint.

23 44. Labor Code section 1194(a) provides that "...any employee receiving less than the
24 legal minimum wage or the legal overtime compensation applicable to the employee is entitled to
25 recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime
26 compensation, including interest thereon, reasonable attorneys' fees, and costs of suit."

27 45. At all times relevant, Defendant required Plaintiff and the Class to work hours off-
28 the-clock, for which Defendants failed to pay them at the appropriate minimum wage and/or
straight time wages.

1 46. As a result of Defendant's unlawful wage practices as alleged herein, Plaintiff and
2 the Class have been denied the appropriate minimum wage and/or straight time wages for all hours
3 worked by them.

4 47. As a result of Defendant's acts and omissions as alleged herein, Plaintiff requests
5 that the Court find Defendants to have willfully failed to pay all minimum wages and/or straight
6 time wages, to Plaintiff and the Class; award all actual losses and damages; award prejudgment
7 interest on any unpaid minimum wages and/or straight time wages from the date such amounts
8 were due; award liquidated damages; all legally authorized penalties; and reasonable attorney's
9 fees and costs.

10 48. Plaintiff and all others similarly situated identified herein were and are employed
11 and scheduled as a matter of established company policy to work and in fact worked as non-exempt
12 hourly employees in excess of eight (8) hours per day and/or in excess of forty (40) hours per
13 week. Defendant employed and scheduled all employees without providing the proper overtime
14 compensation for such excess hours worked in violation of Labor Code §§ 510, 511 and 1194 and
15 the relevant California Industrial Welfare Commission (IWC) orders, including but not limited to,
16 daily, weekly, and seventh day premium overtime payments. Labor Code § 204 establishes the
17 fundamental right of all employees in the state of California to be paid the proper amount of wages
18 in a timely fashion for their work, including overtime. The California overtime requirement and
19 wage requirement are non-waivable rights pursuant to LC §219. Defendant and each of them
20 always had a written and verbal agreement to pay overtime at time and one half for all hours
21 worked in excess of eight (8) per day and/or eighty (80) hours per pay period.

22 49. Pursuant to Labor Code §§ 218 and 1194(a), Plaintiff may bring a civil action for
23 overtime wages directly against the employer without first filing a claim with the Division of Labor
24 Standards Enforcement (hereinafter "DLSE") and may recover such wages, together with interest
25 thereon, penalties, attorneys' fees and costs.

26 50. At all times relevant hereto, Defendant has failed to pay to Plaintiff and all persons
27 similarly situated wages when due as required by Labor Code § 204.
28

1 51. Pursuant to Labor Code § 1198, it is unlawful to employ persons for longer than the
2 hours set by the IWC or under conditions prohibited by the applicable IWC Wage Orders. IWC
3 Wage Order No. 5, as amended, applies to Plaintiff.

4 52. At all times relevant hereto, Plaintiff is informed and believes and thereon alleges
5 that Defendants have treated Plaintiff and all persons similarly situated, as hourly non-exempt
6 employees. Despite this classification, Defendant has willfully violated the Labor Code with
7 respect to meeting the requirements of paying all wages earned, including minimum wages, straight
8 time pay, overtime, and remuneration when calculating the hourly non-exempt employees' regular
9 rate of pay, as hereinbefore alleged.

10 53. Plaintiff is informed and believes and thereon alleges that the hourly non-exempt
11 class paid significantly less premium compensation for work accomplished in excess of forty (40)
12 hours per pay period, and/or eight (8) hours per day, without any valid exemption.

13 54. Labor Code §204 establishes the fundamental right of all employees in the State of
14 California to be paid wages in a timely fashion for their work.

15 55. Plaintiff is informed and believes and thereon alleges that Defendant consistently
16 administered a corporate policy regarding both staffing levels and duties and responsibilities of the
17 members of the class which required the members of the class to work overtime without proper
18 premium pay. This included a uniform corporate policy and practice of requiring the members of
19 the class to work in excess of eight (8) hours a day without paying premium overtime. This
20 corporate policy and pattern of conduct was/is accomplished with the advance knowledge and
21 design of all Defendant herein. Thus, Plaintiff and the members of the class, regularly and
22 customarily performed overtime work. Accordingly, Plaintiff and all others similarly situated are
23 entitled to overtime compensation under California law. Further, Defendant disseminated false
24 information throughout Defendant's facilities and among the employees reciting that all hourly
25 non-exempt employees would receive premium overtime pay.

26 56. Plaintiff is informed and believes and thereon alleges that the obligations and
27 responsibilities of the class employees are irrelevant because Plaintiff and all others similarly
28 situated merely allege wrongdoing with Defendants' pay plans. Further, the duties of Plaintiff and

1 all others similarly situated are not relevant in certifying any of the classes. Defendants' hourly
2 non-exempt employees work routinely included work in excess of eight (8) hours per day, forty
3 (40) hours per pay period and/or and they were not, and have never been, paid the proper regular
4 rate of compensation nor the proper premium compensation for their overtime work.

5 57. Defendant, and each of them, in violation of Labor Code §§ 201 and 202, et seq.,
6 respectively, had a consistent and uniform policy, practice and procedure of willfully failing to pay
7 the earned and unpaid wages of all such former employees. Defendant has willfully failed to pay
8 the earned and unpaid wages of such individuals, including, but not limited to, regular pay, straight
9 time pay (pursuant to Labor Code § 1194), premium pay, and other wages earned and remaining
10 uncompensated according to amendment, or proof.

11 58. Plaintiff and all others similarly situated identified herein were and are employed
12 and scheduled as a matter of established company policy to work and in fact worked as non-exempt
13 hourly employees in excess of eight (8) hours per day without proper overtime premium.
14 Defendant employed and scheduled members of the class without providing proper overtime
15 compensation for such excess daily overtime hours worked in violation of Labor Code §§ 510,
16 1194, 1198 and the relevant California Industrial Welfare Commission (IWC) orders. Pursuant to
17 Labor Code § 1198, it is unlawful to employ persons for longer than the hours set by the IWC or
18 under conditions prohibited by the applicable IWC Wage Orders. IWC Wage Order No. 5, as
19 amended, applies to Plaintiff.

20 **THIRD CAUSE OF ACTION**

21 **FAILURE TO PROVIDE MEAL BREAKS**

22 59. Plaintiff incorporates by reference as if fully set forth herein, the allegations of
23 paragraphs above.

24 60. Labor Code § 226.7 requires an employer to pay an additional hour of compensation
25 for each meal period the employer fails to provide. Plaintiff alleges that Defendant failed to
26 provide legally compliant meals in addition to impeding, discouraging and/or dissuading
27 employees from taking legally compliant meal periods. Employees are entitled to a meal period of
28 at least thirty (30) minutes per five (5) hour work period. Plaintiff and the class consistently

1 worked over five (5) hour shifts without meal periods due to Defendant's policy of discouraging,
2 dissuading and/or impeding Plaintiff and the class from taking meal periods. Plaintiff and the class
3 were scheduled by Defendant in such a way that they were not able to take compliant meal breaks
4 and complete their tasks for the day. Pursuant to the Code, Plaintiff and the class are entitled to a
5 meal period of not less than thirty (30) minutes prior to exceeding five (5) hours of employment.

6 61. Defendant failed to provide, impeded and/or discouraged Plaintiff and others from
7 taking timely meal breaks of not less than thirty (30) minutes as required by the Labor Code during
8 the relevant class period.

9 62. Pursuant to Labor Code §226.7, Plaintiff is entitled to damages in an amount equal
10 to one (1) hour of wages at the employee's regular rate per missed meal break, in a sum to be
11 proven at trial.

12 **FOURTH CAUSE OF ACTION**

13 **FAILURE TO ALLOW REST BREAKS PURSUANT TO LABOR CODE §226.7**

14 **(Against All Defendants)**

15 63. Plaintiff re-alleges and incorporates by reference as if fully set forth herein, the
16 aforementioned allegations.

17 64. The Plaintiff alleges that the Defendant has violated Labor Code §§226.7 & the
18 Wage Order. §226.7 of the Labor Code requires an employer to pay an additional hour (1) of
19 compensation for each rest period the employer fails to provide. Hourly non-exempt employees
20 are entitled to a paid ten (10) minute rest break for every four (4) hours worked or major fraction
21 thereof. The Defendant's policy discourages, dissuades, and prevents all hourly non-exempt
22 employees from taking a rest period break for any work period that is greater than two (2) hours up
23 to four (4) hours. Plaintiff and the class consistently worked over four (4) hours per shift with no
24 rest breaks, due to Defendant's policy of discouraging, dissuading and/or preventing hourly
25 employees from taking said breaks.

26 65. Defendant failed to provide and continues to discourage and dissuade Plaintiff and
27 other hourly employees from taking rest breaks of not less than ten (10) minutes for each work
28 period of four (4) hours worked or major fraction thereof, as required by the Labor Code during the

1 relevant class period. Defendant's policy and practice is to not pay rest period violation penalties
2 at the correct regular rate.

3 66. Pursuant to Labor Code §226.7, Plaintiff and the Class are entitled to damages in an
4 amount equal to one (1) hour of wages at the hourly non-exempt regular rate of pay per rest break
5 violation, in a sum to be proven at trial.

6 **FIFTH CAUSE OF ACTION**

7 **Work Expense Reimbursement Violations**

8 **(Violation of Labor Code § 2802)**

9 **Against All Defendants**

10 67. Plaintiff re-alleges and incorporates by reference herein, the allegations of all
11 preceding paragraphs as though fully set forth herein.

12 68. Labor Code § 2802(a) requires "[a]n employer [to] indemnify his or her employee
13 for all necessary expenditures or losses incurred by the employee in direct consequence of the
14 discharge of his or her duties, or of his or her obedience to the directions of the employer, even
15 though unlawful, unless the employee, at the time of obeying the directions, believed them to be
16 unlawful."

17 69. Defendant and each of them maintained and enforced a policy requiring non-exempt
18 hourly employees to provide their own equipment for use on the job, including but not limited to
19 the use of their own personal cell phone, and purchasing a Chick-fil-A raincoat and other required
20 uniforms, without reimbursement.

21 70. Despite requiring Plaintiff and the Indemnity Class members to use their own
22 personal cell phone and purchase required uniform items, Defendants failed to reimburse Plaintiff
23 and the Class members for the costs of using and purchasing such items.

24 71. Accordingly, Plaintiff and the class members are entitled to full compensation for
25 out-of-pocket costs for obtaining the necessary equipment at the direction of Defendant, in an
26 amount to be proven at trial, plus attorney fees, costs of suit, and interest, pursuant to Labor Code §
27 2802.

28 /////

SIXTH CAUSE OF ACTION

FAILURE TO PAY WAGES OF TERMINATED OR RESIGNED EMPLOYEES

WAITING TIME PENALTIES (Labor Code §§201-203)

72. Labor Code §201 states that an employer is required to provide an employee who is terminated all unpaid wages immediately upon termination.

73. Plaintiff is informed and believes and thereon alleges that Defendant failed to pay Plaintiff all wages due and owing immediately upon termination, thereby violating Labor Code §201.

74. Labor Code §202 states, in pertinent part, that an employer is required to provide an employee who quits his or her employment all wages due and owing not later than 72 hours thereafter.

75. Plaintiff is informed and believes and thereon alleges that Defendant and each of them failed to pay Plaintiff all wages due and owing upon voluntary resignation, thereby violating Labor Code §202.

76. Labor Code §203 states that if an employer willfully fails to pay an employee wages according to Labor Code §§201 and 202, these wages shall continue as a penalty for up to a maximum of 30 days.

77. Defendant willfully withheld paying Plaintiff's wages thereby violating Labor Code §203. As such, Defendant is required to pay Plaintiff a 30-day wage penalty in addition to all unpaid wages as described herein.

78. Accordingly, Plaintiff and the Waiting Time Penalty Class members are entitled to attorneys' fees, and costs, pursuant to Labor Code § 203 and prejudgment interest.

SEVENTH CAUSE OF ACTION

**FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS
PURSUANT TO LABOR CODE §226**

Against All Defendants

79. Plaintiff re-alleges and incorporates by reference herein the allegations of all preceding paragraphs as though fully set forth herein. The applicable Wage Order provides:

1 Every employer shall semimonthly or at the time of each payment of wages furnish
2 each employee, either as a detachable part of the check, draft, or voucher paying the
3 employee's wages, or separately, an itemized statement in writing showing: (1) all
4 deductions; (2) the inclusive dates of the period for which the employee is paid; (3)
5 the name of the employee or the employee's social security number; and (4) the
6 name of the employer, provided all deductions made on written orders of the
7 employee may be aggregated and shown as one item. Subsection (e) provides:
8 "Any employee suffering injury as a result of a knowing and intentional failure by
9 an employer to comply with subdivision (a) shall be entitled to recover the greater of
10 all actual damages or fifty dollars (\$50) for the initial pay period in which a
11 violation occurs and one hundred dollars (\$100) per employee for each violation in a
12 subsequent pay period, not exceeding an aggregate penalty of four thousand dollars
13 (\$4,000), and shall be entitled to an award of costs and reasonable attorney's fees."

9 80. During the Class Period, Defendant knowingly and intentionally failed to provide
10 Plaintiff and the class with timely and accurate wage statements showing gross wages earned, total
11 hours worked, all deductions made, net wages earned, the name and address of the legal entity
12 employing that Class Member, the inclusive dates of the period for which the employee is paid, and
13 all applicable hourly rates in effect during each pay period and the corresponding number of hours
14 worked at each hourly rate by that Class Member.

15 81. Defendant thus required Plaintiff and the class to work under conditions prohibited
16 by order of the Industrial Welfare Commission, in violation of those orders.

17 82. The Class Members, including Plaintiff, suffered injury as a result of Defendants'
18 knowing and intentional failure to provide the Class Members, including Plaintiff, with the wage
19 and hour statements required by law.

20 83. Based on Defendant's conduct as alleged herein, Defendant is liable for actual
21 damages, statutory damages and/or statutory penalties pursuant to Labor Code §226, attorney's fees
22 and costs.

23 **EIGHTH CAUSE OF ACTION**

24 **CIVIL PENALTIES UNDER LABOR CODE §§ 2698-2699**

25
26 84. Plaintiff re-alleges and incorporates each and every one of the allegations of all
27 preceding paragraphs contained in paragraphs, inclusive of this Complaint, as if fully set forth
28 herein.

1 85. Labor Code §§2698 - 2699, the Labor Code Private Attorney General Act of 2004,
2 provides for a civil penalty to be assessed and collected by the Labor and Workforce Development
3 Agency (LWDA), or any of its departments, divisions, commissions, boards, agencies or
4 employees for a violation of the Labor Code, may be recovered through a civil action by an
5 aggrieved employee on behalf of himself or herself, and collectively on behalf of all other current
6 or former employees.

7 86. Whenever the LWDA, or any of its departments, divisions, commissions, boards
8 agencies or employees, has discretion to assess a civil penalty, a court in a civil action is
9 authorized to exercise the same discretion, subject to the same limitations and conditions to assess
10 a civil penalty.

11 87. Plaintiff, and all hourly non-exempt employees of Defendants are "aggrieved
12 employees" as defined by Labor Code §2699, in that they are all current or former employees of
13 Defendants, and one or more of the alleged violations was committed against them.

14 88. Prior to filing this Complaint, Plaintiff gave written notice to the LWDA on or
15 about July 13, 2021, via mandatory online filing through the State of California LWDA/
16 Department of Industrial Relations website with a copy to the employer via certified mail, of the
17 specific provisions of this code alleged to have been violated, including listing some facts and
18 some theories to support the alleged violations as required by Labor Code §2699.3; A true and
19 correct copy of the letter is attached hereto as **Exhibit 1**. Plaintiff alleges that she has exhausted
20 all administrative remedies and filed the herein complaint 65 days after mailing said notice. At the
21 date of filing this Complaint, the LWDA has not responded with any intention to investigate. As
22 such, Plaintiff has exhausted her administrative requirements pursuant to LC §2699.3(a)(1) and (2)
(A-C).

23 89. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on
24 behalf of themselves and other current or former employees, to bring a civil action to recover civil
25 penalties pursuant to the procedures specified in California Labor Code § 2699.3.

26 90. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the aggrieved
27 employees are entitled to recover civil penalties for each of the Defendant's violations of
28 California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, and 1194, 1197, and 1198
during the applicable limitations period in the following amounts:

- 1 a. For violations of California Labor Code § 204, one hundred dollars
2 (\$100.00) for each aggrieved employee for each initial violation and two hundred
3 dollars (\$200.00) for each aggrieved employee plus twenty-five percent (25%) of
4 the amount unlawfully withheld from each aggrieved employee for each subsequent,
5 willful or intentional violation (penalty amounts established by California Labor
6 Code § 210).
- 7 b. For violations of California Labor Code § 226(a), two hundred fifty dollars
8 (\$250.00) per employee for initial violation and one thousand dollars (\$1,000.00)
9 per employee for each subsequent violation (penalty amounts established by
10 California Labor Code § 226.3).
- 11 c. For violations of California Labor Code § 512, fifty dollars (\$50.00) for each
12 aggrieved employee for each initial violation for pay period for which the employee
13 was underpaid in addition to an amount sufficient to recover unpaid wages and one
14 hundred dollars (\$100.00) for each underpaid employee for each pay period for
15 which the employee was underpaid (penalty amounts established by California
16 Labor Code § 558).
- 17 d. For violations of California Labor Code § 1197, one hundred dollars
18 (\$100.00) for each aggrieved employee for each initial and intentional violation per
19 pay period (regardless of whether the initial violations were intentionally
20 committed) and two hundred fifty dollars (\$250.00) for each aggrieved employee for
21 each subsequent violation per pay period (regardless of whether the initial violations
22 were intentionally committed), in addition to an amount sufficient to recover unpaid
23 wages, liquidated damages pursuant to California Labor Code § 1194.2, and
24 applicable penalties imposed pursuant to California Labor Code § 203.
- 25 e. For violations of California Labor Code §§ 201, 202, 203, and 226.7, one
26 hundred dollars (\$100.00) for each aggrieved employee per pay period for each
27 initial violation and two hundred dollars (\$200.00) for each aggrieved employee per
28 pay period for each subsequent violation (penalty amounts established by California

1 Labor Code § 2699(f)(2)).

2 f. Penalties under Code of Regulations, Title 8 § 11070 or other applicable
3 Code of Regulations in the amount of \$50 for each aggrieved employee per pay
4 period for the initial violation, and \$100 for each aggrieved employee per pay period
5 for each subsequent violation;

6 g. Penalties under Labor Code § 210, in addition to and entirely independent
7 and apart from other penalty provided in the Labor Code, in the amount of \$100 for
8 each aggrieved employee per pay period for each violation, and \$200 for each
9 aggrieved employee per pay period for each subsequent violation, plus 25% of the
10 wage wrongly withheld;

11 h. Penalties under Labor Code § 256, in addition to and entirely independent
12 and apart from other penalty provided in the Labor Code, including Labor Code
13 § 2699, et seq., for any aggrieved employee who was discharged or quit, and was not
14 paid all earned wages at termination in accordance with Labor Code §§ 201, 201.1,
15 201.5, 202, and 205.5, in the amount of a civil penalty of one day of pay, at the same
16 rate, for each day that he or she was paid late, until payment was/is made, up to a
17 maximum of thirty (30) days;

18 i. Penalties under Labor Code § 558, in addition to and entirely independent
19 and apart from other penalty provided in the Labor Code, in the amount of \$50 for
20 each underpaid aggrieved employee for each pay period the aggrieved employee
21 was underpaid, and \$100 for each subsequent violation for each underpaid employee
22 for each pay period for which the employee was underpaid pursuant to Labor Code
23 § 558 provided to the affected employees;

24 j. Penalties under Labor Code § 226.3, in addition to and entirely independent
25 and apart from other penalty provided in the Labor Code, in the amount of \$250 for
26 each aggrieved employee per pay period for each violation, and \$1,000 for each
27 aggrieved employee per pay period for each subsequent violation;

28 k. Any and all additional penalties and sums as provided by the Cal. Labor

1 Code and/or other statutes.

2 m. Penalties under Labor Code section 210 for the weekly pay violations.

3 91. Pursuant to California Labor Code §2699(g), Plaintiff and the aggrieved employees
4 are entitled to an award of civil penalties, reasonable attorney's fees and costs in connection with
5 their claims for civil penalties.

6 92. Plaintiff's PAGA claim is limited to the time period of April 29, 2021 to the present
7 as a result of the PAGA settlement reached in Ruvalcaba v. EM KMR LLC, San Bernardino
8 Superior Court Case No. CIVDS 2008937.

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiff prays:

11 1. That the Court determine this action may be maintained as a class action;

12 **As to the First Cause of Action:**

13 2. For an order preliminarily and permanently enjoining Defendants from engaging in
14 the practices challenged herein;

15 3. An order for full restitution of all monies, as necessary and according to proof, to
16 restore any and all monies withheld by the Defendant by means of the unfair practice complained
17 of herein. Plaintiff seeks, on behalf of the putative class, the appointment of a receiver, as
18 necessary. The restitution includes all monies retained as wages, as defined in Labor Code §§ 200,
19 et seq., 510, and 1194, and interest, and attorneys' fees as a result of the unfair business practices or
20 retained in violation of Labor Code §1198 and IWC Wage Order 5-2001;

21 4. For an order finding and declaring that Defendant's acts and practices as challenged
22 herein are unlawful, and unfair and/or fraudulent;

23 5. For an accounting, under administration of Plaintiff and subject to Court Review, to
24 determine the amount to be returned by Defendant and the amounts to be refunded to members who
25 are or were not paid all their wages due to Defendant's unfair business practices;

26 6. For the creation of an administrative process wherein each injured current and
27 former employee receives his or her back wages in the form of overtime pay or alternatively that
28 each current or former eligible employee may submit a claim in order to receive his/her money;

1 7. For an order requiring Defendant to make full restitution and payment pursuant to
2 B&PC Sections 17200, et seq. for unfair business practices that violate Labor Code §§ 200, et seq.,
3 510, and 1194;

4 8. For reasonable attorneys' fees under Code of Civil Procedure §1021.5 all other
5 appropriate declaratory and equitable relief;

6 9. For pre-judgment interest to the extent permitted by law;

7 10. For pre-judgment interest to the extent permitted by law and the California
8 Constitution;

9 11. For an order requiring Defendant to identify, by name, address and telephone
10 number of each person who worked as an hourly non-exempt employee for Defendant from four
11 (4) years before filing of the original complaint in this action through the time of judgment;

12 **As to the Second Cause of Action:**

13 12. That the Court grant to Plaintiff and the Class an award of unpaid minimum wages
14 or straight time wages; liquidated damages as allowed by statute; prejudgment interest on any
15 unpaid wages from the date such amounts were due; and for all legally authorized penalties.

16 13. For damages according to proof, as set forth in Labor Codes §§ 204, 218, 226, 510,
17 1194, and 1198 et seq., (and the applicable California Industrial Welfare Commission wage orders)
18 regarding wages due and owing;

19 14. For unpaid straight time wages pursuant to Labor Code §1194;

20 15. For pre-judgment interest as allowed by Labor Code §218.6, Labor Code §1194(a)
21 and CC §3287;

22 16. For an award of reasonable attorneys' fees and costs pursuant to Labor Code §218.5
23 and/or Labor Code §1194(a);

24 **As to the Third Cause of Action:**

25 17. One (1) hour of pay at each of the employees' regular rate of compensation for each
26 workday that a meal break was not provided, impeded, discouraged and/or dissuaded;

27 **As to the Fourth Cause of Action:**

28 18. One (1) hour of pay at each of the employees' regular rate of compensation for each

1 workday that a rest break was not provided, impeded, interrupted, discouraged and/or dissuaded;

2 **As to the Fifth Cause of Action:**

3 19. For reimbursement of all costs and losses necessarily incurred by Defendant's
4 requirement that employees use their own personal equipment during their shift, and purchase
5 required uniform items;

6 20. For prejudgment interest as allowed by Labor Code § 2802(b);

7 21. For an award of reasonable attorneys' fees and costs;

8 **As to the Sixth Cause of Action:**

9 22. For waiting time penalties for all former employees not timely paid their last pay
10 check, including vacation pay;

11 23. For reasonable attorneys' fees and costs;

12 **As to the Seventh Cause of Action:**

13 24. For recovery as authorized by Labor Code §226(e);

14 25. For an award of costs and reasonable attorneys' fees pursuant to Labor Code§226(e)
15 and/or §226(g);

16 **As to the Eighth Cause of Action:**

17 26. On behalf of all current and former employees, for all civil penalties authorized by
18 Labor Code Private Attorney General Act of 2004 as specified in California Labor Code §558 plus
19 Labor Code §1197.1 for former or current employees who are due wage payments;

20 27. For civil penalties per Labor Code §226.3 in the amount of \$250 for each aggrieved
21 employee per pay period for each violation, and \$1,000 for each aggrieved employee per pay
22 period for each subsequent violation;

23 28. For civil penalties per Labor Code §256 in the amount of one day of pay, at the
24 same rate, for each day that an aggrieved employee was paid late, at the time of termination, until
25 payment was/is made, up to a maximum of thirty (30) days;

26 29. For civil penalties, pursuant to Labor Code § 558 as follows:

27 (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for
28 each pay period for which the employee was underpaid;

1 (2) For each subsequent violation, one hundred dollars (\$100) for each
2 underpaid employee for each pay period for which the employee was underpaid;

3 30. For civil penalties under Labor Code §210, in addition to and entirely independent
4 and apart from other penalty provided in the Labor Code, in the amount of \$100 for each aggrieved
5 employee per pay period for each violation, and \$200 for each aggrieved employee per pay period
6 for each subsequent violation, plus 25% of the wage wrongly withheld;

7 31. For civil penalties under Labor Code §2699(f), in addition to and entirely
8 independent and apart from other penalty provided in the Labor Code and for Labor Code
9 violations without a specific civil penalty, in the amount of \$100 for each aggrieved employee per
10 pay period for each violation, and \$200 for each aggrieved employee per pay period for each
11 subsequent violation.

12 **As to All Causes of Action:**

13 32. For such other and further relief as this Court may deem just and proper.

14
15 Further, Plaintiff demands a trial by jury.

16
17 Date: January 24, 2022

JANELLE CARNEY – ATTORNEY AT LAW, APC

18
19 By:

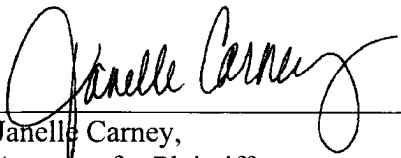

Janelle Carney,
Attorney for Plaintiff
Isabella Caro

Exhibit 1



PAGA Administrator
CA Labor and Workforce Development Agency
1515 Clay Street, Suite 801
Oakland, CA 94612
Via: <http://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html>

EM KMR LLC
Dba: Chick-fil-A/ Colonies Crossroads FSU (01544)
1949 N. Campus Ave.
Upland, CA 91784-1667
Via: Certified U.S. Mail/ Return Receipt Requested

Re: Isabella Caro v. EM KMR LLC dba Chick-fil-A/ Colonies Crossroads FSU (01544)

**NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO
LABOR CODE SECTION §§ 2699, *et seq.***

To: California Labor and Workforce Development Agency and EM KMR LLC
dba Chick-fil-A/ Colonies Crossroads FSU (01544)

From: Isabella Caro, on behalf of herself and all aggrieved employees who were subject to the
employer's wage and hour policies as set forth below.

Please be advised that Janelle Carney – Attorney at Law, APC represents Isabella Caro
and all other aggrieved employees (“Plaintiff”) with respect to their employment with EM KMR
LLC dba Chick-fil-A/ Colonies Crossroads FSU (01544) (hereinafter referred to as “EM KMR”)

Ms. Caro believes and alleges that EM KMR has committed numerous violations of the
California Labor Code, including, but not limited to, §§ 200, *et seq.*, 226, 226.7, 510, 512, 1194,
1194.2, 1197, 1198, and 2802. The facts and theories to support the alleged violations are set
forth herein.

FACTUAL STATEMENT

Please note that this firm represents the interests of Isabella Caro, a former hourly
employee of EM KMR who worked at EM KMR and all other aggrieved employees who
are/were non-exempt hourly employees for EM KMR. Plaintiff seeks to represent herself and all
hourly non-exempt aggrieved employees for the following Labor Code violations.

July 13, 2021

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THEORIES OF LABOR CODE VIOLATIONS AND REMEDIES**A. Underpayment of Wages**

Plaintiff, Isabella Caro, is a former hourly employee of EM KMR. Ms. Caro intends to sue EM KMR on behalf of herself and all non-exempt hourly employees of EM KMR. Ms. Caro does not yet know the specific job titles of all non-exempt persons. During her employment, EM KMR failed to pay Ms. Caro and other aggrieved employees the proper amount of straight time and overtime wages. EM KMR has violated various sections of the Labor Code, including §§ 510, 1194, and 1198, by failing to provide Plaintiff and all other aggrieved employees daily straight time, minimum wages and/or overtime compensation for all hours worked, including over 8 hours in a day and/or 40 hours in a week without a valid overtime exemption.

Here, EM KMR failed to pay Ms. Caro and the Aggrieved Employees for all hours they worked. Specifically, EM KMR required Ms. Caro and the Aggrieved Employees to perform work off-the-clock. Specifically, for shifts on Sunday for cleaning, for hours in excess of eight (8) in a day or forty (40) in a week, including having employees clock out before they reached the tenth (10th) hour and required them to keep working, so EM KMR could avoid providing a second meal on shifts in excess of ten (10) hours. EM KMR had a practice of regularly requiring employees to work off the clock.

B. Meal and Rest Breaks**1. Meal Break Claims**

EM KMR also failed to provide Ms. Caro and the aggrieved employees with meal and rest periods under California law. EM KMR failed to adopt, implement, and enforce a uniform meal period policy that complied with California law. For example, Ms. Caro alleges that she and the aggrieved employees were not provided timely meal periods for every five (5) hours worked, due to understaffing, no relief personnel, and heavy workload. Defendant also would not provide a second meal on shift in excess of ten (10) hours. Further, EM KMR failed to pay Ms. Caro and the aggrieved employees one hour of pay at their regular rate for those missed meals.

As a result of EM KMR's meal period violations, EM KMR has violated Labor Code § 512 and 226.7 and the applicable Industrial Welfare Commission wage order.

2. Rest Breaks Claims

EM KMR fails to authorize and permit employees from taking compliant rest periods by failing to authorize and permit a rest period for every four (4) hours or major fraction thereof. EM KMR failed to provide its hourly employees with relief in order to take duty-free rest periods, failed to authorize and permit hourly employees from taking timely ten (10) minute rest periods, and/or failed to pay the one hour of pay at the regular rate for said missed rest breaks .

July 13, 2021

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C. Wage Statement Violations

Ms. Caro alleges that EM KMR willfully failed to provide accurate itemized wage statements to her and other aggrieved employees pursuant to Labor Code § 226. Specifically, EM KMR wage statements fail to include accurate information and are uniform for all employees. This is a derivative and stand-alone claim as EM KMR's pay stubs do not contain required elements of Labor Code §226, including total hours worked.

D. Waiting Time Penalties

EM KMR willfully failed and refused to timely pay all compensation due and owing to all employees who were terminated during the relevant time period, by failing to pay proper overtime premium and straight time and minimum wages, failing to pay Ms. Caro and the Aggrieved Employees for time worked during meal periods, failing to pay for an extra hour at the employee's regular rate because EM KMR failed to provide compliant meal or rest periods. This claim is both stand-alone and derivative, as Ms. Caro was terminated and was not paid her final check until a week after her termination. As such, EM KMR is liable for accrued wages due, and waiting time penalties owed, in accordance with Labor Code §§ 201, 202, 203, and 256.

E. LC §2802

In addition to the aforementioned, EM KMR required Ms. Caro and aggrieved employees to pay for their own Chick-fil-A raincoats, and/or other required uniforms, without reimbursement. Further, Ms. Caro and other hourly employees were required to use their personal cell phones for work-related communications without reimbursement for the use of their personal phones. As such, Ms. Caro seeks reimbursement of said out of pocket costs and penalties for requiring its employees to bear the burden of Defendant's expenses, accordingly.

Pursuant to Labor Code § 2699.3, the undersigned, on behalf of Isabella Caro and all other aggrieved employees, is hereby written notice of the alleged Labor Code violations.

Reservation of Rights

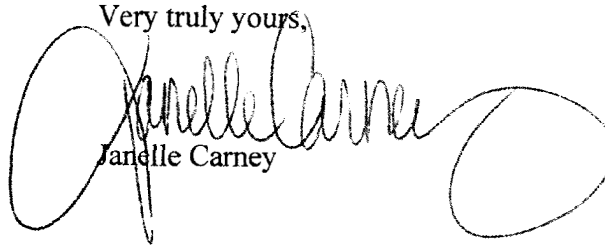
The facts and claims contained herein are based on the information available at the time of this writing. Therefore, if through discovery and/or expert review, Ms. Caro becomes aware of additional compensation owed or losses incurred by Ms. Caro or by any other aggrieved employee of EM KMR, Ms. Caro expressly reserves the right to revise these facts and/or add any new claims by amending the claim letter or by adding applicable causes of action to the complaint which will relate back to the date of this letter.

July 13, 2021

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Please advise the undersigned if the agency intends to investigate the alleged violations. If not, Ms. Caro intends to pursue her claims and those of the aggrieved employees under PAGA in a civil lawsuit. Please also consider this letter as providing notice on behalf of other aggrieved employees working for EM KMR that were subject to the same Labor Code violations described above.

Very truly yours,

A handwritten signature in black ink, appearing to read "Janelle Carney", with a large, stylized loop at the end.

Janelle Carney

JC/jw

[PROPOSED] ORDER

Pursuant to the parties' Stipulation, IT IS ORDERED:

1. Plaintiff may file her Second Amended Complaint (SAC) attached as Exhibit 1 to the parties' Stipulation;
2. Defendant's Answer to Plaintiff's Second Amended Complaint is stayed pending the parties' mediation, set for March 24, 2021. If the parties are unable to reach an agreement at mediation, Defendant's Answer or responsive pleading will be due on April 25, 2022.

Dated: JAN 16 2022

DONALD ALVAREZ

Hon. Donald Alvarez,
Judge of the San Bernardino Superior Court

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SAN BERNARDINO

I am employed in the County of San Bernardino, State of California. I am over the age of eighteen (18) and not a party to the within action; my business address is 14758 Pipeline Avenue, Suite E, Second Floor, Chino Hills, CA 91709-6025.

On January 24, 2022, I served the foregoing document described as:

**STIPULATION AND [PROPOSED] ORDER TO ALLOW PLAINTIFF TO
FILE SECOND AMENDED COMPLAINT**

on INTERESTED PARTIES in this action by placing a copy thereof enclosed in a sealed envelope addressed as stated below:

Lonnie D. Giamela (SBN 228435)
E-Mail: lgiamela@fisherphillips.com
Amy J. Choe (SBN 299870)
E-Mail: achoe@fisherphillips.com
FISHER & PHILLIPS LLP
444 South Flower Street, Suite 1500
Los Angeles, California 90071

XX BY E-MAIL : I electronically served the above-mentioned document to each of the above recipients at their respective e-mail addresses. My e-address is: Janelle@JanelleCarneyLaw.com

Executed on January 24, 2022 at Chino Hills, California.

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


Janelle Carney