

1 DAVID G. SPIVAK (SBN 179684)
2 david@spivaklaw.com

3 MAYA CHEAITANI (SBN 335777)
4 maya@spivaklaw.com

5 THE SPIVAK LAW FIRM

6 8605 Santa Monica Bl

7 PMB 42554

8 West Hollywood, CA 90069

9 Telephone: (213) 725-9094

10 Facsimile: (213) 634-2485

11 Attorneys for Plaintiff,

12 MARIA ELENA DIAZ HERNANDEZ, and all others similarly situated

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

14 **FOR THE COUNTY OF SACRAMENTO**

15 **(UNLIMITED JURISDICTION)**

16 MARIA ELENA DIAZ HERNANDEZ, on
17 behalf of herself, all others similarly situated, the
18 general public, and as an “aggrieved employee”
19 on behalf of other “aggrieved employees” under
20 the Labor Code Private Attorneys General Act of
21 2004,

22 *Plaintiff(s),*

23 vs.

24 GUITRON ALCAZAR ALCAZAR INC., a
25 California corporation doing business as El
26 Tapatio Mexican Cuisine; GUITRON
27 ALCAZAR III, INC, a California corporation;
28 GUITRON ALCAZAR IV, LLC, a California
limited liability company; and DOES 3–50,
inclusive,

Defendant(s).

Case No. 34-2021-00306648

**[PROPOSED] ORDER GRANTING
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Hearing Date: March 1, 2024

Hearing Time: 9:00 a.m.

Reservation No: A-306648-001

Hearing Dept.: 28, The Honorable
Lauri A. Damrell

Action filed: August 23, 2021



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

ADDITIONAL ATTORNEYS FOR PLAINTIFF(S)

WALTER L. HAINES (SBN 71075)

walter@uelglaw.com

UNITED EMPLOYEES LAW GROUP

8605 Santa Monica Bl.

PMB 63354

West Hollywood, CA 90069

Telephone: (562) 256-1047

Facsimile: (562) 256-1006

Attorneys for Plaintiff(s),

MARIA ELENA DIAZ HERNANDEZ, and all others similarly situated



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

1 The Motion of Plaintiff Maria Elena Diaz Hernandez (hereafter referred to as "Plaintiff")
2 for Preliminary Approval of a Class Action Settlement (the "Motion") was considered by the
3 Court, The Honorable Lauri A. Damrell presiding. The Court having considered the Motion, the
4 Class Action and PAGA Settlement Agreement and Class Notice ("Settlement" or "Settlement
5 Agreement"), and supporting papers, HEREBY ORDERS THE FOLLOWING:

6 1. The Court grants preliminary approval of the Settlement and the Settlement Class
7 based upon the terms set forth in the Settlement filed as an Exhibit to the Motion for Preliminary
8 Approval. All terms herein shall have the same meaning as defined in the Settlement. The Court
9 has determined only that there is sufficient evidence to suggest that the proposed settlement
10 might be fair, adequate, and reasonable, and that any final determination of those issues
11 will be made at the final hearing. The Court will make a determination at the hearing on the
12 motion for final approval of class action settlement (the "Final Approval Hearing") as to whether
13 the Settlement is fair, adequate and reasonable to the Settlement Class.

14 2. For purposes of this Preliminary Approval Order, the "Settlement Class" means
15 all persons employed by Defendants in California and classified as non-exempt, hourly employees
16 who worked for Defendants (collectively "Class Members"), who worked anytime during the
17 Class Period. The "Class Period" shall mean the period from August 23, 2017 through the date of
18 the order preliminarily approving the Settlement.

19 3. Based on its records, Defendants estimate that, as of the date of the Settlement
20 Agreement, (1) there are 611 Class Members and 23,061.00 Total Work Weeks during the Class
21 period and (2) there were 305 Aggrieved Employees who received 8,474 Pay Period during the
22 PAGA Period. If the Work Weeks and/or Class Members as of the date the Court approves the
23 settlement exceeds the referenced 23,061 Work Weeks and/or 611 Class Members by more than
24 10.00%, the Gross Settlement Amount, including the Class Counsel Fees Payment, the Class
25 Representative Service Payment, and the LWDA payment, will increase proportionally according
26 to the number of additional Work Weeks or Class Members, whichever results in a higher increase
27 in the Gross Settlement Amount. In the alternative, in the event that this escalator provision is
28 triggered, then Defendants have the option to elect to end the Class Period so as to have an earlier



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

1 end date at the Defendants’ discretion in order to limit the covered workweeks to 25,368 in lieu
2 of paying an increase to the Settlement Amount. The Settlement Administrator will calculate the
3 workweeks worked by the Class Members during the Class Period, the amount to be paid pro
4 rata, and the individual settlement payments to eligible Class Members. Defendants’ data will be
5 presumed to be correct, unless a particular Class Member proves otherwise to the Settlement
6 Administrator by credible evidence. All disputes as to workweeks worked will be resolved and
7 decided by the Settlement Administrator and the Settlement Administrator’s decision on all
8 disputes as to workweeks worked will be final and non-appealable.

9 4. “Effective Date” means the date by when both of the following have occurred: (a)
10 the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the
11 Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no
12 Participating Class Member objects to the Settlement, the day the Court enters Judgment; (b) if
13 one or more Participating Class Members objects to the Settlement, the day after the deadline for
14 filing a notice of appeal from the Judgment; or if a timely appeal from the Judgment is filed, the
15 seventh calendar day after any appellate proceeding opposing the settlement has been finally
16 dismissed with no material changes to the terms of this settlement and there is no right to pursue
17 further remedies.

18 5. This action is provisionally certified pursuant to section 382 of the California Code
19 of Civil Procedure and Rule 3.760, et seq. of the California Rules of Court as a class action for
20 purposes of settlement only with respect to the proposed Settlement Class.

21 6. Not later than 15 days after the Court grants Preliminary Approval of the
22 Settlement, Defendants will simultaneously deliver the Class Data to the Administrator, in the
23 form of a Microsoft Excel spreadsheet. To protect Class Members’ privacy rights, the
24 Administrator must maintain the Class Data in confidence, use the Class Data only for purposes
25 of the Settlement and for no other purpose, and restrict access to the Class Data to Administrator
26 employees who need access to the Class Data to effect and perform under the Settlement
27 Agreement. Defendants have a continuing duty to immediately notify Class Counsel if they
28 discover that the Class Data omitted class member identifying information and to provide



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

1 corrected or updated Class Data as soon as reasonably feasible. Without any extension of the
2 deadline by which Defendants must send the Class Data to the Administrator, the Parties and their
3 counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any
4 issues related to missing or omitted Class Data.

5 7. No later than three (3) business days after receipt of the Class Data, the
6 Administrator shall notify Class Counsel that the list has been received and state the number of
7 Class Members, PAGA Members, Work Weeks, and PAGA Paychecks in the Class Data.

8 8. Using best efforts to perform as soon as possible, and in no event later than 14
9 days after receiving the Class Data, the Administrator will send to all Class Members identified
10 in the Class Data, via first-class United States Postal Service (“USPS”) mail, the Class Notice
11 with Spanish translation substantially in the form attached to this Agreement as Exhibit A. The
12 first page of the Class Notice shall prominently estimate the dollar amounts of any Individual
13 Class Payment and/or Individual PAGA payment payable to the Class Member, and the number
14 of Work Weeks and PAGA Pay Periods (if applicable) used to calculate these amounts. Before
15 mailing Class Notices, the Administrator shall update Class Member addresses using the National
16 Change of Address database.

17 9. Not later than 3 business days after the Administrator’s receipt of any Class Notice
18 returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any
19 forwarding address provided by the USPS. If the USPS does not provide a forwarding address,
20 the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice
21 to the most current address obtained. The Administrator has no obligation to make further
22 attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the
23 USPS a second time.

24 10. Class Counsel’s contact information is David G. Spivak, Esq., The Spivak Law
25 Firm, 8605 Santa Monica Bl, PMB 42554, West Hollywood, CA 90069. Defense Counsel’s
26 contact information is Laura C. McHugh, Esq., Dugan McHugh Law Corporation, 641 Fulton
27 Ave, Ste 100, Sacramento, CA 95825.



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

1 11. The deadlines for Class Members' written objections, Challenges to Work Weeks
2 and/or Pay Periods, and Requests for Exclusion will be extended an additional 14 days beyond
3 the 60 days otherwise provided in the Class Notice for all Class Members whose notice is re-
4 mailed. The Administrator will inform the Class Member of the extended deadline with the re-
5 mailed Class Notice.

6 12. If the Administrator, any of the Defendants or Class Counsel is contacted by or
7 otherwise discovers any persons who believe they should have been included in the Class Data
8 and should have received Class Notice, the Parties will expeditiously meet and confer in person
9 or by telephone, and in good faith, in an effort to agree on whether to include them as Class
10 Members. If the Parties agree, such persons will be Class Members entitled to the same rights as
11 other Class Members, and the Administrator will send, via email or overnight delivery, a Class
12 Notice requiring them to exercise options under this Agreement not later than 14 days after receipt
13 of Class Notice, or the deadline dates in the Class Notice, which ever are later.

14 13. Requests for Exclusion. Class Members who wish to exclude themselves (opt-out
15 of) the Class Settlement must send the Administrator, by fax, email, or mail, a signed written
16 Request for Exclusion not later than 60 days after the Administrator mails the Class Notice (plus
17 an additional 14 days for Class Members whose Class Notice is re-mailed). A Request for
18 Exclusion is a letter from a Class Member or her representative that reasonably communicates the
19 Class Member's election to be excluded from the Settlement and includes the Class Member's
20 name, address and email address or telephone number. To be valid, a Request for Exclusion must
21 be timely faxed, emailed, or postmarked by the Response Deadline.

22 14. The Administrator may not reject a Request for Exclusion as invalid because it
23 fails to contain all the information specified in the Class Notice. The Administrator shall accept
24 any Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of
25 the person as a Class Member and the Class Member's desire to be excluded. The Administrator's
26 determination shall be final and not appealable or otherwise susceptible to challenge. If the
27 Administrator has reason to question the authenticity of a Request for Exclusion, the
28 Administrator may demand additional proof of the Class Member's identity. The Administrator's



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

determination of authenticity shall be final and not appealable or otherwise susceptible to challenge.

15. Every Class Member who does not submit a timely and valid Request for Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all benefits and bound by all terms and conditions of the Settlement, including the Participating Class Members' Releases under Paragraphs 6.2 and 6.3 of this Agreement, regardless of whether the Participating Class Member actually receives the Class Notice or objects to the Settlement.

Every Class Member who submits a valid and timely Request for Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment or have the right to object to the class action components of the Settlement. Because future PAGA claims are subject to claim preclusion upon entry of the Judgment, Non-Participating Class Members who are Aggrieved Employees are deemed to release the claims identified in Paragraph 6.4 of this Agreement and are eligible for an Individual PAGA payment.

16. Challenges to Calculation of Work Weeks. Each Class Member shall have 60 days after the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class Notice is re-mailed) to challenge the number of Class Work Weeks and PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice. The Class Member may challenge the allocation by communicating with the Administrator via fax, email or mail. The Administrator must encourage the challenging Class Member to submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the Work Weeks contained in the Class Notice are correct so long as they are consistent with the Class Data. The Administrator's determination of each Class Member's allocation of Work Weeks and/or Pay Periods shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall promptly provide copies of all challenges to calculation of Work Weeks and/or Pay Periods to Defense Counsel and Class Counsel and the Administrator's determination the challenges.

17. Objections to Settlement. Only Participating Class Members may object to the class action components of the Settlement and/or this Agreement, including contesting the



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

1 fairness of the Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class
2 Counsel Litigation Expenses Payment and/or Class Representative Service Payment.

3 18. Participating Class Members may send written objections to the Administrator,
4 by fax, email, or mail. In the alternative, Participating Class Members may appear in Court (or
5 hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing.
6 A Participating Class Member who elects to send a written objection to the Administrator must
7 do so not later than 60 days after the Administrator's mailing of the Class Notice (plus an
8 additional 14 days for Class Members whose Class Notice was re-mailed).

9 19. Non-Participating Class Members have no right to object to any of the class action
10 components of the Settlement.

11 20. Not later than 14 days before the date by which Plaintiff is required to file the
12 Motion for Final Approval of the Settlement, the Administrator will provide to Class Counsel and
13 Defense Counsel, a signed declaration suitable for filing in Court attesting to its due diligence and
14 compliance with all of its obligations under this Agreement, including, but not limited to, its
15 mailing of Class Notice, the Class Notices returned as undelivered, the re-mailing of Class
16 Notices, attempts to locate Class Members, the total number of Requests for Exclusion from
17 Settlement it received (both valid or invalid), the number of written objections and attach the
18 Exclusion List. The Administrator will supplement its declaration as needed or requested by the
19 Parties and/or the Court. Class Counsel is responsible for filing the Administrator's declaration(s)
20 in Court.

21 21. The Court approves, as to form and content, the Class Notice in substantially the
22 form attached as Exhibit A to this Order.

23 22. The Court approves, for settlement purposes only, David G. Spivak of The Spivak
24 Law Firm and Walter L. Haines of United Employees Law Group as Class Counsel.

25 23. The Court approves, for settlement purposes only, Maria Elena Diaz as the Class
26 Representative.

27 24. The Court approves CPT Group, Inc. as the Administrator.
28



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

1 25. The Court preliminarily approves Class Counsel's request for attorneys' fees and
2 costs subject to final review by the Court.

3 26. The Court preliminarily approves the estimated Administrator costs payable to the
4 Administrator subject to final review by the Court.

5 27. The Court preliminarily approves Plaintiff's Class Representative Service
6 Payment subject to final review by the Court.

7 28. A Final Approval Hearing shall be held on _____ at
8 _____.m. in Department 28 of the Superior Court for the State of California, County of
9 Sacramento, located at the Gordon D. Schaber Sacramento County Courthouse, 720 9th St,
10 Sacramento, CA 95814, to consider the fairness, adequacy and reasonableness of the proposed
11 Settlement preliminarily approved by this Preliminary Approval Order, and to consider the
12 application of Class Counsel for attorneys' fees and costs and the Class Representative Service
13 Payment to the Class Representative. The notice of motion and all briefs and materials in support
14 of the motion for final approval of class action settlement and motion for attorneys' fees and
15 litigation costs shall be served and filed with this Court on or before _____.
16 Plaintiff's counsel must give notice to any objecting party of any continuance of the hearing of
17 the motion for final approval.

18 29. If for any reason the Court does not execute and file a Final Approval Order and
19 judgment, or if the Effective Date, as defined in the Settlement, does not occur for any reason, the
20 proposed Settlement that is the subject of this order, and all evidence and proceedings had in
21 connection therewith, shall be without prejudice to the status quo ante rights of the Parties to the
22 litigation, as more specifically set forth in the Settlement.

23
24 ///

25
26 ///

27
28 ///



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

1 30. The Court expressly reserves the right to adjourn or continue the Final Approval
2 Hearing from time to time without further notice to members of the Class. The Plaintiff shall give
3 prompt notice of any continuance to Settlement Class Members who object to the Settlement.

4 **IT IS SO ORDERED.**

5
6 _____
7 **DATE**

8 **THE HONORABLE LAURI A. DAMRELL**
9 **JUDGE OF THE SUPERIOR COURT**



26 **SPIVAK LAW**
EMPLOYEE RIGHTS

27 Mail:
28 8605 Santa Monica Bl
 PMB 42554
 West Hollywood, CA 90069
 (213) 725-9094 Tel
 (213) 634-2485 Fax
 SpivakLaw.com

 Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

EXHIBIT A

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

***The Superior Court for the State of California authorized this Notice. Read it carefully!
It's not junk mail, spam, an advertisement, or solicitation by a lawyer. You are not being sued.***

The proposed Settlement has two main parts: (1) a Class Settlement requiring Defendants to fund Individual Class Payments, and (2) a PAGA Settlement requiring Defendants to fund Individual PAGA payments and pay penalties to the California Labor and Workforce Development Agency (“LWDA”).

The above estimates are based on Defendants' records showing that **you worked [REDACTED] Work Weeks** during the Class Period and **you worked [REDACTED] Pay Periods** during the PAGA Period. If you believe that you worked more Work Weeks during either period, you can submit a challenge by the deadline date. See Section 4 of this Notice.

If you worked for Defendants during the Class Period and/or the PAGA Period, you have two basic options under the Settlement:

(1) **Do Nothing.** You don't have to do anything to participate in the proposed Settlement and be eligible for an Individual Class Payment and/or an Individual PAGA payment. As a Participating Class Member, though, you will give up your right to assert Class Period wage claims and PAGA Period penalty claims against Defendants.

(2) **Opt-Out of the Class Settlement.** You can exclude yourself from the Class Settlement (opt-out) by submitting the written Request for Exclusion or otherwise notifying the Administrator in writing. If you opt-out of the Settlement, you will not receive an Individual Class Payment. You will, however, preserve your right to personally pursue Class Period wage claims against Defendants, and, if you are an Aggrieved Employee, remain eligible for an Individual PAGA payment. You cannot opt-out of the PAGA portion of the proposed Settlement.

Defendants will not retaliate against you for any actions you take with respect to the proposed Settlement.

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

You Don't Have to Do Anything to Participate in the Settlement	If you do nothing, you will be a Participating Class Member, eligible for an Individual Class Payment and an Individual PAGA payment (if any). In exchange, you will give up your right to assert the wage claims against Defendants that are covered by this Settlement (Released Claims).
You Can Opt-out of the Class Settlement but not the PAGA Settlement The Opt-out Deadline is	If you don't want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion. Once excluded, you will be a Non-Participating Class Member and no longer eligible for an Individual Class Payment. Non-Participating Class Members cannot object to any portion of the proposed Settlement. See Section 6 of this Notice. You cannot opt-out of the PAGA portion of the proposed Settlement. Defendants must pay Individual PAGA payments to all Aggrieved Employees and the Aggrieved Employees must give up their rights to pursue Released Claims (defined below).
Participating Class Members Can Object to the Class Settlement but not the PAGA Settlement Written Objections Must be Submitted by	All Class Members who do not opt-out ("Participating Class Members") can object to any aspect of the proposed Settlement. The Court's decision whether to finally approve the Settlement will include a determination of how much will be paid to Class Counsel and Plaintiff who pursued the Action on behalf of the Class. You are not personally responsible for any payments to Class Counsel or Plaintiff, but every dollar paid to Class Counsel and Plaintiff reduces the overall amount paid to Participating Class Members. You can object to the amounts requested by Class Counsel or Plaintiff if you think they are unreasonable. See Section 7 of this Notice.

You Can Participate in the [REDACTED] Final Approval Hearing	The Court’s Final Approval Hearing is scheduled to take place on [REDACTED]. You don’t have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court’s virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing. See Section 8 of this Notice.
You Can Challenge the Calculation of Your Work Week / Pay Periods Written Challenges Must be Submitted by [REDACTED]	The amount of your Individual Class Payment and LWDA PAGA payment (if any) depend on how many Work Weeks you worked at least one day during the Class Period and how many Pay Periods you worked at least one day during the PAGA Period, respectively. The number Class Period Work Weeks and number of PAGA Period Pay Periods you worked according to Defendants’ records is stated on the first page of this Notice. If you disagree with either of these numbers, you must challenge it by [REDACTED]. See Section 4 of this Notice.

1. WHAT IS THE ACTION ABOUT?

Plaintiff is a former employee of Defendants. The Action accuses Defendants of violating California labor laws by failure to provide meal periods, failure to authorize and permit rest periods, failure to issue proper wage statements, failure to timely pay wages, failure to maintain required payroll records, and related violations of the Labor Code. Based on the same claims, Plaintiff has also asserted a claim for civil penalties under the California Private Attorneys General Act (Labor Code §§ 2698, et seq.) (“PAGA”). Plaintiff is represented by attorneys in the Action: David G. Spivak of The Spivak Law Firm, and Walter L. Haines of United Employees Law Group, PC (“Class Counsel.”)

Defendants strongly deny violating any laws or failing to pay any wages and contend they complied with all applicable laws.

2. WHAT DOES IT MEAN THAT THE ACTION HAS SETTLED?

So far, the Court has made no determination whether Defendants or Plaintiff is correct on the merits. In the meantime, Plaintiff and Defendants hired an experienced, neutral mediator in an effort to resolve the Action by negotiating an to end the case by agreement (settle the case) rather than continuing the expensive and time-consuming process of litigation. The negotiations were successful. By signing a lengthy written settlement agreement (“Agreement”) and agreeing to jointly ask the Court to enter a judgment ending the Action and enforcing the Agreement, Plaintiff and Defendants have negotiated a proposed Settlement that is subject to the Court’s Final Approval. Both sides agree the proposed Settlement is a compromise of disputed claims. By agreeing to settle, Defendants do not admit any violations or concede the merit of any claims.

Plaintiff and Class Counsel strongly believe the Settlement is a good deal for you because they believe that: (1) Defendants have agreed to pay a fair, reasonable and adequate amount considering the strength of the claims and the risks and uncertainties of continued litigation; and

(2) Settlement is in the best interests of the Class Members and Aggrieved Employees. The Court preliminarily approved the proposed Settlement as fair, reasonable and adequate, authorized this Notice, and scheduled a hearing to determine Final Approval.

3. WHAT ARE THE IMPORTANT TERMS OF THE PROPOSED SETTLEMENT?

1. Defendants Will Pay \$685,000.00 as the Gross Settlement Amount (Gross Settlement). Defendants have agreed to deposit the Gross Settlement into an account controlled by the Administrator of the Settlement. The Administrator will use the Gross Settlement to pay the Individual Class Payments, Individual PAGA payments, Class Representative Service Payment, Class Counsel's attorney's fees and expenses, the Administrator's expenses, and penalties to be paid to the California Labor and Workforce Development Agency ("LWDA"). Assuming the Court grants Final Approval, Defendants will begin to fund the Gross Settlement as follows: Within thirty (30) calendar days of the Effective Date, Defendants shall pay the first of two (2) equal \$342,500.00 installment payments on the Gross Settlement Amount into the Settlement Account and shall pay the remaining \$342,500.00 installment payment within 180 days of the first installment payment. The Administrator will make a distribution after each installment payment as follows:

First Distribution. Within fourteen (14) calendar days of the Effective Date, or within ten (10) calendar days of the deadline for the First payment (whichever is later), the Settlement Administrator shall distribute, *pro rata*, the portion of the Gross Settlement Amount Defendants paid by that date, including *pro rata* portions of the Individual Class Payments, Individual PAGA Payments, LWDA PAGA payment, Class Representative Service Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Administrator's expenses.

Second Distribution. Within ten (10) calendar days of the Second Installment Payment, the Settlement Administrator shall distribute, *pro rata*, the portion of the Gross Settlement Amount Defendants paid since the first distribution, including *pro rata* portions of the Individual Class Payments, Individual PAGA Payments, LWDA PAGA payment, Class Representative Service Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Administrator's expenses.

2. Disbursements of the pro rata portions of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment and the Class Representative Service Payment shall not precede disbursement of pro rata portions of the Individual Class Payments and Individual PAGA payments.

3. The Judgment will be final on the date the Court enters Judgment, or a later date if Participating Class Members object to the proposed Settlement or the Judgment is appealed.

4. Court Approved Deductions from Gross Settlement. At the Final Approval Hearing, Plaintiff and/or Class Counsel will ask the Court to approve the following deductions from the Gross Settlement, the amounts of which will be decided by the Court at the Final Approval Hearing:

A. Up to \$228,333.30 (33.33% of the Gross Settlement to Class Counsel for

1 attorneys' fees and up to \$20,000.00 for their litigation expenses. To date, Class Counsel have
2 worked and incurred expenses on the Action without payment.

3 B. Up to \$15,000.00 as a Class Representative Award to Plaintiff for filing
4 the Action, working with Class Counsel and representing the Class. A Class Representative
5 Award will be the only monies Plaintiff will receive other than her Individual Class Payment and
6 any Individual PAGA payment.

7 C. Up to \$25,000.00 to the Administrator for services administering the
8 Settlement.

9 D. Up to \$4,000.00 for PAGA Penalties, allocated 75% to the LWDA PAGA
10 payment and 25% in Individual PAGA payments to the Aggrieved Employees based on their
11 PAGA Period Pay Periods.

12 Participating Class Members have the right to object to any of these deductions. The Court
13 will consider all objections.

14 If the Work Weeks and/or Class Members as of the date the Court approves the settlement
15 exceeds the referenced 23,061 Work Weeks and/or 611 Class Members by more than 10.00%,
16 the Gross Settlement Amount, including the Class Counsel Fees Payment, the Class
17 Representative Service Payment, and the LWDA payment, will increase proportionally according
18 to the number of additional Work Weeks or Class Members, whichever results in a higher increase
19 in the Gross Settlement Amount.

20 5. Net Settlement Distributed to Class Members. After making the above deductions
21 in amounts approved by the Court, the Administrator will distribute the rest of the Gross
22 Settlement (the "Net Settlement") by making Individual Class Payments to Participating Class
23 Members based on their Class Period Work Weeks.

24 6. Taxes Owed on Payments to Class Members. Plaintiff and Defendants are asking
25 the Court to approve an allocation of 20.00% of each Individual Class Payment to taxable wages
26 ("Wage Portion") and 80.00% to interest and penalties ("Non-Wage Portion."). The Wage Portion
27 is subject to withholdings and will be reported on IRS W-2 Forms. Defendants will separately
28 pay employer payroll taxes they owes on the Wage Portion. The Individual PAGA payments are
counted as penalties rather than wages for tax purposes. The Administrator will report the
Individual PAGA payments and the Non-Wage Portions of the Individual Class Payments on IRS
1099 Forms.

Although Plaintiff and Defendants have agreed to these allocations, neither side is giving
you any advice on whether your Payments are taxable or how much you might owe in taxes. You
are responsible for paying all taxes (including penalties and interest on back taxes) on any
Payments received from the proposed Settlement. You should consult a tax advisor if you have
any questions about the tax consequences of the proposed Settlement.

7. Need to Promptly Cash Payment Checks. The front of every check issued for

1 Individual Class Payments and Individual PAGA payments will show the date when the check
2 expires (the void date). If you don't cash it by the void date, your check will be automatically
cancelled, and the monies

3 ☒ will be deposited with the California Controller's Unclaimed Property Fund in your
4 name.

5 ☐ will irrevocably lost to you because they will be paid to a non-profit organization or
6 foundation ("Cy Pres").

7 If the monies represented by your check is sent to the Controller's Unclaimed Property,
8 you should consult the rules of the Fund for instructions on how to retrieve your money.

9 8. Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated
10 as a Participating Class Member, participating fully in the Class Settlement, unless you notify the
11 Administrator in writing, not later than [REDACTED], that you wish to opt-out. The easiest way to notify
12 the Administrator is to send a written and signed Request for Exclusion by the [REDACTED] Response
13 Deadline. The Request for Exclusion should be a letter from a Class Member or her representative
14 setting forth a Class Member's name, present address, telephone number, and a simple statement
15 electing to be excluded from the Settlement. Excluded Class Members (i.e., Non-Participating
16 Class Members) will not receive Individual Class Payments, but will preserve their rights to
17 personally pursue wage and hour claims against Defendants.

18 You cannot opt-out of the PAGA portion of the Settlement. Class Members who exclude
19 themselves from the Class Settlement (Non-Participating Class Members) remain eligible for
20 Individual PAGA payments and are required to give up their right to assert PAGA claims against
21 Defendants based on the PAGA Period facts alleged in the Action.

22 9. The Proposed Settlement Will be Void if the Court Denies Final Approval. It is
23 possible the Court will decline to grant Final Approval of the Settlement or decline enter a
24 Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiff
25 and Defendants have agreed that, in either case, the Settlement will be void: Defendants will not
26 pay any money and Class Members will not release any claims against Defendants.

27 10. Administrator. The Court has appointed a neutral company, [REDACTED] CPT Group, Inc. (the
28 "Administrator") to send this Notice, calculate and make payments, and process Class Members'
Requests for Exclusion. The Administrator will also decide Class Member Challenges over Work
Weeks, mail and re- mail settlement checks and tax forms, and perform other tasks necessary to
administer the Settlement. The Administrator's contact information is contained in Section 9 of
this Notice.

11. Participating Class Members' Release. After the Judgment is final and Defendants
have fully funded the Gross Settlement (and separately paid all employer payroll taxes),
Participating Class Members will be legally barred from asserting any of the claims released under
the Settlement. This means that unless you opted out by validly excluding yourself from the Class
Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendants or
related entities for wages based on the Class Period facts and PAGA penalties based on PAGA

1 Period facts, as alleged in the Action and resolved by this Settlement.

2 The Participating Class Members will be bound by the following release:

3 All Participating Class Members, on behalf of themselves and their respective former and
4 present representatives, agents, attorneys, heirs, administrators, successors, and assigns,
5 release Released Parties from (i) all claims that were alleged, or reasonably could have
6 been alleged, based on the Class Period facts stated in the Operative Complaint and
7 ascertained in the course of the Action including failure to provide meal periods, failure
8 to authorize and permit rest periods, failure to issue proper wage statements, failure to
9 timely pay wages, failure to maintain required payroll records, and related allegations.
10 Except as set forth in Section 6.3 of the Settlement Agreement, Participating Class
11 Members do not release any other claims, including claims for vested benefits, wrongful
12 termination, violation of the Fair Employment and Housing Act, unemployment
13 insurance, disability, social security, workers' compensation, or claims based on facts
14 occurring outside the Class Period.

15
16 12. Aggrieved Employees' PAGA Release. After the Court's judgment is final, and
17 Defendants have paid the Gross Settlement (and separately paid the employer-side payroll taxes),
18 all Aggrieved Employees will be barred from asserting PAGA claims against Defendants, whether
19 or not they exclude themselves from the Settlement. This means that all Aggrieved Employees,
20 including those who are Participating Class Members and those who opt-out of the Class
21 Settlement, cannot sue, continue to sue, or participate in any other PAGA claim against
22 Defendants or their related entities based on the PAGA Period facts alleged in the Action and
23 resolved by this Settlement.

24 The Aggrieved Employees' Releases for Participating and Non-Participating Class
25 Members are as follows:

26 All Participating and Non-Participating Class Members who are Aggrieved Employees
27 are deemed to release, on behalf of themselves and their respective former and present
28 representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released
Parties, from all claims for PAGA penalties that were alleged, or reasonably could have been
alleged, based on the PAGA Period facts stated in the Operative Complaint and the PAGA Notice
and ascertained in the course of the Action including failure to provide meal periods, failure to
authorize and permit rest periods, failure to issue proper wage statements, failure to timely pay
wages, failure to maintain required payroll records, and related allegations.

29 **4. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?**

30 1. Individual Class Payments. The Administrator will calculate Individual Class
31 Payments by (a) dividing the Net Settlement Amount by the total number of Work Weeks worked
32 by all Participating Class Members, and (b) multiplying the result by the number of Work Weeks
33 worked by each individual Participating Class Member.

34 2. Individual PAGA payments. The Administrator will calculate Individual PAGA

1 payments by (a) dividing \$1,000.00 by the total number of PAGA Pay Periods worked by all
2 Aggrieved Employees and (b) multiplying the result by the number of PAGA Period Pay Periods
worked by each individual Aggrieved Employee.

3 3. Workweek/Pay Period Challenges. The number of Class Work Weeks you worked
4 during the Class Period and the number of PAGA Pay Periods you worked during the PAGA
5 Period, as recorded in Defendants' records, are stated in the first page of this Notice. You have
6 until [REDACTED] to challenge the number of Work Weeks and/or Pay Periods credited to you. You can
submit your challenge by signing and sending a letter to the Administrator via mail, email or fax.
Section 9 of this Notice has the Administrator's contact information.

7 You need to support your challenge by sending copies of pay stubs or other records. The
8 Administrator will accept Defendants' calculation of Work Weeks and/or Pay Periods based on
9 Defendants' records as accurate unless you send copies of records containing contrary
10 information. You should send copies rather than originals because the documents will not be
11 returned to you. The Administrator will resolve Workweek and/or Pay Period challenges based
on your submission and on input from Class Counsel (who will advocate on behalf of
Participating Class Members) and Defendants' Counsel. The Administrator's decision is final.
You can't appeal or otherwise challenge its final decision.

12 5. HOW WILL I GET PAID?

13 Within thirty (30) calendar days of the Effective Date, Defendants shall pay the first of
14 two (2) equal \$342,500.00 installment payments on the Gross Settlement Amount into the
15 Settlement Account and shall pay the remaining \$342,500.00 installment payment within 180
days of the first installment payment.

16 1. Participating Class Members. After each instalment payment by Defendants
17 toward the Gross Settlement Amount, the Administrator will send, by U.S. mail, a single pro rata
18 check to every Participating Class Member (i.e., every Class Member who doesn't opt-out)
including those who also qualify as Aggrieved Employees. The single check will combine the
19 Individual Class Payment and the Individual PAGA payment.

20 2. Non-Participating Class Members. After each instalment payment by Defendants
21 toward the Gross Settlement Amount, the Administrator will send, by U.S. mail, a single pro rata
Individual PAGA payment check to every Aggrieved Employee who opts out of the Class
22 Settlement (i.e., every Non-Participating Class Member).

23 **Your checks will be sent to the same address as this Notice. If you change your
24 address, be sure to notify the Administrator as soon as possible. Section 9 of this Notice has
the Administrator's contact information.**

25 6. HOW DO I OPT-OUT OF THE CLASS SETTLEMENT?

26 Submit a written and signed letter with your name, present address, telephone number,
27 and a simple statement that you do not want to participate in the Settlement. The Administrator

will exclude you based on any writing communicating your request be excluded. Be sure to personally sign your request, identify the Action as *Maria Elena Diaz Hernandez vs. Guitron Alcazar Alcazar Inc. dba El Tapatio Mexican Cuisine*, Case No. 34-2021-00306648, and include your identifying information (full name, address, telephone number, approximate dates of employment, and social security number for verification purposes). You must make the request yourself. If someone else makes the request for you, it will not be valid. **The Administrator must be sent your request to be excluded by [redacted], or it will be invalid.** Section 9 of the Notice has the Administrator's contact information.

7. HOW DO I OBJECT TO THE SETTLEMENT?

Only Participating Class Members have the right to object to the Settlement. Before deciding whether to object, you may wish to see what Plaintiff and Defendants are asking the Court to approve. At least [redacted] days before the [redacted] Final Approval Hearing, Class Counsel and/or Plaintiff will file in Court (1) a Motion for Final Approval that includes, among other things, the reasons why the proposed Settlement is fair, and (2) a Motion for Fees, Litigation Expenses and Service Award stating (i) the amount Class Counsel is requesting for attorneys' fees and litigation expenses; and (ii) the amount Plaintiff is requesting as a Class Representative Service Award. Upon reasonable request, Class Counsel (whose contact information is in Section 9 of this Notice) will send you copies of these documents at no cost to you. You can also view them on the Administrator's Website ([url](#)) or the Court's website ([url](#)).

A Participating Class Member who disagrees with any aspect of the Agreement, the Motion for Final Approval and/or Motion for Fees, Litigation Expenses and Service Award may wish to object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class Counsel or Plaintiff are too high or too low. **The deadline for sending written objections to the Administrator is [redacted].** Be sure to tell the Administrator what you object to, why you object, and any facts that support your objection. Make sure you identify the Action, *Maria Elena Diaz Hernandez, et al. vs. Guitron Alcazar Alcazar Inc. dba El Tapatio Mexican Cuisine*, case no. 34-2021-00306648, and include your name, current address, telephone number, and approximate dates of employment for Defendants and sign the objection. Section 9 of this Notice has the Administrator's contact information.

Alternatively, a Participating Class Member can object (or personally retain a lawyer to object at your own cost) by attending the Final Approval Hearing. You (or your attorney) should be ready to tell the Court what you object to, why you object, and any facts that support your objection. See Section 8 of this Notice (immediately below) for specifics regarding the Final Approval Hearing.

8. CAN I ATTEND THE FINAL APPROVAL HEARING?

You can, but don't have to, attend the Final Approval Hearing on [redacted] at (time) in Department 28 of the Sacramento Superior Court, located at 720 Ninth Street, Sacramento, CA 95814. At the Hearing, the judge will decide whether to grant Final Approval of the Settlement and how much of the Gross Settlement will be paid to Class Counsel, Plaintiff, and the Administrator. The Court will invite comment from objectors, Class Counsel and Defense Counsel before making a

1 decision. You can attend (or hire a lawyer to attend) either personally or virtually via [REDACTED]
2 ([https://www.\[REDACTED\]](https://www.[REDACTED])). Check the Court's website for the most current information.

3 It's possible the Court will reschedule the Final Approval Hearing. You should check the
4 Administrator's website [REDACTED] beforehand or contact Class Counsel to verify the date and time of
the Final Approval Hearing.

5 **9. HOW CAN I GET MORE INFORMATION?**

6 The Agreement sets forth everything Defendants and Plaintiff has promised to do under the
7 proposed Settlement. The easiest way to read the Agreement, the Judgment or any other
8 Settlement documents is to go to (specify entity)'s website at (url). You can also telephone or send
9 an email to Class Counsel or the Administrator using the contact information listed below, or
consult the Superior Court website by going to ([http://www.\[REDACTED\].aspx](http://www.[REDACTED].aspx)) and entering the Case
10 Number for the Action, Case No. 34-2021-00306648. You can also make an appointment to
personally review court documents in the Clerk's Office at the 720 Ninth Street by calling [REDACTED].

11 **DO NOT TELEPHONE THE SUPERIOR COURT TO OBTAIN INFORMATION** 12 **ABOUT THE SETTLEMENT.**

13 Class Counsel:

14 DAVID G. SPIVAK
15 david@spivaklaw.com
16 THE SPIVAK LAW FIRM
17 8605 Santa Monica Bl
18 PMB 42554
West Hollywood, CA 90069
Telephone: (213) 725-9094
Facsimile: (213) 634-2485

19 WALTER L. HAINES
20 walter@uelglaw.com
21 UNITED EMPLOYEES LAW GROUP, PC
22 8605 Santa Monica Blvd., PMB 63354
West Hollywood, CA 90069
Telephone: (562) 256-1047
Facsimile: (562) 256-1006

23 Administrator:

24 Name of Company: CPT Group, Inc.
25 Email Address: _____
26 Mailing Address: _____
27 Telephone: _____
28 Fax Number: _____

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

10. WHAT IF I LOSE MY SETTLEMENT CHECK?

If you lose or misplace your settlement check before cashing it, the Administrator will replace it as long as you request a replacement before the void date on the face of the original check. If your check is already void, you should consult the Unclaimed Property Fund for instructions on how to retrieve the funds.

11. WHAT IF I CHANGE MY ADDRESS?

To receive your check, you should immediately notify the Administrator if you move or otherwise change your mailing address.