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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

12 **FOR THE COUNTY OF SAN MATEO**
13 **(UNLIMITED JURISDICTION)**

14 ORLANDO PEREZ AVALOS,

15 *Plaintiff,*

16 vs.

17 MILAGROS RESTAURANT LLC;
18 GREGORY HAROLD ST. CLAIRE; and
19 DOES 1 to 25, inclusive,

20 *Defendants.*

Case No.: 22-CIV-01222

21 **DECLARATION OF HAROUT**
22 **MESSRELIA IN SUPPORT OF**
23 **PLAINTIFF'S MOTION FOR APPROVAL**
24 **OF PAGA SETTLEMENT AND RELEASE**

Action filed: March 22, 2022

Hearing Date: May 16, 2023

Hearing Time: 2:00 p.m.

Hearing Dept: 2, Hon. Marie S. Weiner

**DECLARATION OF HAROUT MESSRELIAN IN SUPPORT OF
PLAINTIFF’S MOTION FOR APPROVAL OF PAGA SETTLEMENT AND RELEASE**

I, HAROUT MESSRELIAN, declare and state as follows:

1. I am an attorney duly licensed to practice before all the Courts of the State of California. I am the managing attorney of Messrelian Law Inc. and the attorney of record for Orlando Perez Avalos (individually, “Avalos” or “Plaintiff”) in his lawsuit against Defendants Milagros Restaurant, LLC and Gregory Harold St. Claire (“Defendants”).

2. I am experienced in handling employment law matters and specifically wage and hour representative and individual actions. My qualifications are as follows: I received my JD from Loyola Law School in 2010. I started my own law firm in 2011 – the Law Offices of Harout Messrelian. Since 2016, I have been the founder and principal attorney at Messrelian Law, Inc. Since 2011, I have filed and handled over 225 civil actions and/or claims involving representative actions under the Private Attorneys General Act (“PAGA”) and/or wage and hour claims on behalf of my clients and have been appointed Class Counsel in three class action cases –*Zohrab Mekhitarian v. Triple Play Motors dba Bob Smith Toyota*, Los Angeles Superior Court Case No. 19STCV22411 (ADR Services, Inc., Case Number 20-2668-RWT), *Carina Camberos, on behalf of herself and others similarly situated, v. Great American Chicken Corp, Inc.*, Los Angeles Superior Court Case No. 21STCV32015, and *Robert Garcia, on behalf of himself and others similarly situated v. HD Supply Management Inc.*, San Bernardino Superior Court Case No. CIVSB2028067. I have a practice that encompasses cases in the Los Angeles Superior Courts, the Orange County Superior Courts, the Riverside County Superior Courts, the San Bernardino County Superior Courts, the Alameda County Superior Courts, Santa Clara County Superior Courts, San Mateo County Superior Courts, and the Monterey County Superior Courts.

3. Except as otherwise indicated, I have personal knowledge of all matters set forth herein and, if called as a witness, could and would competently testify thereto under oath.

4. A true and correct copy of the PAGA Settlement Agreement (the “Agreement or “PAGA Settlement”) is attached hereto as **Exhibit 1**. A true and correct copy of the parties agreed upon notice to the below-defined Aggrieved Employees (the “PAGA Notice”) is attached hereto

as **Exhibit 2.**

Factual and Procedural Background

5. Defendants own and operate Milagros restaurant in Redwood City, California. Plaintiff first started working for Defendants as a bartender in or about April of 2021. Plaintiff's employment ended on or around September 24, 2021. At all times during his employment with Defendants, Plaintiff was considered an hourly, non-exempt employee.

6. Plaintiff complied with the procedures of Labor Code § 2699.3 for bringing suit under the Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698, et seq. ("PAGA"). On October 27, 2021, Plaintiff, on behalf of himself and Defendants' other California non-exempt hourly employees (hereafter collectively the "Aggrieved Employees") gave written notice by electronic service to the California Labor and Workforce Development Agency ("LWDA") and via certified mail to Defendants of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. A true and correct copy of Plaintiff's letter to the LWDA is attached hereto as **Exhibit 3.**

7. On March 22, 2022, Plaintiff filed a lawsuit for his individual wage and hour violations, retaliation, wrongful termination, and the PAGA claim in San Mateo County Superior Court (the "Lawsuit"). A true and correct copy of the Lawsuit is attached hereto as **Exhibit 4.** Plaintiff asserted on behalf of himself and the Aggrieved Employees that Defendants (1) failed to pay for all hours worked, including but not limited to, minimum and overtime wages (California Labor Code sections 510, 1194, 1197, 1197.1); (2) failed to provide all required timely and duty-free meal and rest periods (California Labor Code sections 226.7 and 512); (3) failed to pay wages owed every pay period (California Labor Code section 204); (4) failed to provide accurate, itemized wage statements (California Labor Code section 226a); (5) failed to pay all wages owed at the end of employment (California Labor section 203); (6) failed to maintain accurate records (California Labor Code section 1174d); (7) failed to reimburse business expenses (California Labor Code sections 2800 and 2802); (8) unlawful tip collection (California Labor Code sections 351 and 353); (9) failed to provide sick pay (California Labor

1 Code sections 232 and 246); and (10) failed to provide Worker's Compensation coverage
2 (California Labor Code section 3700.5). *Id.*

3 8. In response to Plaintiff's assertions, Defendants filed their answer on May 23,
4 2022. A true and correct copy of Defendants' Answer to the Lawsuit is attached hereto as
5 **Exhibit 5.**

6 9. Defendants deny any liability or wrongdoing of any kind whatsoever associated
7 with the lawsuit. It is the desire of the parties to fully, finally, and forever compromise, and
8 discharge all claims known or unknown related to those alleged in Plaintiff's lawsuit.

9 10. The parties met and conferred and agreed that it may be in their mutual interests
10 to discuss Plaintiff's allegations informally, rather than through litigation, and scheduled private
11 mediation. On January 16, 2023, the parties attended a full day mediation session with Eleanor
12 Barr, Esq. At the mediation, the parties agreed to settle Plaintiff's PAGA Claim for violation of
13 Labor Code § 2698, *et seq.* Before agreeing to the terms of the Settlement, the Parties engaged
14 in informal discovery regarding Defendants' policies, practices, operations, time and payroll
15 information and other topics. In advance of mediation, Defendants produced Plaintiff's
16 personnel file, including time and payroll data through data sampling. Moreover, prior to the
17 mediation, Defense counsel provided my office with information and documents relating to
18 other Aggrieved Employees, including time and payroll data. Through extensive arm's length
19 negotiations at the mediation and only after discovery and investigation were performed, the
20 Parties agreed to settlement terms. At all times, the negotiations were adversarial and
21 contentious, although still professional in nature. Now that the parties have finalized the PAGA
22 Settlement, Plaintiff submits it to this Court for approval.

23 11. Counsel for the Parties have further investigated the applicable law as applied to
24 the facts discovered regarding Plaintiff's claims, the defenses thereto, and the Labor Code
25 violations claimed by Plaintiff. I am experienced in prosecuting PAGA lawsuits. Counsel for the
26 Defendants are experienced in defending PAGA cases. Based on the parties' own independent
27 investigations and evaluations, the parties and their respective counsel are of the opinion that the
28 Settlement for the consideration and on the terms set forth in the Agreement are fair, reasonable

1 and adequate and are in the best interests of Plaintiff, the Aggrieved Employees, the State, and
2 Defendants in light of all known facts and circumstances and the risks inherent in litigation,
3 especially in this post pandemic era, where businesses are struggling to remain afloat, much less
4 prosper and make a large profit.

5 12. The Settlement of a PAGA claim requires court approval. Lab. Code §2699(1)(2).
6 The Court necessarily has broad discretion in making the decision to approve or reject a
7 settlement for civil penalties as the statutory scheme authorizes the Court to determine whether,
8 in certain circumstances, penalties should be assessed and, if so assessed, the appropriate amount
9 of penalties based on the facts and circumstances of the particular case. Although the PAGA
10 does not set forth the particular standards against which a PAGA settlement should be evaluated,
11 the LWDA has provided guidance for approval that mirrors the standards for evaluating class
12 action settlements.

13 13. PAGA imposes two requirements for the settlement of a PAGA claim. Both are
14 met here. First, any civil penalties recovered, whether by judgment or settlement, must be
15 distributed as follows: 75 percent to the LWDA, and the remaining 25 percent to the aggrieved
16 employees. *See Moorer v. Noble L.A. Events, Inc.* (2019) 32 Cal.App.5th 736, 742; Cal. Lab.
17 Code, § 2699(i). The parties' Settlement so provides (*See Exhibit 1*). Second, the LWDA must
18 be given notice of the settlement so that it may be heard before the Court decides whether to
19 grant approval. Cal. Lab. Code § 2699(1)(2). Here, notice is being given to the LWDA
20 concurrently with the filing of this motion. A true and correct copy of Plaintiff's submission with
21 the LWDA and a confirmation email is attached as **Exhibit 14**. As a result, Plaintiff has met all
22 procedural statutory requirements for settling a PAGA action.

23 14. The PAGA Settlement warrants a presumption of fairness for several reasons: (1)
24 The parties reached the Settlement through arm's-length bargaining with the aid of a respected
25 mediator; (2) The parties conducted sufficient investigation and discovery to allow Counsel and
26 the Court to act intelligently. Plaintiff requested and Defendants provided the number Aggrieved
27 Employees, the number of total pay periods during the PAGA Period, all policies in effect during
28 the PAGA Period, and a sampling of time records; and (3) Counsel for the Parties are experienced

1 with PAGA cases. Moreover, neither Plaintiff nor I have any conflicts of interest with the absent
2 Aggrieved Employees and there are no issues of ascertainability.

3 15. I considered various sources of information in the lead-up to the mediation of
4 January 16, 2023 that enabled Plaintiff to achieve the Settlement at issue. Among other things,
5 Plaintiff considered the following:

- 6 • Defendants produced and my staff and I reviewed Plaintiff's personnel file.
- 7
- 8 • My office requested that Defendants provide any and all policies regarding overtime and
9 double-time wages, off the clock work, expense reimbursement, meal periods, rest
10 breaks, meal period waivers and agreements, compensation plans, and complaints about
11 working conditions in effect during the relevant time period beginning in January of
12 2021. Defendants produced those policies as part of their employee handbook.
- 13
- 14 • My office requested that Defendants provide the total number of employees, paychecks,
15 and the pay cycles during the relevant period. Defendants provided the answers to each
16 of these questions.
- 17
- 18 • My office requested a 20% sample of time and payroll records for the relevant time
19 period. Defendants provided a sampling of time and pay records for 38 of their
20 employees. This represents 20% of the total employees that Defendants employed during
21 the PAGA Period based on data available at the time of mediation.
- 22
- 23 • My office then retained a professional data analyst, James Toney, to examine the records
24 and determine the meal period violation rates, if there was any pay discrepancy in
25 timesheet hours versus paid hours, and if there was any rounding/time shaving issues.
26 Plaintiff is prepared to provide the Court with the data analysis for *in camera* inspection
27 upon its request.
- 28
- I analyzed the state of caselaw on PAGA claims, meal and rest break violations, claims
for "off the clock" work and business expense reimbursement, especially as it relates to
"manageability" arguments brought up by the defense.

16. Before mediation, Defendants disclosed that January 16, 2021 to January 16,
2023, there were approximately 186 potential Aggrieved Employees and 3,708 pay periods.
Based on this information, I prepared an estimate of the maximum possible civil penalties under
the PAGA. The maximum possible civil penalties under the PAGA is the total number of pay
periods with one or more violations multiplied by the maximum possible civil penalty amount
per pay period. Under the civil penalty formulas applicable under PAGA, Plaintiff's counsel
estimated a maximum possible exposure of approximately \$2,874,000 for civil penalties as

follows:

TYPE OF VIOLATION	LABOR CODE SECTION VIOLATED/ CIVIL PENALTY STATUTE	INITIAL PENALTY AMOUNT/PAY PERIOD	PAY PERIODS	CIVIL PENALTIES
Unpaid Minimum Wages	1197/1197.1	\$100	3708	\$370,800.00
Unpaid Overtime	510/558	\$50	3708	\$185,400.00
Inaccurate Wage Statements	226/226.3	\$250	3708	\$927,000.00
Inaccurate Pay Records	1174/1174.5	\$500	186 ees	\$93,000.00
Untimely Wages	201-204/210, 2699(f)(2)	\$100	3708	\$370,800.00
Unreimbursed Expenses	2802/2699(f)(2)	\$100	3708	\$370,800.00
Unprovided Meal Breaks	512/558	\$50	3708	\$185,400.00
Unprovided Rest Breaks	1198/2699(f)(2)	100	3708	\$370,800.00
MAXIMUM CIVIL PENALTIES				\$2,874,000.00

The potential for recovery of this maximum possible civil penalties depends on circumstances that are highly unlikely and not in line with reality. It would depend on the Court stacking the maximum recoverable civil penalties for unpaid wages violations, inaccurate wage statements violations, inaccurate pay records violations, untimely wages violations, unreimbursed expenses violations, unprovided meal breaks violations, and unprovided rest breaks violations, per pay period for all 3,708 pay periods for all 186 potential Aggrieved Employees during the PAGA Period. I am unaware of any California State court decision awarding a plaintiff and the other Aggrieved Employees he represents multiple civil penalties for the same pay period under different Labor Code provisions. As such, one of the risks Plaintiff faces is that the Court would refuse to “stack” civil penalties arising under the various Labor Code statutes. I had to substantially discount the value of these claims in the settlement negotiations for this and a variety of other reasons. At best, Plaintiff could hope to recover one penalty for each pay period (regardless of the different Labor Code violations that potentially occurred for the same employee, during the same pay periods). Assuming that Plaintiff could prove that there was at least one violation of a Labor Code section per pay period, Plaintiff could expect to recover approximately \$175,450.00 (3,708 pay periods x \$50 = \$185,400.00).

1 17. The PAGA action brought forth in this case by Plaintiff had two main substantive
2 arguments: 1) unprovided meal and rest periods, 2) failure to reimburse business expenses for
3 the purchase of work uniforms. The other arguments for PAGA penalties, including inaccurate
4 paystubs, not paying all wages owed every pay period and at the end of employment, and not
5 keeping accurate time records, are all derivative claims that have no value on their own, and
6 especially when the substantive labor code violations, like business expense reimbursement is
7 being used as a predicate. *See Naranjo v. Spectrum Security Services, Inc.*, 40 Cal App5th 444.

8 18. There are risks to Plaintiff's meal and rest period claims. The data analysis of the
9 sample records revealed that meal punches were not tracked and as such, the timing and length
10 of the meal periods cannot be determined based on the punch records. The only notation is that
11 a meal period was taken with the number of hours (0.5) of unpaid break. At mediation, Plaintiff
12 pointed to *Donohue v. AMN Services, LLC*, where the California Supreme Court held that
13 rounding time punches for meal periods is inconsistent with the purpose of the Labor Code
14 provisions and the California Wage Orders governing meal periods. Here, Milagros was rounding
15 the employees' meal periods and not recording actual time for meal periods. However,
16 Defendants contend that all of their employees did in fact take their meal breaks, and provided
17 evidence at mediation that Milagros paid a significant amount of meal period premiums during
18 the PAGA Period. Furthermore, out of the 4,044 total shifts recorded in the sample, only 23.6%
19 of the shifts had no meal period recorded at all. Finally, Defendants contend that, to establish a
20 violation for missed meal periods, a plaintiff must do more than show that a meal break was not
21 taken. *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004. So long as an
22 employer provides employees with a "reasonable opportunity" to take a duty-free meal period, it
23 has no further duty to "police meal breaks and ensure no work thereafter is performed." *Id.* at
24 1040-41. Instead, a plaintiff must show the employer impeded, discouraged, or prohibited the
25 employee from taking a proper break, or otherwise failed to release the employee of all control.
26 *Id.* "Thus, the crucial issue with regard to the meal break claim is the reason that a particular
27 employee may have failed to take a meal break." *Washington v. Joe's Crab Shack* (N.D. Cal.
28 2010) 271 F.R.D. 629, 641. Determining by a review of Defendants' time records the exact

1 reasons why a meal period appears to be short or late would be difficult and pinpointing those
2 days in which Plaintiff and the Aggrieved Employees worked during their meal periods will be
3 a challenge. Additionally, Defendants provided evidence that they provide employees with the
4 opportunity to take meal and rest breaks. Milagros' Employee Handbook contains legally
5 compliant meal period and rest break policies.

6 19. Defendants contend they provided their non-exempt employees with the
7 opportunity to take rest periods in accordance with California law, and, accordingly, Plaintiff's
8 rest break claim has no support. Additionally, there are other risks to Plaintiff's rest period claim.
9 Employers are not required to record rest periods and such periods are paid. Unlike meal periods,
10 where there are often records showing whether an employee clocked out or not, there is no such
11 evidence to prove a missed rest period or that the employer refused to authorize and permit one.

12 20. There are risks to Plaintiff's claim for unreimbursed expenses. There is a risk that
13 the Court may consider Plaintiff's claims as to Defendants' alleged failure to indemnify for
14 business expenses to be individual in nature. Plaintiff alleges that Defendants did not reimburse
15 him or the other Aggrieved Employees for their purchase of work uniforms. During mediation,
16 Defendants provided evidence that employees were only required to wear black shirts, black
17 pants and black shoes. California's business reimbursement law does not require an employer to
18 reimburse its employees for the cost of items that are generally usable, including black pants and
19 black shoes because such items do not qualify as a "necessary expenditure." (*Townley v. BJ's*
20 *Restaurants, Inc.* (2019) 37 Cal.App.5th 179.) Uniforms are only subject to reimbursement if the
21 items are not "usual and generally usable" in the applicable industry. As such, I had to
22 significantly discount the value of this claim during settlement negotiations.

23 21. Additionally, PAGA states a court has discretion to award a lesser amount than
24 the maximum penalty. See Lab. Code § 2699(e)(2) ("...a court may award a lesser amount than
25 the maximum civil penalty amount specified by this part if, based on the facts and circumstances
26 of the particular case, to do otherwise would result in an award that is unjust, arbitrary and
27 oppressive, or confiscatory."). There is a substantial risk that the Court could reduce civil
28 penalties to an insignificant amount if it is unpersuaded by Plaintiff's evidence of willful and

1 intentional conduct. *Carrington v. Starbucks* (2018) 30 Cal.App.5th 504 (“*Carrington*”)
2 illustrates this. In that case, the Court of Appeal affirmed a trial court’s heavily discounted award
3 of only \$5 per violation because it was within the Court’s discretion to significantly reduce
4 PAGA penalties even when there is a finding that a violation of the California Labor Code
5 occurred. The plaintiff in *Carrington* had requested penalties in excess of \$70 million and was
6 successful in proving the PAGA claim during a bench trial. However, the trial court reduced the
7 total award after trial to only \$150,000 (30,000 violations x \$5) and stated that this reduction was
8 warranted because imposing the maximum penalty would be “unjust, arbitrary, and oppressive”,
9 based on Starbucks’s “good faith attempts” to comply with meal break obligations and because
10 the Court found the violations were minimal. Applying the same formula here and assuming there
11 was one violation during each pay period, the award of civil penalties could not exceed
12 \$18,540.00 in PAGA penalties (3,708 violations x \$5). As such, this Settlement is a great result
13 based solely on the risk the Court chooses to apply the *Carrington* formula. Defendants have
14 also posed formidable defenses to the Labor Code claims underlying Plaintiff’s allegations. Thus,
15 the chance of Plaintiff recovering a higher amount than the Gross Settlement Amount is
16 uncertain.

17 22. Further, although, class certification is not required for a PAGA claim,
18 Defendants could contend that Plaintiff should show that the PAGA claims are manageable,
19 especially as it relates to the business expense reimbursement claim for uniforms and cell phones,
20 which will invariably be an individualized assessment. As such, Defendants could also convince
21 the Court to dismiss the claims due to unmanageability. In *Ortiz v. CVS Caremark Corp.*, the
22 court dismissed a PAGA claim because it was unmanageable. 2014 WL 1117614, at *3–4 (N.D.
23 Cal. 2014). The Ortiz court cited the “multitude of individualized assessments” that case would
24 have required in ordering dismissal. *Id.* at *4. Several other courts have adopted *Ortiz*, and
25 dismissed PAGA claims where, as here, there are a large number of allegedly aggrieved
26 individuals whose claims require individual assessments. *See, e.g., Litty v. Merrill Lynch & Co.*,
27 2014 WL 5904904, at *3 (C.D. Cal. 2014); *Bowers v. First Student, Inc.*, 2015 WL 1862914, at
28 *4 (C.D. Cal. 2015); *see also Stafford v. Dollar Tree Stores, Inc.*, 2014 WL 6633396, at *2–4

1 (E.D. Cal. 2014) (bifurcating trial of plaintiff’s claim from representative claims: “in light of the
2 number of potential aggrieved employees, judicial economy favors deferring the representative
3 portion of the PAGA claim”); *Amey v. Cinemark USA Inc.*, 2015 WL 2251504, at *16 (N.D. Cal.
4 May 13, 2015).

5 23. Furthermore, on September 9, 2021, the California Court of Appeal issued a
6 significant decision in *Wesson v. Staples the Office Superstore, LLC*, No. B302988, 2021 Cal.
7 App. LEXIS 743 (Ct. App. Sep. 9, 2021) (“*Wesson*”), holding that courts have authority to ensure
8 that PAGA claims are manageable, and that courts may limit or strike unmanageable PAGA
9 claims. The *Wesson* decision marks the first time an appellate court has weighed in on whether
10 PAGA claims must be manageable.

11 24. The Parties further recognize that the issues presented in the representative PAGA
12 claim are likely only to be resolved with extensive and costly pretrial and trial proceedings, and
13 that further litigation will cause inconvenience, distraction, disruption, delay, and expense
14 disproportionate to the maximum potential benefits to the Aggrieved Employees and Plaintiff
15 from continued litigation, especially in the pandemic era where further and extensive litigation
16 may cause businesses to shut down, resulting in no monetary compensation to Plaintiff,
17 Plaintiff’s attorneys, other Aggrieved Employees, and the State of California.

18 25. The settlement of the representative PAGA claim involves monetary relief to all
19 Aggrieved Employees, Plaintiff, his attorneys, and the State of California. The Settlement is
20 reasonable given the uncertainties this lawsuit entails. It is also reasonable given the structure
21 and purpose of the PAGA, since the PAGA is not a restitution statute. Rather, it is essentially a
22 punishment statute. It provides for civil penalties only. Within the PAGA framework he is bound
23 by, Plaintiff, considering the evidence he faced, achieved a great result for the employees
24 concerned. Furthermore, any employees who are dissatisfied with the amount they received in
25 civil penalties can pursue any damages they believe they are owed by the Defendants. The
26 Settlement does not require them to opt out to do so.

27 26. Furthermore, Plaintiff recognizes that continued litigation presents significant
28 risks that support a significant downward departure from Plaintiff’s estimated civil penalties

1 amount. In view of the risks, the Settlement represents a fair, adequate, and reasonable
2 compromise amount for these claims and is in the best interest of Plaintiff and the Aggrieved
3 Employees and thus, warrants approval. *See Laguna v. Coverall N. Am., Inc.*, Case No. 12-55479
4 (9th Cir. June 3, 2014) 2014 WL 2465049, * 3. The PAGA settlement and its terms are fair, just,
5 reasonable, adequate, and equitable to Defendants, Plaintiff, and the State, especially in light of
6 the current economic climate, and are the product of good faith, and informed arms-length
7 negotiations between the Parties consistent with public policy and fully comply with applicable
8 provisions of law.

9 27. As such, the settlement of PAGA penalties in the gross sum of \$130,000.00, of
10 which 75% of the net amount after attorney's fees, litigation costs, and settlement administration
11 costs (\$55,733.90) will be paid to the LWDA and 25% (\$18,577.96) will be distributed to the
12 Aggrieved Employees, is reasonable and appropriate under the circumstances.

13 ***Individual PAGA Payments***

14 28. Defendants represent that there are approximately 186 Aggrieved Employees
15 during the PAGA Period. After deducting the requested Court-approved PAGA Counsel's Fees
16 Payment (\$43,333.33) and PAGA Counsel's Litigation Expenses Payment (\$8,354.80), and the
17 Settlement Administration Costs (\$4,000.00), the Net Settlement Amount will be approximately
18 \$74,311.87. Seventy five percent (75%) of the Net Settlement Amount will be paid to the Labor
19 and Workforce Development Agency ("LWDA") (\$55,733.90), and twenty five percent (25%)
20 (\$18,577.96) of the Net Settlement Amount will be paid to the Aggrieved Employees on a pro-
21 rata basis based upon their respective number of pay periods during the PAGA Period.
22 Agreement, ¶ 3.

23 29. With a total of 186 Aggrieved Employees, the average estimated Individual
24 PAGA Payment for each Aggrieved Employee is approximately \$99.88 (\$18,577.96 (25% of
25 the estimated Net Settlement of \$74,311.87) / 186 Aggrieved Employees). This is a great result
26 given the uncertainties this lawsuit entails.

27 ***Plaintiff's Individual Settlement***

28 30. Plaintiff negotiated an individual settlement agreement separate from the PAGA

1 Settlement. The parties agreed that the consideration Plaintiff received pursuant to the individual
2 settlement agreement was to settle his individual wage and hour claims and retaliation and
3 wrongful termination claims. Plaintiff's individual settlement agreement does not provide for
4 any additional attorney's fees or costs to my firm.

5 31. Plaintiff also had claims against Defendants for retaliation and wrongful
6 termination. Plaintiff was reprimanded with a write-up for attempting to take a statutory break
7 to which he was legally entitled and wrongfully terminated from his employment. *See generally*
8 Declaration of Orlando Perez Avalos.

9 32. As part of this confidential agreement, Plaintiff also provided Defendants with a
10 general release of all claims, whether known or unknown, including unknown claims covered
11 by Civil Code Section 1542. Plaintiff has no conflict of interest with the absent Aggrieved
12 Employees and is adequate to represent the Aggrieved Employees. Plaintiff has maintained
13 contact with my office and helped me gather information and evidence to prove the alleged
14 claims and has agreed to remain involved as a PAGA representative even if the Court does not
15 approve the Settlement. While Plaintiff and I believe that Plaintiff's individual settlement has
16 no bearing on his adequacy as a PAGA Representative, he is willing to present that Settlement
17 to the Court *in camera* for review if the Court requests. It represents a fair resolution for
18 Plaintiff's individual wage and hour claims and claims for retaliation and wrongful termination.
19 *See generally* Declaration of Orlando Perez Avalos.

20 33. The PAGA statute does not forbid service awards. Courts frequently award them
21 in PAGA-only cases as well. *See Mancini v. W. & S. Life Ins. Co.* (S.D. Cal. Sept.18, 2018),
22 2018 WL 4489590, at *2 (approving an incentive award of \$5,000 to named plaintiff in a PAGA-
23 only settlement); *see also Kinney v. Harvest Al Mgmt. Sub LLC*, (E.D. Cal. Sept. 6, 2013) 2013
24 WL 12415482, at *2 (awarding an incentive award of \$3,000 to a named plaintiff in a PAGA-
25 only settlement). The work Plaintiff has done on this case includes hiring my firm, speaking
26 with our office on many occasions by phone, explaining what his employment at Milagros was
27 like, explaining what his employment at Milagros had in common with other employees who
28 worked for Milagros, explaining his claims to me and my staff, and communicating with me and

1 my staff about the settlement agreement and related documents. Despite this, Plaintiff is **not**
2 asking for a service award for his involvement and the time he spent assisting my firm with the
3 PAGA action. *See generally* Declaration of Orlando Perez Avalos.

4 *Attorneys' Fees and Costs*

5 34. I represent Plaintiff on a straight contingency basis. My firm's request for
6 \$43,333.33 in attorney fees and \$8,354.80 in litigation costs is fair and reasonable. "[R]egardless
7 whether the percentage method or the lodestar method is used, fee awards in class actions average
8 around one-third of the recovery." (See *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66,
9 fn.11 ("*Chavez*")); *In re Pacific Enter. Sec. Litig.* (9th Cir. 1995) 47 F.3d 373, 379 ("*Pacific*")
10 [affirming 33% fee award]; *Williams v. MGM-Pathe Communications Co.* (9th Cir. 1997) 129
11 F.3d 1026, 1027 ("*MGM*") (awarding 33% of total fund amount).) This is also consistent with my
12 experience in wage and hour class and PAGA settlements.

13 35. Should the Court elect to use Plaintiff's Counsel's lodestar as the method for
14 awarding fees, notwithstanding courts' clear preference for the percentage method, my request
15 for attorney's fees of \$43,333.33 (1/3 of the Gross Settlement Amount) is fair and reasonable
16 based on my firm's lodestar as cross-checked against the percentage of the recovery.

17 36. To date, the attorneys in my firm and I have investigated and prosecuted this
18 matter for over 56.2 hours. I also expect to perform additional work on this case if the Court
19 grants final approval of the Settlement, including supervision of the Settlement Administrator's
20 disbursement of the settlement funds to the Aggrieved Employees.

21 37. In this case, my firm has a total lodestar of approximately \$25,145.00 without
22 the use of any multiplier, which results in a multiplier of 1.723 when compared against the
23 \$43,333.33 request for attorneys' fees.¹ A general summary showing of the pre-multiplier

24
25 ¹The multiplier of 1.396 is supported by California case law. Under California law, lodestar multipliers can range
26 from 2 to 4 or even higher. See *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 49; *Wershba v. Apple Computer,*
27 *Inc.*, 91 Cal.App.4th at p. 255; *Natural Gas Anti-Trust Cases I, II, III & IV* (Cal. Sup. Ct. 2006) 2006 WL 5377849,
28 *4 ("This Court and numerous cases have applied multipliers of between 4 and 12 to counsel's lodestar in awarding
fees."); *In re California Indirect Purchases* (Cal. Sup. Ct. 1998) 1998 WL 1031494, *10 (citing *Wilson v. Bank of*
America Nat'l Trust & Sav. Ass'n., (Cal Sup. Ct. 1982) No. 643872 (multiplier of 10 times the hourly rate awarded)
(cited in 3 Newberg & Conte, *Newberg on Class Actions*, section 1403, at 14-5 n. 21), and *Glendora Community*
Redevelopment Agency v. Demeter (Cal. App. 2 Dist., 1984) 155 Cal. App. 3d 465, 479 (approving fee award 12
times estimated lodestar multiplier).

lodestar and the total number of hours of work performed by my firm is set forth below with a total lodestar of approximately \$25,145.00.

<u>Name</u>	<u>Hours</u>	<u>Rate</u>	<u>Pre-Multiplier Lodestar</u>
Harout Messrelian (11 th Year Attorney)	22.0	\$500 (10 th Year Atty); \$550 (11 th Year Atty)	\$11,960.00
Maralle Messrelian (6 th Year Attorney)	34.2	\$350 (5 th Year Atty); \$400 (6 th Year Atty)	\$13,185.00
Totals	56.2		\$25,145.00

True and correct copies of the time records of my firm are collectively attached as **Exhibit 6** to this declaration.

38. In addition, my firm incurred substantial costs, \$8,354.80 to date, which consist of mediator fees, data analysis fees, filing fees and attorney service fees. A true and correct summary of my firm's costs and expenses incurred to date is attached as **Exhibit 7** to this declaration. I will make detailed copies of such records available to the Court for *in camera* inspection upon its request. As the evidence submitted herewith shows, all of these costs are documented and reasonably incurred. Accordingly, they warrant the Court's approval.

39. My previous experience in litigating wage and hour actions also supports the reasonableness of the fee request. Based on past experience with similar matter, I was able to evaluate the strengths and weaknesses of this case and the reasonableness of the Settlement. Because it is reasonable to compensate me commensurate with my skill, reputation, and experience, attorney's fees of approximately one-third of the Gross Settlement Amount is reasonable. Likewise, the caliber and experience of opposing counsel in labor and employment litigation, Helene A. Simvoulakis-Panos and Servando Sandoval of PAHL & MCCAY, APLC, also supports the fairness and reasonableness of the requested fee award.

40. Attached hereto as **Exhibit 8** is a true and correct copy of the biography page for Helene A. Simvoulakis-Panos from the PAHL & MCCAY, APLC website. She defended this case. Attached hereto as **Exhibit 9** is a true and correct copy of the biography page for

1 Servando Sandoval from the PAHL & MCCAY, APLC website. He defended this case

2 41. Plaintiff reiterates his request that the Court award his counsel one third of the
3 recovery as attorney fees. The award of attorney's fees sought is justified by the contingency
4 nature of the attorney-client relationship, my experience in litigating wage and hour cases, the
5 number of attorney and staff hours my firm has spent on this lawsuit, the high caliber of defense
6 counsel, the risks of non-payment and non-reimbursement, the delay in payment and cost
7 reimbursement, and the great results Plaintiff's Counsel has achieved for the Aggrieved
8 Employees.

9 ***Settlement Administration Costs***

10 42. With regard to the settlement administration costs provision, it is reasonable.
11 Before agreeing to Simpluris, Inc. ("Simpluris"), the parties sought and reviewed bids from other
12 reputable third-party administrator and Simpluris' bid was the lowest.

13 A. ILYM Group, Inc.= \$6,500.00

14 B. Phoenix Class Action Administration Solutions = \$6,000.00;

15 C. Simpluris, Inc.= \$ 4,000.00; and

16 D. CPT Group, Inc. = \$6,000.00

17 A true and correct copy of the bid from ILYM Group Inc. is attached hereto as **Exhibit 10**. A
18 true and correct copy of the bid from Phoenix is attached hereto as **Exhibit 11**. A true and correct
19 copy of the bid from Simpluris, Inc. is attached hereto as **Exhibit 12**. A true and correct copy of
20 the bid from CPT Group, Inc. is attached hereto as **Exhibit 13**. Thus, settlement administration
21 costs provision should be given approval.

22 43. Furthermore, the Declaration of Jacob Kamenir with attached exhibit, filed under
23 separate cover, sets forth Simpluris' qualifications and costs to administer the settlement. See
24 *generally* Declaration of Jacob Kamenir. Thus, the settlement administration costs provision
25 should be given approval.

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



HAROUT MESSRELIAN,
Declarant

EXHIBIT 1

PAGA SETTLEMENT AGREEMENT

This PAGA Settlement Agreement (“Agreement”) is made by and between PLAINTIFF ORLANDO PEREZ AVALOS (“PLAINTIFF”) and Defendants GREGORY HAROLD ST. CLAIRE and MILAGROS RESTAURANT, LLC (collectively “DEFENDANT”). The Agreement refers to PLAINTIFF and Defendant collectively as the “Parties,” or individually as a “Party.”

1. DEFINITIONS.

1.1. “Action” means the PLAINTIFF’s PAGA lawsuit alleging wage and hour violations against DEFENDANT captioned initiated on or about March 22, 2022, and pending in Superior Court of the State of California, County of San Mateo.

1.2. “Administrator” means Simpluris, Inc., whom the Parties have agreed to appoint to administer the Settlement.

1.3. “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with approval of this Settlement.

1.4. “Aggrieved Employee” means a non-exempt California employee who worked for DEFENDANT during the PAGA Period.

1.5. “Aggrieved Employee Data” means Aggrieved Employee identifying information in DEFENDANT’s possession including the Aggrieved Employee’s name, last-known mailing address, Social Security number, and number of PAGA Pay Periods.

1.6. “Aggrieved Employee Address Search” means the Administrator’s investigation and search for current Aggrieved Employee mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Aggrieved Employees.

1.7. “Court” means the Superior Court of California, County of San Mateo.

1.8. “Defense Counsel” means PAHL & MCCAY, a Professional Law Corporation.

1.9. “Effective Date” means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Approving the PAGA Settlement and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) the day the Court enters Judgment.

1.10. “Gross Settlement Amount” means \$130,000.00 which is the total amount DEFENDANT agrees to pay under the Settlement except as provided in Paragraph 8 below. The Gross Settlement Amount will be used to pay Individual PAGA Payments, the LWDA PAGA

Payment, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, and the Administrator's Expenses Payment.

1.11. "Individual PAGA Payment" means the Aggrieved Employees' pro rata share of 25% of the PAGA Penalties calculated according to the number of Pay Periods the Aggrieved Employee worked during the PAGA Period.

1.12. "Judgment" means the judgment entered by the Court based upon the Final Approval.

1.13. "LWDA" means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).

1.14. "LWDA PAGA Payment" means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).

1.15. "Net Settlement Amount" means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to Aggrieved Employees as Individual PAGA Payments.

1.16. "PAGA Counsel" means MESSRELIAN LAW, INC., the attorneys representing the PLAINTIFF in the Action.

1.17. "PAGA Counsel Fees Payment" and "PAGA Counsel Litigation Expenses Payment" mean the amounts allocated to PAGA Counsel for reimbursement of reasonable attorneys' fees and expenses, respectively, incurred to prosecute the Action.

1.18. "PAGA Pay Period" means any Pay Period during which an Aggrieved Employee worked for DEFENDANT for at least one day during the PAGA Period.

1.19. "PAGA Period" means the period from January 16, 2021, to January 16, 2023.

1.20. "PAGA" means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).

1.21. "PAGA Notice" means PLAINTIFF's letter to DEFENDANT and the LWDA providing notice pursuant to Labor Code section 2699.3, subd. (a).

1.22. "PAGA Penalties" means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees and the 75% to LWDA in settlement of PAGA claims.

1.23. "PLAINTIFF" means the named PLAINTIFF in the Action.

1.24. "Approval Order" means the proposed Court Order Granting Approval of PAGA Settlement.

1.25. "Released PAGA Claims" means the claims being released by the PLAINTIFF and PAGA Counsel and as described in Paragraph 5 below.

1.26. "Released Parties" means: DEFENDANT and each of its former and present directors, officers, shareholders, owners, members, attorneys, insurers, predecessors, successors, assigns, subsidiaries, affiliates and employees.

1.27. "Settlement" means the disposition of the Action effected by this Agreement and the Judgment.

1.28. "DEFENDANT" means the named Defendant in the Action.

2. RECITALS

2.1. On March 22, 2022, PLAINTIFF commenced this Action by filing a Complaint alleging causes of action against DEFENDANT for: 1) Failure to Compensate for All Hours Worked; 2) Failure to Pay Minimum Wages; 3) Failure to Pay Overtime; 4) Failure to Provide Accurate Itemized Wage Statements; 5) Failure to Pay Wages Owed Every Pay Period; 6) Violation of Labor Code Section 558; 7) Failure to Maintain Accurate Records; 8) Failure to Give Rest Breaks; 9) Failure to Give Meal Breaks; 10) Private Attorneys General Act ("PAGA"); 11) Failure to Pay Wages When Employment Ends; 12) Failure to Reimburse Business Expenses; 13) Failure to Provide Pay Records; 14) Failure to Provide Personnel Records; 15) Retaliation in Violation of Labor Code Section 98.6; 16) Retaliation in Violation of Labor Code Section 1102.5; 17) Wrongful Termination in Violation of Public Policy; and 18) Violation of California Business & Processions Code Section 17200 (the "Complaint"). The Complaint is the operative complaint in the Action (the "Operative Complaint.") DEFENDANT denies the allegations in the Operative Complaint, denies any failure to comply with the laws identified in the Operative Complaint and denies any and all liability for the causes of action alleged.

2.2. Pursuant to Labor Code section 2699.3, subd. (a), PLAINTIFF gave timely written notice to DEFENDANT and the LWDA by sending the PAGA Notice.

2.3. On January 16, 2023, Parties participated in an all-day mediation presided over by Eleanor Barr, Esq. of Barr Mediation LLC which led to this Agreement to settle the Action.

2.4. Prior to participating mediation and negotiating the Settlement, PLAINTIFF obtained, through informal discovery, copies of time records, paystubs and DEFENDANT'S policies and procedures pertaining to the Action.

2.5. The Parties, PAGA Counsel and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

3. **MONETARY TERMS**

3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 8 below, DEFENDANT promises to pay \$130,000.00, and no more, as the Gross Settlement Amount. DEFENDANT has no obligation to pay the Gross Settlement Amount prior to the deadline stated in Paragraph 6.1 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to DEFENDANT.

3.2. Payments from the Gross Settlement Amount. The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval:

3.2.1. To PAGA Counsel: PAGA Counsel Fees Payment of not more than 1/3 of the Gross Settlement Amount which is currently estimated to be \$43,333.33, as well as PAGA Counsel Litigation Expenses Payment in an amount not to exceed \$9,000.00. Neither DEFENDANT, nor Defense Counsel, will oppose requests for Court approval of these payments provided that they do not exceed these amounts. PLAINTIFF and/or PAGA Counsel will file an application or motion for PAGA Counsel Fees Payment and PAGA Litigation Expenses Payment. If the Court approves a PAGA Counsel Fees Payment and/or a PAGA Counsel Litigation Expenses Payment in amounts less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to PAGA Counsel or any other PLAINTIFF's counsel arising from any claim to any portion any PAGA Counsel Fee Payment and/or PAGA Counsel Litigation Expenses Payment. The Administrator will pay the PAGA Counsel Fees Payment and PAGA Counsel Expenses Payment using one or more IRS 1099 Forms. PAGA Counsel assumes full responsibility and liability for taxes owed on the PAGA Counsel Fees Payment and the PAGA Counsel Litigation Expenses Payment and holds DEFENDANT harmless, and indemnifies DEFENDANT, from any dispute or controversy regarding any division or sharing of any of these Payments.

3.2.2. To the Administrator: An Administration Expenses Payment in an amount not to exceed \$5,000.00. To the extent the Court approves an Administration Expenses Payment in an amount less than \$5,000.00, the Administrator will retain the remainder in the Net Settlement Amount.

3.2.3. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$72,666.67 to be paid from the Gross Settlement Amount, with 75% (\$54,500) allocated to the LWDA PAGA Payment and 25% (\$18,166.66) allocated to the Individual PAGA Payments.

3.2.3.1. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$18,166.66) the total number of PAGA Period Pay Period by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

3.2.3.2. If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

4. SETTLEMENT FUNDING AND PAYMENTS

4.1. Aggrieved Employee Pay Periods. Based on a review of its records to date, DEFENDANT estimates there are 186 Aggrieved Employees who worked a total of 3,708 PAGA Pay Periods.

4.2. Aggrieved Employee Data. Within 15 days of the Effective Date, DEFENDANT will simultaneously deliver the Aggrieved Employee Data to the Administrator in the form of a Microsoft Excel spreadsheet. To protect Aggrieved Employee' privacy rights, the Administrator must maintain the Aggrieved Employee Data in confidence, use the Aggrieved Employee Data only for purposes of this Settlement and for no other purpose, and restrict access to the Aggrieved Employee Data to Administrator employees who need access to the Aggrieved Employee Data to effect and perform under this Agreement. DEFENDANT has a continuing duty to immediately notify PAGA Counsel if it discovers that the Aggrieved Employee Data omitted employee identifying information and to provide corrected or updated Aggrieved Employee Data as soon as reasonably feasible. Without any extension of the deadline by which DEFENDANT must send the Aggrieved Employee Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Aggrieved Employee Data.

4.3. Funding of Gross Settlement Amount. DEFENDANT shall fully fund the Gross Settlement Amount by transmitting the funds to the Administrator no later than 30 days after the Effective Date.

4.4. Payments from the Gross Settlement Amount. Within 10 days after DEFENDANT funds the Gross Settlement Amount, the Administrator will mail checks for all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the PAGA Counsel Fees Payment, and the PAGA Counsel Litigation Expenses Payment. Disbursement of the PAGA Counsel Litigation Expenses Payment shall not precede disbursement of Individual PAGA Payments.

4.4.1. The Administrator will issue checks for the Individual PAGA Payments and send them to the Aggrieved Employees via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database.

4.4.2. The Administrator must conduct an Aggrieved Employee Address Search for all Aggrieved Employees whose checks are returned undelivered without USPS forwarding address. Within 7 days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Aggrieved Employee

Address Search. The Administrator need not take further steps to deliver checks to Aggrieved Employees whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Aggrieved Employee whose original check was lost or misplaced, requested by the Aggrieved Employee prior to the void date.

4.4.3. For any Aggrieved Employee whose Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Aggrieved Employee.

4.4.4. The payment of Individual PAGA Payments shall not obligate DEFENDANT to confer any additional benefits or make any additional payments to the Aggrieved Employees (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

5. **RELEASES OF CLAIMS.** Effective on the date when DEFENDANT fully funds the entire Gross Settlement Amount, PLAINTIFF and PAGA Counsel will release claims against all Released Parties as follows:

5.1. **PLAINTIFF's Release.** PLAINTIFF and his or her respective former and present spouses, representatives, agents, attorneys (including PAGA Counsel), heirs, administrators, successors, and assigns generally, release and discharge Released Parties from all claims, transactions, or occurrences that took place during the PAGA Period, including, but not limited to: (a) all claims that were, or reasonably could have been, alleged, based on the facts contained in the Operative Complaint and the PAGA Notice ("PLAINTIFF's Release"). PLAINTIFF's Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time, or based on occurrences outside the PAGA Period. PLAINTIFF acknowledges that PLAINTIFF may discover facts or law different from, or in addition to, the facts or law that PLAINTIFF now knows or believes to be true but agrees, nonetheless, that PLAINTIFF's Release shall be and remain effective in all respects, notwithstanding such different or additional facts or PLAINTIFF's discovery of them.

5.1.1. **PLAINTIFF's Waiver of Rights Under California Civil Code Section 1542.** For purposes of PLAINTIFF's Release, PLAINTIFF expressly waives and relinquishes the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

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

5.2. **Release by Aggrieved Employees:** All Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present 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.

5.3. Release by PAGA Counsel: PAGA Counsel release on behalf of their present and former attorneys, employees, agents, successors and assigns the Released Parties from all claims for PAGA Fees incurred in connection with the Operative Complaint and the PAGA Period facts stated in the Operative Complaint and the PAGA Notice.

6. MOTION OR APPLICATION FOR APPROVAL OF SETTLEMENT.

6.1. No later than 60 days following the full execution of this Agreement, PAGA Counsel will prepare and file all documents necessary for obtaining approval of this Settlement under Labor Code Section 2699, subd. (f)(2), including: (i) a draft proposed Order Granting Approval of PAGA Settlement; (ii) a signed declaration from the Administrator attaching its “not to exceed” bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Aggrieved Employee Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Aggrieved Employees or the LWDA; and the nature and extent of any financial relationship with PLAINTIFF, PAGA Counsel or Defense Counsel; (iii) a signed declaration from PAGA Counsel attesting to its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code section 2699, subd. (l)(2)); (iv) all facts relevant to any actual or potential conflict of interest with Aggrieved Employees and/or the Administrator. In their Declarations, PLAINTIFF and PAGA Counsel shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.

7. SETTLEMENT ADMINISTRATION.

7.1 Selection of Administrator. The Parties have jointly selected Simpluris, Inc. to serve as the Administrator and verified that, as a condition of appointment, Simpluris, Inc. agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.

7.2 Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports state and federal tax authorities.

7.3 Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund (“QSF”) under U.S. Treasury Regulation section 468B-1.

7.4 Administrator Duties. The Administrator has a duty to perform or observe all tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

8. AGGRIEVED EMPLOYEE SIZE ESTIMATES AND ESCALATOR CLAUSE.

8.1. Based on its records, DEFENDANT estimates that, as of the date of this Settlement Agreement, there are 186 Aggrieved Employees who worked 3,708 Pay Periods during the PAGA Period.

8.2. Within 30 days of the Effective Date, DEFENDANT will provide a declaration under penalty of perjury confirming the number of applicable Aggrieved Employees and Pay Periods they worked during the applicable PAGA Period.

8.3. In the event the number of pay periods increases by more than 15% of the estimate stated herein, the Settlement Amount shall increase proportionally for the number of Pay Periods over 15% of 3,708 (4,264).

9. CONTINUING JURISDICTION OF THE COURT. Pursuant to California Code of Civil Procedure section 664.6, the Parties agree that, following entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

9.1 Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the PAGA Counsel Fees Payment and PAGA Counsel Litigation Expenses Payment, the Parties and their respective counsel waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If another party appeals the Judgment, the Parties' obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.

10. ADDITIONAL PROVISIONS.

10.1. No Admission of Liability or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by DEFENDANT that any of the allegations in the Operative Complaint have merit or that DEFENDANT has any liability for any claims asserted; nor should it be intended or construed as an admission by PLAINTIFF that DEFENDANT's defenses in the Action have merit. The Parties agree that representative treatment is for purposes of this Settlement only. If, for any reason the Court does not approve this Settlement, DEFENDANT reserves all available defenses to the claims in the Action, and PLAINTIFF reserves the right to contest DEFENDANT's defenses. The Settlement, this Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

10.2. Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with any attached exhibits, shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.

10.3. Attorney Authorization. PAGA Counsel and Defense Counsel separately warrant and represent that they are authorized by PLAINTIFF and DEFENDANT, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.

10.4. Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.

10.5. No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.

10.6. No Tax Advice. Neither PLAINTIFF, PAGA Counsel, DEFENDANT nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.

10.7. Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.

10.8. Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.

10.9. Applicable Law. All terms and conditions of this Agreement and its exhibits (if any) will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.

10.10. Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.

10.11. Confidentiality. To the extent permitted by law, all agreements made, and orders

entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.

10.12. Use and Return of Aggrieved Employee Data. Information provided to PAGA Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the PAGA Data provided to PAGA Counsel by DEFENDANT in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than 90 days after the Administrator discharges its obligation to pay out of all Settlement funds, PLAINTIFF shall destroy all paper and electronic versions of Aggrieved Employee Data received from DEFENDANT unless, prior to the Administrator's payment of all Settlement Funds, DEFENDANT makes a written request to PAGA Counsel for the return, rather than the destructions, of Aggrieved Employee Data.

10.13. Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.

10.14. Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.

10.15. Notice. All notices, demands or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

To PLAINTIFF:

Orlando Perez Avalos
c/o MESSRELIAN LAW INC.
500 N. Central Avenue, Suite 840
Glendale, California 91203

To DEFENDANT:

Milagros Restaurant, LLC
c/o PAHL & MCCAY, a Professional Law Corporation
225 West Santa Clara Street, Suite 1500
San Jose, California 95113

10.16. Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between

themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

10.17. Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.

PLAINTIFF:

DATED: _____, 2023

ORLANDO PEREZ AVALOS

DEFENDANT:

DATED: 3/24/2023, 2023

MILAGROS RESTAURANT, LLC

DocuSigned by:
By: Greg St. Claire
08D00B38E08D48B
Gregory Harold St. Claire, Owner

DATED: _____, 2023

PAGA COUNSEL:
MESSRELIAN LAW INC.

Harout Messrelian, Esq.
Maralle Messrelian, Esq.

DATED: _____, 2023

DEFENSE COUNSEL:
PAHL & MCCAY, APLC

Servando R. Sandoval, Esq.

themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

10.17. Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.

PLAINTIFF:

DATED: Mar 9, 2023, 2023


Orlando Perez (Mar 9, 2023 12:18 PST)

ORLANDO PEREZ AVALOS

DEFENDANT:

DATED: _____, 2023

MILAGROS RESTAURANT, LLC

By: _____
Gregory Harold St. Claire, Owner

DATED: March 9, 2023

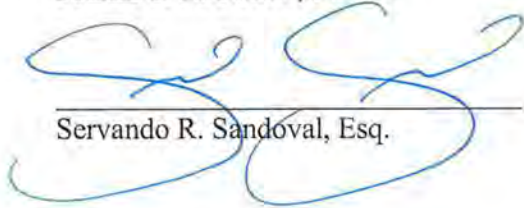
PAGA COUNSEL:
MESSRELIAN LAW INC.



Harold Messrelian, Esq.
Maralle Messrelian, Esq.

DATED: 3/24, 2023

DEFENSE COUNSEL:
PAHL & MCCAY, APLC



Servando R. Sandoval, Esq.

EXHIBIT 2

NOTICE OF PAGA SETTLEMENT

Orlando Perez Avalos v. Milagros Restaurant LLC, et al.
San Mateo County Superior Court, Case No. 22CIV01222

<<Simpluris, Inc.>>

[]

[]

Telephone: []

«Barcode» «BarcodeString»

SIMID «SIMID»

«FirstName»

«LastName»

«Address1» «Address2»

«City» «State» «Zip»

You are receiving this notice as a result of lawsuits brought on a representative basis under the Private Attorneys General Act, Labor Code § 2698 et seq. (“PAGA”) (“the Action”). The plaintiff in the Action is Orlando Perez Avalos (“Plaintiff”) and the defendants are Milagros Restaurant LLC and Gregory Harold St. Claire (“Defendants”). The Action seek civil penalties for purported violations of the California Labor Code on behalf of all non exempt California employees who worked for Defendants during the PAGA Period of January 16, 2021 to January 16, 2023 (the “Aggrieved Employees”). Defendants deny all claims and allegations in the Action, deny that they owe any penalties, and assert that they have fully complied with all applicable Labor Code provisions. Nevertheless, to avoid further costs and time in defending the Action, Defendants have settled the case and the Court has approved the settlement and release of claims. By settling the Action, Defendants are not admitting that they have done anything wrong as of and subject to the occurrence of the Effective Date of the Settlement. Upon the Effective Date of this Settlement, Plaintiff, the State of California (including, but not limited to, the LWDA), and the Aggrieved Employees will be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged the Released PAGA Claims with respect to Defendants and each of their former and present directors, officers, shareholders, owners, members, attorneys, insurers, predecessors, successors, assigns, subsidiaries, affiliates and employees. The Released PAGA Claims shall include 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, including but not limited to: California Labor Code Sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 232, 246, 351, 353, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1197, 1198, 2802, and 3705.

By Order dated <<court approval order date>>, the Superior Court of the State of California, San Mateo County approved the Settlement of the PAGA claims.

According to the Defendants' records, you are an Aggrieved Employee and therefore entitled to a share of the settlement based upon the Court approved allocation. Enclosed with this Notice is your check for your share. The settlement check shall remain valid for 180 days. Thereafter, all uncashed checks shall be distributed to California State Controller's Office Unclaimed Property Fund with an identification of the amount of unclaimed funds attributable to each Aggrieved Employee.

Please Note: One hundred percent (100%) of your individual PAGA payment under this Settlement will be considered penalties and may be subject to local, state, or federal tax withholdings and will be reported to the IRS and state tax authorities. You should rely on your own tax advisors as to the tax consequences of your individual PAGA payment. Neither Plaintiff nor Defendants have made any representations or warranties regarding the taxation of your individual PAGA payment. Nothing within this notice or any other communication shall constitute or be construed or relied upon as tax advice within the meaning of United States Treasury Department Circular 230 (31 C.F.R. Part 10, as amended). Enclosed are the appropriate tax forms pertaining to your payment.

Do not call or write the Court or Office of the Clerk to ask questions about the settlement or to ask questions about the claims process. If you have any questions, you may call or write to **Simpluris, Inc.** (the Settlement Administrator) using the contact information at the top of this correspondence.

EXHIBIT 3

VIA ELECTRONIC FILING

October 27, 2021

California Labor & Workforce Development Agency (LWDA)
Attn. PAGA Administrator
800 Capitol Mall, MIC-55
Sacramento, California 95814

VIA U.S. CERTIFIED MAIL (RETURN RECEIPT REQUESTED)

MILAGROS RESTAURANT, LLC
GREGORY HAROLD ST. CLAIRE
c/o PATRICK KERWIN
968 WOODSIDE RD.
REDWOOD CITY, CA 94061

MILAGROS RESTAURANT, LLC
GREGORY HAROLD ST. CLAIRE
1099 MIDDLEFIELD RD.
REDWOOD CITY, CA 94063

**ORLANDO PEREZ AVALOS v. MILAGROS RESTAURANT, LLC; GREGORY
HAROLD ST. CLAIRE**

RE: PRIVATE ATTORNEYS GENERAL ACT NOTICE

To Whom It May Concern:

Please be informed that our client, Mr. Orlando Perez Avalos (hereinafter “our client” or “Mr. Perez”) seeks penalties on behalf of the State of California and all current and former non-exempt or hourly paid employees (“aggrieved employees”) who worked for MILAGROS RESTAURANT, LLC and GREGORY HAROLD ST. CLAIRE (hereinafter collectively “MILAGROS”) during the relevant time period pursuant to California Labor Code section 2698, et. seq., the Labor Code Private Attorneys General Act of 2004 (“PAGA”). The purpose of this letter is to comply with the statutory requirements of California Labor Code section 2699.3 and shall constitute notice of the same. GREGORY HAROLD ST. CLAIRE is being included in this PAGA notice pursuant to Labor Code Section 558.1 as he was and is the owner/director/managing agent of MILAGROS RESTAURANT, LLC and as such, controlled the wages, hours, and working conditions of Mr. Perez and other similarly situated aggrieved employees.

Mr. Perez started working for MILAGROS as a bartender on or around April 2021. Mr. Perez was classified as an hourly, non-exempt employee and earned approximately \$15.00/hour. Mr. Perez’s employment ended on or around late September 2021.



It is our position that MILAGROS has committed the following labor code violations:

MILAGROS did not provide Mr. Perez and other similarly situated aggrieved employees with the minimum wages to which they were entitled for all work performed and did not compensate her and others for all hours worked pursuant to California Labor Code sections 1194, 1197 and 1197.1. Mr. Perez and others were not paid for all hours worked and consistently worked “off the clock”. This is so because Mr. Perez and others would consistently be required to perform work duties after clocking out for work and required to stay past their shifts. Management/ownership would have Mr. Perez and others clock out first and then complete end of the shift tasks. Moreover, MILAGROS had a policy and practice of rounding down hours worked and “time shaving”, which led to Mr. Perez and others not being paid for all hours worked, which would include the minimum wage. Moreover, to the extent employees such as Mr. Perez and others worked through their meal periods, they were not compensated for that time, which would be akin to a minimum wage violation.

Additionally, MILAGROS violated Labor Code Section 351 by taking some of the tips meant for employees and also deducting the tips from Mr. Perez’s and others’ earned wages. MILAGROS also deducted the credit card fee from Mr. Perez’s and others’ tips and did not timely provide the credit card and even cash tips to Mr. Perez and other similarly situated aggrieved employees.

Due to the above “off the clock” violations and as a matter of company policy, MILAGROS violated Labor Code §510 because it failed to pay our client and other similarly situated aggrieved employees overtime, even though they worked more than 8 hours per day, 12 hours per day, and/or 40 hours per week throughout their employment. Mr. Perez’s and others’ actual work hours, which included the “off the clock” work as described above, entitled them to overtime, however, it was not company policy to keep accurate track of all hours worked and to pay employees overtime.

MILAGROS violated Labor Code § 226.7 along with Industrial Welfare Commission Wage Order no. 5 because it failed to provide our client and other similarly situated aggrieved employees 10-minute rest periods for every four hours of work, or majority portion thereof, throughout their employment. MILAGROS did not completely relieve our client of all duty during said rest periods. MILAGROS did not pay to our client one additional hour of pay at our client’s regular rate of compensation for each workday that one or more statutory rest periods was not provided. Rest breaks were not authorized or enforced at the restaurant. In fact, it was not part of MILAGROS’s culture for employees such as Mr. Perez and others to take at least one 10-minute rest break every day wherein they are relieved of all work duties. The latter was due to understaffing of servers/bartenders and bartenders such as Mr. Perez being too busy to be able to take rest breaks or not being able to take rest breaks because there was no coverage at the bar. Taking rest breaks meant leaving customers unattended and that could not happen.

MILAGROS also violated Labor Code §§ 512 and 226.7 along with Industrial Welfare Commission Wage Order No. 5 because it failed to provide our client and other similarly situated aggrieved employees the requisite 30-minute, uninterrupted meal periods for every five (5) hours of work throughout their employment, and our client did not validly waive said meal periods. MILAGROS did not completely relieve our client of all duties during said meal periods.



MILAGROS did not pay to our client one additional hour of pay at our client's regular rate of compensation for each workday that one or more statutory meal periods was not provided. If MILAGROS had Mr. Perez sign a meal period waiver, it would not be valid and enforceable since Mr. Perez and others generally worked more than a 6-hour shift. If MILAGROS had Mr. Perez sign an on-duty meal period agreement wherein Mr. Perez agreed to work through his meal period, it would also be invalid and unenforceable because the nature of Mr. Perez's job as a bartender does not prevent him from taking a meal period. As such, Mr. Perez and others never received statutory, timely meal periods during their employment. In other words, there was never an uninterrupted 30-minute meal period for any employees, including Mr. Perez, that was taken before the 5th hour worked. As was the case with rest periods, meal breaks were definitively not part of the MILAGROS's culture, especially in a fast-paced restaurant environment. The meal periods were not authorized and were not enforced. Furthermore, Mr. Perez was not able to take a meal period because there was no one to relieve him of his job duties as a bartender and no one to cover the bar if Mr. Perez was to attempt to take any type of statutory break.

Furthermore, during the relevant time period, MILAGROS failed to pay our client and other similarly situated aggrieved employees all wages due to them within any time period specified by California Labor Code section 204, including the minimum wages and overtime as described above as well as meal/rest break premiums. Moreover, Mr. Perez and others were paid late and more than 7 calendar days after the end of the pay period in contravention of Labor Code Section 204. MILAGROS was also in violation of California Labor Code section 226(a) by not providing access to paystubs and failing to include pertinent information on the wage statements, including but not limited to, all hours worked, tips earned, gross wages earned, net wages earned, all deductions, premium payments for meal and rest breaks, the correct legal name and address of employing entity (in fact, Mr. Perez's pay stubs reflect the name MILAGROS, LLC and not the true and correct name of MILAGROS RESTAURANT, LLC which is a facial violation), the correct beginning and end of the pay period, all applicable hourly rates, and all identifying employee information, among other items. As such, MILAGROS did not provide our client and other similarly situated aggrieved employees with complete, accurate itemized wage statements.

MILAGROS violated Labor Code § 203 because it willfully failed to pay our client and other similarly situated aggrieved employees earned and due wages upon separation of employment, either immediately upon involuntary termination, or within 72 hours of resignation. After our client stopped working at MILAGROS and after our client's employment with MILAGROS ended, MILAGROS failed and refused to pay all wages earned and due immediately upon separation. These earned but unpaid wages include compensation for all hours worked including minimum wages and overtime compensation, tips, and premiums for the missed meal and rest breaks.

During the relevant time period, MILAGROS also failed to keep accurate and complete payroll records showing the actual hours worked per day (including the time for meal periods) and the wages paid to our client and other aggrieved employees pursuant to California Labor Code sections 1174(d).



MESSRELIAN LAW
ATTORNEYS AT LAW

500 N. Central Avenue, Suite 840
Glendale, California 91203

Tel: (818) 484-6531
Fax: (818) 956-1983

Additionally, during the relevant time period, Mr. Perez and others incurred necessary, business-related expenses and costs that were not reimbursed by MILAGROS. These costs include, but are not limited to, the cost of uniforms. Accordingly, MILAGROS was in violation of California Labor Code sections 2800 and 2802.

Moreover, MILAGROS failed to provide sick pay pursuant to Labor Code section 246 and also failed to provide Worker's Compensation coverage for Mr. Perez and other aggrieved employees in violation of Labor Code Section 3700.5.

Mr. Perez also has claims under Labor Code Sections 1102.5 and 98.6 (in addition to wrongful termination in violation of public policy) in that he was terminated from his employment and reprimanded with a write-up for attempting to take a statutory break to which he was legally entitled, but not provided by the company for the reasons given above.

Each of the aforementioned violations, except the Labor Code section 226(a) violations, is among the enumerated serious violations set forth in Labor Code § 2699.5, for which there is no statutory right to cure.

Please take notice that, based upon the above-mentioned violations, and in addition to the penalties provided by those specific sections themselves, our client also intends to seek penalties under the following Labor Code sections which themselves are inviolable but provide for recovery of penalties for violating one or more of the above-mentioned Labor Code sections: Labor Code §§ 558, 226.3.

Should your agency choose not to pursue this matter, this law office intends to vigorously prosecute the aforementioned Labor Code violations on its behalf and vindicate the rights of all employees who have been subjected to these same Labor Code violations by MILAGROS.

If you have any questions or require additional information, please do not hesitate to contact us. Thank you in advance for your attention to this matter.

Very Truly Yours,

Harout Messrelian, Esq.

EXHIBIT 4

MESSRELIAN LAW INC.

Harout Messrelian, Esq., SB# 272020
500 N. Central Ave., Suite 840
Glendale, California 91203
Telephone: (818) 484-6531
Facsimile: (818) 956-1983
Email: hm@messrelianlaw.com

Electronically
FILED
by Superior Court of California, County of San Mateo
ON 3/22/2022
By /s/ Una Finau
Deputy Clerk

Attorneys for Plaintiff ORLANDO PEREZ AVALOS

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN MATEO

ORLANDO PEREZ AVALOS,

Plaintiff,

vs.

MILAGROS RESTAURANT LLC;
GREGORY HAROLD ST. CLAIRE; and
DOES 1 to 25, inclusive,

Defendants.

) CASE NO. 22-CIV-01222

) **COMPLAINT FOR DAMAGES FOR:**

-) 1) **FAILURE TO COMPENSATE FOR**
) **ALL HOURS WORKED;**
) 2) **FAILURE TO PAY MINIMUM**
) **WAGES;**
) 3) **FAILURE TO PAY OVERTIME;**
) 4) **FAILURE TO PROVIDE ACCURATE**
) **ITEMIZED WAGE STATEMENTS;**
) 5) **FAILURE TO PAY WAGES OWED**
) **EVERY PAY PERIOD;**
) 6) **VIOLATION OF LABOR CODE**
) **SECTION 558;**
) 7) **FAILURE TO MAINTAIN**
) **ACCURATE RECORDS;**
) 8) **FAILURE TO GIVE REST BREAKS;**
) 9) **FAILURE TO GIVE MEAL BREAKS;**
) 10) **PRIVATE ATTORNEYS GENERAL**
) **ACT ("PAGA");**
) 11) **FAILURE TO PAY WAGES WHEN**
) **EMPLOYMENT ENDS**
) 12) **FAILURE TO REIMBURSE**
) **BUSINESS EXPENSES**
) 13) **FAILURE TO PROVIDE**
) **PERSONNEL RECORDS;**
) 14) **FAILURE TO PROVIDE PAY**
) **RECORDS;**
) 15) **RETALIATION IN VIOLATION OF**
) **LABOR CODE SECTION 98.6;**
) 16) **RETALIATION IN VIOLATION OF**
) **LABOR CODE SECTION 1102.5;**

1) 17) WRONGFUL TERMINATION IN
2) VIOLATION OF PUBLIC POLICY;
3) 18) VIOLATION OF CALIFORNIA
4) BUSINESS AND PROFESSIONS
5) CODE SECTION 17200.
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DEMAND FOR JURY TRIAL

COMES NOW Plaintiff, ORLANDO PEREZ AVALOS (hereinafter "Plaintiff"), and alleges:

PARTIES, JURISDICTION, VENUE

1. Jurisdiction and Venue are proper in this Court and this action is properly filed in the County of San Mateo in this judicial district because Defendants MILAGROS RESTAURANT LLC; GREGORY HAROLD ST. CLAIRE and DOES 1 to 25, inclusive, (collectively "Defendant(s)" or "MILAGROS") do business in the County of San Mateo, and because Defendants' obligations and liabilities arise therein. Moreover, Plaintiff's damages sought herein exceed \$25,000.

2. Plaintiff is a male resident of the State of California.

3. Plaintiff is informed and believes that at all times herein mentioned, Defendant MILAGROS RESTAURANT LLC was and is a domestic limited liability company, operating in the County of San Mateo, State of California, and which employed Plaintiff.

4. Plaintiff is informed and believes that all times herein mentioned, Defendant GREGORY HAROLD ST. CLAIRE is and was a resident of the County of San Mateo, State of California and was the owner, director, and/or managing agent of MILAGROS RESTAURANT LLC, who was personally involved in the day-to-day activities of the business and hence controlled the wages, hours, and working conditions of Plaintiff and other aggrieved employees.

5. Plaintiff is ignorant of the true names and capacities, whether individual, corporate, or

1 associate of those defendants fictitiously sued as DOES 1 to 25, inclusive, and so Plaintiff sues
2 them by these fictitious names. Plaintiff is informed and believes that each of the DOE
3 defendants, numbers 1 to 25, reside in the State of California and are in some manner
4 responsible for the conduct alleged herein. Upon discovering the true names and capacities of
5 these fictitiously named defendants, Plaintiff will amend this complaint to show the true names
6 and capacities of these fictitiously named defendants. Unless otherwise alleged in this
7 complaint, Plaintiff is informed, and on the basis of that information and belief, alleges that at
8 all times herein mentioned, each of the remaining codefendants, in doing the things hereinafter
9 alleged, were acting within the course, scope, and under the authority of their agency,
10 employment, or representative capacity, with the consent of his/her codefendants.

12 **GENERAL ALLEGATIONS**

13 6. Plaintiff started working for MILAGROS as a bartender on or around April 2021.
14 Plaintiff was classified as an hourly, non-exempt employee and earned approximately
15 \$15.00/hour. Plaintiff's employment ended on or around late September 2021.

16 7. It is Plaintiff's position that MILAGROS has committed numerous labor code
17 violations against Plaintiff and other hourly, non-exempt aggrieved employees.

18 8. MILAGROS did not provide Plaintiff and other similarly situated aggrieved employees
19 with the minimum wages to which they were entitled for all work performed and did not
20 compensate her and others for all hours worked pursuant to California Labor Code sections
21 1194, 1197 and 1197.1. Plaintiff and others were not paid for all hours worked and consistently
22 worked "off the clock". This is so because Plaintiff and others would consistently be required
23 to perform work duties after clocking out for work and required to stay past their shifts.
24 Management/ownership would have Plaintiff and others clock out first and then complete end
25 of the shift tasks. Moreover, MILAGROS had a policy and practice of rounding down hours
26 worked and "time shaving", which led to Plaintiff and others not being paid for all hours
27 worked, which would include the minimum wage. Moreover, to the extent employees such as
28

1 Plaintiff and others worked through their meal periods, they were not compensated for that
2 time, which would be akin to a minimum wage violation.

3 9. Additionally, MILAGROS violated Labor Code Section 351 by taking some of the tips
4 meant for employees and also deducting the tips from Plaintiff's and others' earned wages.
5 MILAGROS also deducted the credit card fee from Plaintiff's and others' tips and did not
6 timely provide the credit card and even cash tips to Plaintiff and other similarly situated
7 aggrieved employees.

8 10. Due to the above "off the clock" violations and as a matter of company policy,
9 MILAGROS violated Labor Code §510 because it failed to pay Plaintiff and other similarly
10 situated aggrieved employees overtime, even though they worked more than 8 hours per day, 12
11 hours per day, and/or 40 hours per week throughout their employment. Plaintiff's and others'
12 actual work hours, which included the "off the clock" work as described above, entitled them to
13 overtime, however, it was not company policy to keep accurate track of all hours worked and to
14 pay employees overtime.

15 11. MILAGROS violated Labor Code § 226.7 along with Industrial Welfare Commission
16 Wage Order no. 5 because it failed to provide Plaintiff and other similarly situated aggrieved
17 employees 10-minute rest periods for every four hours of work, or majority portion thereof,
18 throughout their employment. MILAGROS did not completely relieve Plaintiff of all duty
19 during said rest periods. MILAGROS did not pay to Plaintiff one additional hour of pay at
20 Plaintiff's regular rate of compensation for each workday that one or more statutory rest periods
21 was not provided. Rest breaks were not authorized or enforced at the restaurant. In fact, it was
22 not part of MILAGROS's culture for employees such as Plaintiff and others to take at least one
23 10-minute rest break every day wherein they are relieved of all work duties. The latter was due
24 to understaffing of servers/bartenders and bartenders such as Plaintiff being too busy to be able
25 to take rest breaks or not being able to take rest breaks because there was no coverage at the bar.
26 Taking rest breaks meant leaving customers unattended and that could not happen.

27 12. MILAGROS also violated Labor Code §§ 512 and 226.7 along with Industrial Welfare
28

Commission Wage Order No. 5 because it failed to provide Plaintiff and other similarly situated aggrieved employees the requisite 30-minute, uninterrupted meal periods for every five (5) hours of work throughout their employment, and Plaintiff did not validly waive said meal periods. MILAGROS did not completely relieve Plaintiff of all duties during said meal periods. MILAGROS did not pay to Plaintiff one additional hour of pay at Plaintiff's regular rate of compensation for each workday that one or more statutory meal periods was not provided. If MILAGROS had Plaintiff sign a meal period waiver, it would not be valid and enforceable since Plaintiff and others generally worked more than a 6-hour shift. If MILAGROS had Plaintiff sign an on-duty meal period agreement wherein Plaintiff agreed to work through his meal period, it would also be invalid and unenforceable because the nature of Plaintiff's job as a bartender does not prevent him from taking a meal period. As such, Plaintiff and others never received statutory, timely meal periods during their employment. In other words, there was never an uninterrupted 30-minute meal period for any employees, including Plaintiff, that was taken before the 5th hour worked. As was the case with rest periods, meal breaks were definitively not part of the MILAGROS's culture, especially in a fast-paced restaurant environment. The meal periods were not authorized and were not enforced. Furthermore, Plaintiff was not able to take a meal period because there was no one to relieve him of his job duties as a bartender and no one to cover the bar if Plaintiff was to attempt to take any type of statutory break.

13. Furthermore, during the relevant time period, MILAGROS failed to pay Plaintiff and other similarly situated aggrieved employees all wages due to them within any time period specified by California Labor Code section 204, including the minimum wages and overtime as described above as well as meal/rest break premiums.

14. Moreover, Plaintiff and others were paid late and more than 7 calendar days after the end of the pay period in contravention of Labor Code Section 204. MILAGROS was also in violation of California Labor Code section 226(a) by not providing access to paystubs and failing to include pertinent information on the wage statements, including but not limited to, all hours worked, tips earned, gross wages earned, net wages earned, all deductions, premium payments

1 for meal and rest breaks, the correct legal name and address of employing entity (in fact,
2 Plaintiff's pay stubs reflect the name MILAGROS, LLC and not the true and correct name of
3 MILAGROS RESTAURANT, LLC which is a facial violation), the correct beginning and end
4 of the pay period, all applicable hourly rates, and all identifying employee information, among
5 other items. As such, MILAGROS did not provide Plaintiff and other similarly situated
6 aggrieved employees with complete, accurate itemized wage statements.

7 15. MILAGROS violated Labor Code § 203 because it willfully failed to pay Plaintiff and
8 other similarly situated aggrieved employees earned and due wages upon separation of
9 employment, either immediately upon involuntary termination, or within 72 hours of resignation.
10 After Plaintiff stopped working at MILAGROS and after Plaintiff's employment with
11 MILAGROS ended, MILAGROS failed and refused to pay all wages earned and due
12 immediately upon separation. These earned but unpaid wages include compensation for all hours
13 worked including minimum wages and overtime compensation, tips, and premiums for the
14 missed meal and rest breaks.

15 16. During the relevant time period, MILAGROS also failed to keep accurate and complete
16 payroll records showing the actual hours worked per day (including the time for meal periods)
17 and the wages paid to Plaintiff and other aggrieved employees pursuant to California Labor Code
18 sections 1174(d). Additionally, during the relevant time period, Plaintiff and others incurred
19 necessary, business-related expenses and costs that were not reimbursed by MILAGROS. These
20 costs include, but are not limited to, the cost of uniforms. Accordingly, MILAGROS was in
21 violation of California Labor Code sections 2800 and 2802.

22 17. Moreover, MILAGROS failed to provide sick pay pursuant to Labor Code section 246
23 and also failed to provide Worker's Compensation coverage for Plaintiff and other aggrieved
24 employees in violation of Labor Code Section 3700.5.

25 18. Plaintiff also has claims under Labor Code Sections 1102.5 and 98.6 (in addition to
26 wrongful termination in violation of public policy) in that he was terminated from his
27 employment and reprimanded with a write-up for attempting to take a statutory break to which
28

1 he was legally entitled, but not provided by the company for the reasons given above.

2 **FIRST CAUSE OF ACTION**

3 **FAILURE TO COMPENSATE FOR ALL HOURS WORKED**

4 **(California Industrial Welfare Commission Order 5-2001, California Code of**
5 **Regulations Title 8 Section 11050, and California Labor Code Section 1198)**

6 **(Plaintiff against all named defendants and all DOE defendants)**

7 19. Plaintiff re-alleges and incorporates by reference each and every allegation in
8 paragraphs 1 through 18, inclusive, of this Complaint as though fully set forth herein.

9 20. At all times relevant herein, Defendants were required to compensate its employees for
10 all hours worked upon reporting for work at the appointed time stated by the employer
11 pursuant to Industrial Welfare Commission Order 5-2001, California Code of Regulations,
12 Title 8, Section 11050.

13 21. For the three (3) years preceding filing of this action, Defendants failed to compensate
14 Plaintiff for all hours worked.

15 22. Under the aforementioned wage order and regulations, Plaintiff is to recover
16 compensation for all hours worked but not paid by Defendants for the three (3) years
17 preceding the filing of this Complaint.

18 23. As a proximate result of the aforementioned violations, Plaintiff has been damaged in
19 an amount according to proof at time of trial, but in an amount in excess of the jurisdiction of
20 this Court.

21 24. Defendants' conduct described herein violates Labor Code Section 512, 558, 1194, and
22 1198. Therefore, pursuant to Labor Code Sections 218.5, 512, 558, and 1194, Plaintiff is
23 entitled to recover damages for the nonpayment of wages for all hours worked, penalties, plus
24 reasonable attorney's fees and costs of suit.

25 25. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
26 along with any allowable interest, penalties, attorney's fees, and costs which will equal an
27 amount known to Plaintiff once he has obtained all of his payroll records from
28

Defendants.

SECOND CAUSE OF ACTION

FAILURE TO PAY MINIMUM WAGES

(California Labor Code Sections 1194, 1194.2, 1197)

(Plaintiff against all named defendants and all DOE defendants)

26. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 25, inclusive, of this Complaint as though fully set forth herein.

27. Pursuant to Labor Code Sections 1194, 1194.2 and 1197, it is unlawful for an employer to suffer or permit a California employee to work without paying wages at the minimum wage rate for all hours worked as required by the applicable Industrial Welfare Commission (hereinafter "IWC") Wage Order No. 5-2001, codified at California Code of Regulations, Title 8, Section 11050, subdivision 4.

28. Pursuant to IWC Wage Order no. 5-2001, subdivision 2(K), at all relevant times, "hours worked" included "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so..."

29. During his employment, Plaintiff was regularly required as a matter of uniform policy and practice to work, and in fact worked, as an employee of Defendants and Plaintiff was paid less than the minimum wage rate by Defendants for hours worked in violation of California Labor Code Section 1197 and the applicable California Industrial Wage Commission wage order(s).

30. Plaintiff was, at all relevant times, under the control of Defendants and suffered or permitted to work by Defendants. Defendants' acts or omissions in failing to adequately compensate Plaintiff were not in good faith nor were there reasonable grounds for Defendants to believe that their acts or omissions were not contrary to California law.

31. For all hours worked by Plaintiff for which he was paid less than the minimum wage rate by Defendants, Plaintiff is entitled to not less than the applicable California minimum

1 wage rate and, pursuant to Labor Code Section 1194.2(a), liquidated damages in an amount
2 equal to unpaid minimum wages and interests thereon. Pursuant to Labor Code Section 1194,
3 Plaintiff is also entitled to attorney's fees, costs and interests according to proof.

4 32. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
5 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
6 trial.

7
8 **THIRD CAUSE OF ACTION**

9 **FAILURE TO PAY OVERTIME**

10 **(California Industrial Welfare Commission Order 5-2001, California Code of**
11 **Regulations Title 8 Section 11050)**

12 **(Plaintiff against all named defendants and all DOE defendants)**

13 33. Plaintiff re-alleges and incorporates by reference each and every allegation in
14 paragraphs 1 through 32, inclusive, of this Complaint as though fully set forth herein.

15 34. Pursuant to Industrial Welfare Commission Order No. 5-2001, California Code of
16 Regulations, Title 8, Section 11050, for the period of Plaintiff's employment, Defendants were
17 required to compensate Plaintiff for all overtime, which is calculated at one and one-half (1.5)
18 times the regular rate of pay for hours worked in excess of eight (8) in a day or forty (40) hours
19 in a week, and two (2) times the regular rate of pay for hours worked in excess of twelve (12)
20 hours in a day or hours worked in excess of eight (8) on the seventh consecutive work day in a
21 week.

22 35. Plaintiff was a non-exempt employee entitled to the protections of the California
23 Industrial Welfare Commission Order No. 5-2001, California Code of Regulations, Title 8,
24 Section 11050.

25 36. Plaintiff worked more than eight (8) hours in a single workday, more than twelve (12)
26 hours in a single day, or forty (40) hours in a single workweek on numerous occasions.

27 37. Plaintiff was entitled to the above overtime premiums.
28

1 38. Defendants did not pay Plaintiff premium wages of at least one and one-half times
2 Plaintiff's regular rate of pay for hours worked past eight (8) in a day or two times Plaintiff's
3 regular rate of pay for hours worked past twelve (12) in a day.

4 39. Defendants did not pay Plaintiff premium wages of at least one and one-half times
5 Plaintiff's regular rate of pay for hours worked past forty (40) in a week.

6 40. Plaintiff worked at least one pay period in which he was not properly paid overtime
7 within the three (3) years prior to the initiation of this lawsuit.

8 41. Defendants know or should know the actual dates of overtime worked, the amount of
9 overtime worked, and the amount of unpaid overtime due.

10 42. As a proximate result of Defendants' violations, Plaintiff has been damaged in an
11 amount according to proof at time of trial, but in an amount in excess of the jurisdiction of this
12 Court.

13 43. Pursuant to California Labor Code Sections 218.6, 510, 1194, and California Code of
14 Regulations, Title 8, Sections 11050, Plaintiff is entitled to recover damages for the
15 nonpayment of overtime premiums for all overtime hours worked, penalties, interest, plus
16 reasonable attorney's fees and costs of suit.

17 44. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
18 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
19 trial.

20 **FOURTH CAUSE OF ACTION**

21 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

22 **(California Labor Code Section 226)**

23 **(Plaintiff against all named and all DOE defendants)**

24 45. Plaintiff re-alleges and incorporates by reference each and every allegation in
25 paragraphs 1 through 44, inclusive, of this Complaint as though fully set forth herein.

26 46. Pursuant to California Labor Code Section 226, every employer must furnish each
27 employee an itemized statement of wages and deductions at the time of payment of wages.
28

1 47. Defendants knowingly and intentionally did not furnish Plaintiff with any pay stubs that
2 accurately reflected all information required by Labor Code Section 226, including but not
3 limited to, gross wages earned, including overtime, net wages earned, total hours worked by
4 the employee, all deductions, and premium pay for missed meal breaks and rest breaks.
5 Therefore, Defendants failed to maintain and provide accurate itemized wage statements to
6 Plaintiff in accordance with California Labor Code Section 226(a).

7 48. Pursuant to California Labor Code Section 226(e), Plaintiff is entitled to recover the
8 greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation
9 occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay
10 period, not exceeding an aggregate amount of four thousand dollars (\$4,000), plus costs and
11 reasonable attorney's fees. Plaintiff only claims damages under this cause of action pursuant to
12 the 1-year period immediately preceding the date this lawsuit was filed.

13 49. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff has
14 sustained damages, including loss of earnings, in an amount to be established at trial. As a
15 further direct and proximate result of Defendants' unlawful conduct, as set forth herein,
16 Plaintiff is entitled to recover penalties, in an amount to be established at trial, as well as costs
17 and attorney's fees pursuant to statute.

18 50. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
19 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
20 trial.

21 **FIFTH CAUSE OF ACTION**

22 **FAILURE TO PAY WAGES OWED EVERY PAY PERIOD**

23 **(California Labor Code Section 204)**

24 **(Plaintiff against all named defendants and all DOE defendants)**

25 51. Plaintiff re-alleges and incorporates by reference each and every allegation in
26 paragraphs 1 through 50, inclusive, of this Complaint as though fully set forth herein.

27 52. California Labor Code Section 204 establishes the fundamental right of all employees
28

1 in the State of California to be paid wages in a timely fashion for their work.

2 53. At all times relevant during the liability period, Defendants failed to pay Plaintiff the
3 full amount of all owed wages when due as required by California Labor Code Section 204.

4 54. Defendants failed to pay Plaintiff all wages earned each pay period. Plaintiff is
5 informed, believes, and thereon alleges, that all times relevant during the liability period,
6 Defendants maintained a policy or practice of not paying Plaintiff wages for all hours worked,
7 including overtime hours and the minimum wage along with premiums for missed meal breaks
8 and rest breaks.

9 55. As a result of Defendants' unlawful conduct, Plaintiff has suffered damages in an
10 amount, subject to proof, to the extent he was not paid all wages each pay period. The precise
11 amount of unpaid wages is not presently known to Plaintiff but can be determined directly
12 from Defendants' records or indirectly based on information from Defendants' records.

13 56. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
14 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
15 trial.

16 **SIXTH CAUSE OF ACTION**

17 **VIOLATION OF LABOR CODE SECTION 558**

18 **(California Labor Code Section 558)**

19 **(Plaintiff against all named defendants and all DOE defendants)**

20 57. Plaintiff re-alleges and incorporates by reference each and every allegation in
21 paragraphs 1 through 56, inclusive, of this Complaint as though fully set forth herein.

22 58. California Labor Code Section 558 states that any person acting on behalf of an
23 employer who violates, or causes to be violated, a section of this chapter or any provision
24 regulating hours and days of work in any order of the Industrial Welfare Commission shall be
25 subject to a civil penalty for any initial violation, fifty dollars (\$50) for each underpaid
26 employee for each pay period for which the employee was underpaid in addition to an amount
27 sufficient to recover underpaid wages. The civil penalty for each subsequent violation is one
28

1 hundred dollars (\$100) for each underpaid employee for each pay period for which the
2 employee was underpaid in addition to an amount sufficient to recover underpaid wages.
3 Plaintiff claims penalties for five (5) years immediately preceding the date this lawsuit was
4 filed.

5 59. Plaintiff hereby alleges that named Defendants violated Labor Code Section 558. Thus,
6 Defendants are subject to civil penalties under the following laws:

- 7 a. California Labor Code Section 558. Defendants failed to pay Plaintiff regular
8 wages, including minimum wages for all hours worked and overtime wages for
9 overtime hours worked. As such, Defendants violated Section 558 under which
10 penalties are due. Plaintiff therefore prays for penalties of \$50.00 for the first pay
11 period and \$100.00 for each subsequent violation for each pay period for which
12 Plaintiff was underpaid in addition to an amount sufficient to recover underpaid
13 wages.
14
- 15 b. California Labor Code Section 218.5 for recovery of costs and attorney's fees for
16 relief associated with Plaintiff's prosecution of this cause of action under California
17 Labor Code Sections 200, et seq. Defendants knowingly violated labor laws by not
18 paying Plaintiff for his overtime hours worked and minimum wages for all hours
19 worked.
20
- 21 c. California Labor Code Section 211 and 218.5 for recovery of costs and attorney's
22 fees for relief associated with Plaintiff's prosecution of this cause of action under
23 California Labor Code Sections 200, et seq.

24 60. Under this cause of action, Plaintiff prays for all penalties and pay otherwise due under
25 the statutes, regulations, and wage orders alleged in this cause of action along with any
26 allowable interest, penalties, attorney's fees, and costs according to proof at trial.

27 61. Plaintiff also prays for Labor Code Section 211 and 218.5 recovery of costs an
28

attorney's fees for the time Plaintiff's attorney spent prosecuting this cause of action.

SEVENTH CAUSE OF ACTION

FAILURE TO MAINTAIN ACCURATE RECORDS

(California Labor Code Section 1174(d))

(Plaintiff against all named defendants and all DOE defendants)

62. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 61, inclusive, of this Complaint as though fully set forth herein.

63. Labor Code section 1174(d) requires that employers, including Defendants, maintain accurate records showing the hours worked daily by its employees and to whom wages were paid.

64. Additionally, the "Records" section of the applicable IWC Wage Order obligates the employer, including Defendants, to keep accurate information with respect to each one of their employees including, but not limited to, the total wages paid each payroll period, and time records showing when the employee begins and ends each work period, meal periods, split shift intervals; the total daily hours worked; the total hours worked in the payroll period, and the applicable rates of pay.

65. Pursuant to Labor Code section 1174.5, any person employing labor who willfully fails to maintain accurate and complete records required by Labor Code section 1174(d) is subject to a penalty. On information and belief, Defendants intentionally failed to maintain accurate records of Plaintiff's total daily hours, the total hours worked in the payroll period, the applicable rates of pay, and total wages earned for the payroll period.

66. As a direct result of Defendants' violations alleged herein, Plaintiff has suffered and continues to suffer substantial losses related to Defendants' failure to record and maintain records of meal and rest periods as well as time records.

67. Plaintiff seeks all available remedies for Defendants' violations including, but not limited penalties, and costs to the extent permitted by law and according to proof at trial.

///

EIGHTH CAUSE OF ACTION

FAILURE TO GIVE REST BREAKS

(Plaintiff against all named defendants and all DOE defendants)

68. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 67, inclusive, of this Complaint as though fully set forth herein.

69. Plaintiff brings this cause of action under the following laws, for the following reasons:

- a. Title 8 of the California Code of Regulations Sections 11050(12)(A), which provides that every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof;
- b. Title 8 of the California Code of Regulations Sections 11050(12)(B), which provides that if an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at employee's regular rate of compensation for each workday that the rest period is not provided;
- c. Title 8 of the California Code of Regulations sections 11050(20)(A), which penalizes the employer \$50.00 for each initial violation, per employee, of any provision of the Wage Order, and \$100.00 for each additional violation thereafter per employee; and
- d. California Labor Code section 226.7, which states that (a) no employer shall require any employee to work during any rest period mandated by an applicable order of the Industrial Welfare Commission, and (b) if an employer fails to provide an employee a rest period in accordance with an applicable order of the Industrial

1 Welfare Commission, the employer shall pay the employee one (1) additional hour
2 of pay at employee's regular rate of compensation for each work day that the rest
3 period is not provided.

4 70. Plaintiff alleges that he was not authorized and permitted to take a ten (10) minute
5 rest break after every four (4) hours of work or major fraction thereof, as required by California
6 law.

7 71. Under this cause of action, Plaintiff prays for wages due to him under the statutes,
8 regulations, and wage orders alleged in this cause of action along with any allowable interest,
9 penalties, attorney's fees and costs according to proof at trial. Specifically, Plaintiff prays for
10 the foregoing moneys calculated from 3 years immediately preceding the filing of this lawsuit.
11

12 72. Plaintiff also prays for Labor Code section 218.5 recovery of costs and attorney's
13 fees as well as interest under Labor Code section 218.6.

14 73. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
15 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
16 trial.
17

18 **NINTH CAUSE OF ACTION**

19 **FAILURE TO GIVE MEAL BREAKS**

20 **(Plaintiff against all named defendants and all DOE defendants)**

21 74. Plaintiff re-alleges and incorporates by reference each and every allegation in
22 paragraphs 1 through 73, inclusive, of this Complaint as though fully set forth herein.
23

24 75. Plaintiff brings this cause of action under the following laws, for the following
25 reasons:

- 26 a. California Labor Code section 512(a), which requires that employees be given a 30-
27 minute uninterrupted meal break after five (5) hours of work, and a second
28

uninterrupted meal break after ten (10) hours of work;

- b. California Labor Code section 226.7, which states that (a) no employer shall require any employee to work during any meal period mandated by an applicable order of the Industrial Welfare Commission, and (b) if any employer fails to provide an employee a meal period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one (1) additional hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided;
- c. California Industrial Welfare Commission Order No. 5 section 11(B), as codified under Title 8 of the California Code of Regulations Section 11050, which states that if an employer fails to provide an employee a meal period in accordance with the applicable provisions of the Wage Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided;
- d. California Industrial Welfare Commission Wage Order No. 5 Section 7(A)(3), as codified under Title 8 of the California Code of Regulations Section 11050, which requires an employer to maintain records documenting its employees' meal periods;
- e. California Industrial Welfare Commission wage order No. 5 Section 20(A), as codified under California Code of Regulations Section 11050, which penalizes the employer \$50.00 for each initial violation, per employee, of any provision of the Wage Order, and \$100.00 for each additional violation thereafter per employee; and
- f. California Labor Code section 1171 and 1173, which have given the California Labor Commission jurisdiction to enact Wage Orders (such as Wage Order no. 5) as enforceable law.

1 76. Plaintiff alleges that he was not authorized and permitted to take relieved meal breaks
2 after five (5) hours of work. Plaintiff further alleges that he was not authorized and permitted to
3 take a second relieved meal break after ten (10) hours of work, as required by California law.
4 California Labor Code section 512(a) and California Industrial Welfare Commission Order No.
5 5, as codified under California Code of Regulations Sections 11050 et. seq. requires that
6 employees receive uninterrupted meal periods every five (5) hours of consecutive work, and
7 that the meal period be at least 30 minutes in length, wherein employee is relieved of all work
8 duty. California Labor Code section 226.7 provides that employers may not require their
9 employees to work through their meal periods. California Labor Code section 226.7 and
10 California Code of Regulations section 11050 requires that if the employer fails to provide the
11 employee with an uninterrupted meal period, the employer must pay the employee one (1) hour
12 of pay for each work day that the meal period is not given.
13

14 77. Under this cause of action, Plaintiff prays for wages due to him under the statutes,
15 regulations, and wage orders alleged in this cause of action along with any allowable interest,
16 penalties, attorney's fees and costs according to proof at trial. Specifically, Plaintiff prays for
17 the foregoing moneys calculated from 3 years immediately preceding the filing of this lawsuit.
18

19 78. Plaintiff also prays for Labor Code section 218.5 recovery of costs and attorney's
20 fees as well as interest under Labor Code section 218.6.

21 79. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
22 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
23 trial.

24 **TENTH CAUSE OF ACTION**

25 **PRIVATE ATTORNEYS GENERAL ACT**

26 **Individual and Representative Claim for PAGA penalties under California Labor Code**
27 **sections 201, 202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 232, 246, 351, 353, 510, 512,**
28 **558, 1174, 1174.5, 1194, 1197, 1198, 2802, 3700.5)**

(Plaintiff Against all Named Defendants and all DOE Defendants)

1 80. Plaintiff re-alleges and incorporates by reference each and every allegation in
2 paragraphs 1 through 79, inclusive, of this Complaint as though fully set forth herein.

3 81. Pursuant to law, Plaintiff provided the required written notice to the LWDA and
4 Defendants of the specific violations of the California Labor Code that Defendants
5 and DOE defendants have violated and continue to violate.

6 82. Pursuant to California Labor code section 2699.3, no response was received from the
7 LWDA within 65 days of the postmark date of the above-alleged letter.

8 83. Plaintiff therefore has exhausted all administrative remedies required of him under
9 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this
10 cause of action and pursue penalties in a representative action for Defendants' violations of the
11 Labor Code.

12 84. Pursuant to California Labor Code section 2699, any provisions of the Labor Code
13 that provides for a civil penalty to be assessed and collected by the LWDA or any of its
14 departments, divisions, commissions, boards, agencies, or employees for violation of the code
15 may, as an alternative, be recovered through a civil action brought by an aggrieved employee
16 on behalf of himself or herself and other current or former employees pursuant to the
17 procedures specified in California Labor Code section 2699.3.

18 85. Plaintiff is an "aggrieved employee" because Plaintiff was employed by the alleged
19 violator and had one or more of the alleged violations committed against him, and therefore is
20 properly suited to represent the interests of other current and former hourly, non-exempt
21 employees who worked for MILAGROS at all locations in the state of California during the
22 relevant PAGA Period.

23 86. Based on the acts alleged above, Plaintiff, on behalf of himself and others, seeks
24 penalties under California Labor Code sections 2698 and 2699 because of Defendants'
25 violations of numerous provisions of the California Labor Code as alleged in this Complaint.

26 87. Plaintiff therefore has exhausted all administrative remedies required of him under
27
28

1 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this
2 cause of action and pursue penalties in a representative action for Defendants' violations of the
3 Labor Code.

4 88. California Labor Code section 2699 et seq. imposes penalties upon culpable
5 Defendants for violating the Labor Code.

6 89. California Labor Code section 558 establishes a civil penalty as follows: Any
7 employer or other person action on behalf of an employer who violates, or causes to be
8 violated, a section of this chapter or any provision regulating hours and days of work in any
9 order of the Industrial Welfare Commission (including the "Hours and Days of Work" section
10 of the Wage Order) shall be subject to a civil penalty of (1) for any initial violation, fifty
11 dollars (\$50) for each underpaid employee for each pay period for which the employee was
12 underpaid... (2) for each subsequent violation, one hundred dollars (\$100) for each underpaid
13 employee for each pay period for which the employee was underpaid...

14 90. Plaintiff seeks penalties for Defendants' misconduct as alleged herein as permitted by
15 law, but only those penalties that are required to be shared with the LWDA as Plaintiff is not
16 seeking individual/victim specific relief or underpaid wages for Plaintiff or other aggrieved
17 employees in this specific cause of action under the Private Attorneys General Act.

18 91. Specifically, Plaintiff seeks penalties under California Labor Code section 2699, for
19 the following:

20 Violations of California Labor Code sections 201, 202, 203, 204 and/or 204b, 210, 226,
21 226.3, 226.7, 232, 246, 351, 353, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1198, 2802,
22 3700.5 via 2698 and 2699 and any other Labor Codes and Industrial Welfare Commission
23 Wage Order Provisions (no. 5) violated based on the facts alleged in this Complaint.

24 92. Pursuant to Labor Code section 2698 et seq., Plaintiff seeks to recover attorney's fees,
25 costs, and civil penalties on behalf of Plaintiff and other current and former aggrieved
26 employees as alleged herein in an amount to be shown according to proof at trial and within the
27 jurisdictional limits of this Court.
28

ELEVENTH CAUSE OF ACTION

FAILURE TO PAY WAGES WHEN EMPLOYMENT ENDS

(California Labor Code Sections 201, 202, 203)

(Plaintiff against all named defendants and all DOE defendants)

93. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 92, inclusive, of this Complaint as though fully set forth herein.

94. Pursuant to California Labor Code Section 201(a), an employer who discharges an employee must immediately pay for all compensation due and owing.

95. Pursuant to California Labor Code Section 202, when an employee resigns, the employer must pay all compensation due and owing within 72 hours of resignation, or on the employee's last day of work, if the employee gives more than 72 hours notice of resignation.

96. Pursuant to California Labor Code Section 203, if an employer willfully fails to pay, without abatement or reduction, any wages of an employee whose employment ends, the wages of the employee shall continue as a penalty from the due date at the same rate until paid or until an action is commenced; however, the wages shall not continue for more than 30 days for failure to pay an employee owed wages.

97. After Plaintiff's employment with Defendants ended, Defendants willfully refused and continue to refuse to pay him unpaid wages as required by Labor Code Section 203.

98. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged along with any allowable interest, penalties, attorney's fees, and costs according to proof at trial. Moreover, Plaintiff prays for the above-mentioned money from 1 year immediately preceding the filing of this lawsuit.

99. Under this cause of action, Plaintiff also prays for attorney's fees and costs under California Labor Code Section 218.5 for time spent pursuing the non-payment of wages as set forth herein. Plaintiff also prays for interest under California Labor Code Section 218.6.

100. Under this cause of action, Plaintiff prays for penalties due under the statutes

1 alleged along with any allowable interest, penalties, attorney's fees, and costs according to
2 proof at trial.

3 **TWELFTH CAUSE OF ACTION**

4 **FAILURE TO REIMBURSE FOR BUSINESS EXPENSES**

5 **(Plaintiff against all Defendants and DOE Defendants, and each of them)**

6 101. Plaintiff re-alleges and incorporates by reference each and every allegation in
7 paragraphs 1 through 100, inclusive, of this Complaint as thought fully set forth herein.

8 102. Labor Code section 2802 provides that "[a]n employer shall indemnify his or her
9 employee for all necessary expenditures or losses incurred by the employee in direct
10 consequence of the discharge of his or her duties."

11 103. Beginning at least 3 years prior to the filing of this complaint, in order to discharge
12 their duties for Defendant, Plaintiff incurred reasonable and necessary expenses in the course
13 of completing his job duties, which were not reimbursed by Defendant. These expenses
14 include, but are not limited to, the cost of uniforms.

15 104. Plaintiff is entitled to reimbursement for these necessary expenditures, plus interest
16 and attorney's fees and costs, under Labor Code section 2802.

17 **THIRTEENTH CAUSE OF ACTION**

18 **FAILURE TO PROVIDE PERSONNEL RECORDS**

19 **(Plaintiff against all named defendants and all DOE defendants)**

20 105. Plaintiff re-alleges and incorporates by reference each and every allegation in
21 paragraphs 1 through 104, inclusive, of this Complaint as though fully set forth herein.

22 106. Labor Code section 1198.5 dictates "every current and former employee, or his or her
23 representative, has the right to inspect and receive a copy of the personnel records that the
24 employer maintains relating to the employee's performance or to any grievance concerning the
25 employee."
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27
28

1 107. Moreover, pursuant to sub-part (b)(1) of Labor Code section 1198.5, “the employer
2 shall make the contents of those personnel records available for inspection to the current or
3 former employee, or his or her representative, at reasonable intervals and at reasonable
4 times...” On information and belief, Defendants intentionally failed to provide Plaintiff with
5 personnel records when requested by Plaintiff via letter on October 30, 2021, as required by
6 law. Plaintiff requested his personnel records in accordance with California Labor Code
7 section 1198.5(k) on October 30, 2021, via U.S. certified mail, return receipt requested. .
8

9 108. Defendants failed to provide Plaintiff with an opportunity to inspect or copy his
10 records within 30 days. As a direct result of Defendants’ violations alleged herein, Plaintiff has
11 suffered and continues to suffer substantial losses related to Defendants’ failure to provide
12 personnel records.

13 109. Plaintiff seeks all available remedies for Defendants’ violations including, but not
14 limited penalties, and costs to the extent permitted by law and according to proof at trial.
15 Pursuant to Labor Code section 1198.5, Plaintiff prays for judgment against Defendants
16 in the amount of \$750.00, along with costs and attorney’s fees.

17 **FOURTEENTH CAUSE OF ACTION**

18 **FAILURE TO PROVIDE PAY RECORDS**

19 **(Plaintiff against all named defendants and all DOE defendants)**

20
21 110. Plaintiff re-alleges and incorporates by reference each and every allegation in
22 paragraphs 1 through 109, inclusive, of this Complaint as though fully set forth herein.

23 111. Labor Code section 226 sub-section (b) dictates “an employer...shall afford current
24 and former employees the right to inspect or copy records pertaining to their employment,
25 upon reasonable request to the employer...”

26 112. Moreover, pursuant to sub-section (c) of Labor Code section 226, “an employer who
27 receives a written or oral request to inspect or copy records pursuant to subdivision (b)
28

1 pertaining to a current or former employee shall comply with the request as soon as
2 practicable, but no later than 21 calendar days from the date of the request.” On information
3 and belief, Defendants intentionally failed to provide Plaintiff with pay records when requested
4 by Plaintiff via certified letter, return receipt requested, on October 30, 2021, and as required
5 by law. Plaintiff requested his pay records in accordance with California Labor Code section
6 226 on October 30, 2021, via certified mail. Defendant failed to provide Plaintiff with an
7 opportunity to inspect or copy his pay records within 21 days.

8
9 113. As a direct result of Defendants’ violations alleged herein, Plaintiff has suffered and
10 continues to suffer substantial losses related to Defendants' failure to provide pay records.
11 Pursuant to Labor Code section 226, Plaintiff prays for judgment against Defendants
12 in the amount of \$750.00, along with costs and attorney’s fees.

13 114. Plaintiff seeks all available remedies for Defendants’ violations including, but not
14 limited penalties, and costs to the extent permitted by law and according to proof at trial.

15
16 **FIFTEENTH CAUSE OF ACTION**

17 **RETALIATION IN VIOLATION OF LABOR CODE SECTION 98.6**

18 **(California Labor Code section 98.6)**

19 **(Plaintiff against MILAGROS RESTAURANT LLC as the corporate Defendant only and**
20 **all DOE Defendants, and each of them)**

21 115. Plaintiff re-alleges and incorporates by reference each and every allegation in
22 paragraphs 1 through 114, inclusive, of this Complaint as though fully set forth herein.

23 116. California Labor Code section 98.6 provides, in pertinent part, as follows:

24 “A person shall not discharge an employee or in any manner discriminate, retaliate, or
25 take any adverse action against any employee or applicant for employment because the
26 employee or applicant engaged in any conduct delineated in this chapter...or because
the employee or applicant...made a written or oral complaint that he or she is owed
unpaid wages...

27 117. In doing the things herein alleged, corporate Defendant MILAGROS RESTAURANT
28

1 LLC violated Labor Code section 98.6 in that they retaliated against Plaintiff for attempting to
2 take a statutory break and for complaining about labor code violations that were being
3 committed by Defendants against him.

4 118. As a direct and proximate result of the aforementioned acts and omissions of
5 Defendants, Plaintiff suffered general and compensatory damages, including but not
6 limited to, loss of income (past and future), loss of employment benefits (past and future),
7 general and compensatory damages (past and future), mental pain and anguish and emotional
8 distress (past and future), and will continue to suffer in the future, in an amount to be proved at
9 trial. Moreover, pursuant to Labor Code section 98.6, an employer who violates this section is
10 liable for a civil penalty not exceeding ten thousand dollars (\$10,000) per employee for each
11 violation of this section.

12 119. The foregoing conduct engaged in by corporate Defendant MILAGROS
13 RESTAURANT LLC and each of its directors, officers and/or managing agents, constitutes
14 malice, fraud, and oppression and was authorized, ratified, and carried on with a conscious and
15 willful disregard of their workers' right to work in an environment free of retaliation, so as to
16 justify the imposition of punitive damages to punish and set an example of said Defendants.

18 **SIXTEENTH CAUSE OF ACTION**

19 **RETALIATION IN VIOLATION OF LABOR CODE SECTION 1102.5**

20 **(Plaintiff against corporate Defendant MILAGROS RESTAURANT LLC only and DOE**
21 **Defendants, and each of them)**

22 120. Plaintiff re-alleges and incorporates by reference each and every allegation in
23 paragraphs 1 through 119, inclusive, of this Complaint as though fully set forth herein.

24 121. At all times material to this Complaint, California Labor Code § 1102.5 was in effect
25 and binding on corporate Defendant MILAGROS RESTAURANT LLC. This section requires
26 corporate Defendant to refrain from retaliating against an employee for refusing to participate
27 in an activity that he/she reasonably believes would result in a violation of state or federal
28

1 statute, or a violation or noncompliance with a state or federal rule or regulation. California
2 Labor Code section 1102.5 also requires Defendants to refrain from retaliating against an
3 employee for disclosing information to a person with authority over the employee if the
4 employee has reasonable cause to believe that the information discloses a violation of state or
5 federal statute, or a violation of or noncompliance with a local, state, or federal rule or
6 regulation, regardless of whether disclosing the information is part of the employee's job
7 duties.
8

9 122. As discussed fully above, Plaintiff complained to Defendants about the company's
10 illegal conduct and the labor code violations being committed against Plaintiff, including
11 Plaintiff attempting to take a statutory and lawful break while on the job.

12 123. Corporate Defendant MILAGROS RESTAURANT LLC retaliated against Plaintiff
13 for his whistleblowing and protected activity in trying to take a statutory break, as alleged
14 above, all in violation of Labor Code § 1102.5.
15

16 124. As a direct and proximate result of the aforementioned acts and omissions of
17 corporate Defendant MILAGROS RESTAURANT LLC, Plaintiff suffered general and
18 compensatory damages, including but not limited to, loss of income (past and future), loss of
19 employment benefits (past and future), general and compensatory damages (past and future),
20 mental pain and anguish and emotional distress (past and future), and will continue to suffer in
21 the future, in an amount to be proved at trial.
22

23 125. Plaintiff requests all available relief under Labor Code § 1102.5 including damages
24 and the imposition of civil penalties of \$10,000 for each violation as well as attorneys fees.
25

26 **SEVENTEENTH CAUSE OF ACTION**

27 **WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY**

28 **(Plaintiff against corporate Defendant MILAGROS RESTAURANT LLC
only and DOE Defendants, and each of them)**

1 126. Plaintiff re-alleges and incorporates by reference each and every allegation in
2 paragraphs 1 through 125, inclusive, of this Complaint as though fully set forth herein.

3 127. At all times during his employment with Defendant MILAGROS, Plaintiff
4 performed his duties with the utmost diligence and competence.

5 128. Plaintiff is informed and believes and thereon alleges that Defendants' decisions and
6 actions to treat him differently and ultimately terminate his employment as alleged herein, was
7 motivated by Plaintiff's whistleblowing and complaints about illegal activity at the workplace
8 as well as wage and hour violations being committed against Plaintiff, including the fact that
9 Plaintiff attempted to take a statutory break. Defendant MILAGROS RESTAURANT LLC
10 intentionally created the aforementioned retaliation, thereby not giving Plaintiff an opportunity
11 to work in an environment free of retaliation.

12 129. The employment of Plaintiff wrongfully terminated on or around September 2021 in
13 violation of the fundamental public policy of the State of California with respect to retaliating
14 against an employee on account of his whistleblowing and in engaging in protected activity
15 such as attempting to take a statutory break to which he is entitled. Moreover, Plaintiff was
16 forced to hire an attorney to assist him to end these illegal activities. Said conduct violated
17 statutory and constitutional expressions of public policy including, the California Labor Code
18 and the California Constitution, Article 1 section 8.

19 130. As set forth above, said actions by Defendants were wrongful and in violation of the
20 fundamental principles of the public policy of the State of California as reflected in its laws,
21 objectives and policies. Said statutes and constitutional expressions of public policy include,
22 but are not limited to, California Labor Code and the California Constitution, Article 1 section
23 8. These laws inure to the benefit of the public at large, and not just the private interests of the
24 employers and employees whom they govern or protect.

25 131. As a direct and proximate result of the aforementioned acts and omissions of
26 corporate Defendants, Plaintiff suffered general and compensatory damages, including but not
27 limited to, loss of income (past and future), loss of employment benefits (past and future),
28

1 general and compensatory damages (past and future), mental pain and anguish and emotional
2 distress (past and future), and will continue to suffer in the future, in an amount to be proved at
3 trial.

4 132. The foregoing conduct engaged in by corporate Defendants and each of their directors,
5 officers and/or managing agents, constitutes malice, fraud, and oppression and was authorized,
6 ratified, and carried on with a conscious and willful disregard of their workers' right to work in
7 an environment free of retaliation due to whistleblowing, so as to justify the imposition of
8 punitive damages to punish and set an example of said Defendants.
9

10 **EIGHTEENTH CAUSE OF ACTION**

11 **VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200**

12 **(California Business and Professions Code Section 17200)**

13 **(Plaintiff against MILAGROS RESTAURANT LLC and all DOE defendants)**

14 133. Plaintiff re-alleges and incorporates by reference each and every allegation in
15 paragraphs 1 through 132, inclusive, of this Complaint as though fully set forth herein.

16 134. By virtue of the foregoing statutes, regulations, and laws, the acts of Defendants
17 constitutes unfair and unlawful business practices under California Business and Professions
18 Code Section 17200, et seq.

19 135. Defendant's violations of California labor laws and the Labor Code constitutes a
20 business practice because it was done repeatedly over a significant period of time in a
21 systematic manner that was detrimental to Plaintiff and others.

22 136. For the four years preceding the filing of this action, Plaintiff has suffered damages
23 and request damages and/or restitution of all monies and profits to be disgorged from
24 corporate defendant MILAGROS RESTAURANT LLC in an amount according to proof at
25 time of trial, but in excess of the jurisdiction of this Court.

26 WHEREFORE, Plaintiff prays for Judgment against Defendants, and each of them, as
27 follows:
28

1. For compensatory damages including lost past and future wages, regular wages, overtime, and all other sums of money, including employment benefits, together with interest on said amounts, and any other economic injury to Plaintiff, according to proof;
2. For general damages according to proof;
3. For special and consequential damages to the extent allowed by law;
4. For damages for wages and overtime not paid to Plaintiff in an amount subject to proof at trial;
5. For an award of punitive damages against Defendants according to proof;
6. For damages and penalties under Labor Code Section 226 for Plaintiff in an amount subject to proof at trial;
7. For damages and penalties pursuant to Labor Code Section 203 in an amount subject to proof at trial;
8. For restitution and disgorgement for all unfair business practices by corporate Defendants against Plaintiff in an amount subject to proof at trial;
9. For an order enjoining corporate Defendants from further unfair and unlawful business practices in violation of Business and Professions Code Sections 17200, et seq.;
10. For one hour of wages due to Plaintiff for each work period of more than five (5) hours when Plaintiff did not receive an uninterrupted thirty (30) minute meal period;
11. For one hour of wages due to Plaintiff for each work period of four (4) hours or major fraction thereof when Plaintiff did not receive a ten (10) minute rest break;
12. For maximum civil penalties available under the Labor Code and applicable Wage Order against Defendants as described more particularly in the Complaint and representative PAGA claim;
13. For all remedies available to Plaintiff under the applicable Wage Order and the Labor Code including an award of unpaid wages, attorney's fees, costs, interest,

liquidated damages, damages, penalties, and waiting time penalties according to proof to the extent permitted by law via PAGA;

14. For the imposition of civil penalties and/or statutory penalties;

15. For all interest as allowed by law;

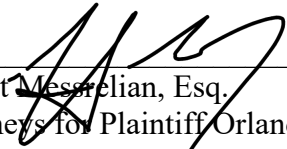
16. For all costs and disbursements incurred in this suit;

17. Reasonable attorney's fees where available by law, including but not limited to, pursuant to Labor Code section 2698 et seq., Code of Civil Procedure section 1021.5, Labor Code section 1102.5 and 1102.6, the Labor Code generally; and/or other applicable laws; and

18. For such other and further relief as this Court may deem proper.

DATED: March 2, 2022

MESSRELIAN LAW INC.

By 
Harout Messrelian, Esq.
Attorneys for Plaintiff Orlando Perez Avalos

DEMAND FOR JURY TRIAL

Plaintiff hereby demands, as a matter of right, a trial by jury in this case.

DATED: March 2, 2022

MESSRELIAN LAW INC.

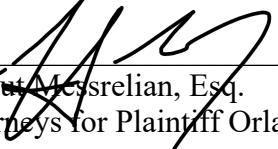
By 
Harout Messrelian, Esq.
Attorneys for Plaintiff Orlando Perez Avalos

EXHIBIT 5

1 **PAHL & McCAY**

A Professional Law Corporation

2 **Servando R. Sandoval, Esq.** (State Bar No. 205339)

Helene A. Simvoulakis-Panos, Esq. (State Bar No. 256334)

3 225 West Santa Clara Street

Suite 1500

4 San Jose, California 95113-1752

Telephone: (408) 286-5100

5 Facsimile: (408) 286-5722

Email: ssandoval@pahl-mccay.com

6 Attorneys for Defendants

7 MILAGROS RESTAURANT LLC and

8 GREGORY HAROLD ST. CLAIRE

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **COUNTY OF SAN MATEO – COMPLEX CIVIL LITIGATION**

11 ORLANDO PEREZ AVALOS,

12 Plaintiff,

13 v.

14 MILAGROS RESTAURANT LLC;
15 GREGORY HAROLD ST. CLAIRE, AND
DOES 1 through 100, inclusive,

16 Defendants.

Case No. 22-CIV-01222

**ASSIGNED FOR ALL PURPOSES TO
HON. MARIE S. WEINER, DEPT. 2**

**DEFENDANTS' ANSWER TO
UNVERIFIED COMPLAINT**

Action Filed: 3/22/2022

Trial Date: TBD

17
18 Defendants MILAGROS RESTAURANT LLC and GREGORY HAROLD ST. CLAIRE

19 (collectively "Defendants") hereby answer the unverified Complaint ("Complaint") of Plaintiff

20 ORLANDO PEREZ AVALOS ("Plaintiff") as follows:

21 **GENERAL DENIAL**

22 Pursuant to California Code of Civil Procedure Section 431.30, Defendants deny each and
23 every allegation, all and singular, both generally and specifically, contained in the Complaint and
24 each purported cause of action contained therein. Defendants further deny that Plaintiff has been
25 damaged in the amount or manner alleged in the Complaint, or in any other amount or manner, by
26 any act or omission of these Defendants. In addition to the above general denials to the
27 Complaint, Defendants allege the affirmative defenses set forth herein.

28 ///

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A Professional Corp.
225 W. Santa Clara
Suite 1500
San Jose, CA 95113
(408) 286-5100

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1 **AFFIRMATIVE DEFENSES**

2 AS AND FOR A FIRST, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE,
3 these answering Defendants allege that the Complaint, and each cause of action therein, fails to
4 state facts sufficient to constitute any cause of action.

5 AS AND FOR A SECOND, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE,
6 these answering Defendants allege that the Complaint is barred by the applicable statutes of
7 limitations, including but not limited to, those enumerated in California Code of Civil Procedure
8 Sections 338(a) and 340(a) and California Business and Professions Code Section 17208.

9 AS AND FOR A THIRD, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE,
10 these answering Defendants allege that the relief sought by Plaintiff is barred due to the acts,
11 conduct, and omissions of Plaintiff which constitute waiver.

12 AS AND FOR A FOURTH, SEPARATE AND DISTINCT AFFIRMATIVE
13 DEFENSE, these answering Defendants allege that the relief sought by Plaintiff is barred due to
14 the acts, conduct, and omissions of Plaintiff which constitute estoppel.

15 AS AND FOR A FIFTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE,
16 these answering Defendants allege that the relief sought by Plaintiff is barred due to the acts,
17 conduct, and omissions of Plaintiff which constitute laches.

18 AS AND FOR A SIXTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE,
19 these answering Defendants allege that the relief sought by Plaintiff is barred due to the acts,
20 conduct, and omissions of Plaintiff which constitute unclean hands.

21 AS AND FOR A SEVENTH, SEPARATE AND DISTINCT AFFIRMATIVE
22 DEFENSE, these answering Defendants allege that Plaintiff's Complaint, and each cause of
23 action contained therein, is barred because Plaintiff would be unjustly enriched by receipt of
24 any recovery prayed for in the Complaint.

25 AS AND FOR AN EIGHTH, SEPARATE AND DISTINCT AFFIRMATIVE
26 DEFENSE, these answering Defendants allege that any loss or damage suffered by Plaintiff was
27 caused in whole or in part, by Plaintiff's own conduct, acts or omissions.

28 AS AND FOR A NINTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE,

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1 these answering Defendants allege that Plaintiff had no probable cause for bringing any action
2 against these answering Defendants.

3 AS AND FOR A TENTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE,
4 these answering Defendants allege that Plaintiff's Complaint, and each cause of action thereof, are
5 barred in whole or in part because Plaintiff has sustained no injury or damage by reason of acts or
6 omissions of these Defendants.

7 AS AND FOR AN ELEVENTH, SEPARATE AND DISTINCT AFFIRMATIVE
8 DEFENSE, these answering Defendants allege that any of the various provisions of the California
9 Labor Code and/or the Industrial Welfare Commission ("IWC") Wage Orders cited in Plaintiff's
10 Complaint are inapplicable to the particular facts of this matter. Plaintiff's claim in those respects
11 would be subject to, and reduced (if not barred) by, the provisions of California Labor Code
12 Sections 203(a) and/or 1194.2(b), because, among other things, Defendants acted in good faith and
13 had reasonable grounds for believing that its employment and pay practices as applied to Plaintiff
14 were not in violation of the Labor Code or the Wage Orders, and there was a good faith dispute as
15 to whether any wages are due as well the amount of wages, if any, due.

16 AS AND FOR A TWELFTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE,
17 these answering Defendants allege that none of the various provisions of the California Labor
18 Code, Regulations and Wage Orders cited in Plaintiff's Complaint, are applicable to the particular
19 facts of this matter.

20 AS AND FOR A THIRTEENTH, SEPARATE AND DISTINCT AFFIRMATIVE
21 DEFENSE, these answering Defendants allege that Plaintiff's Complaint, and each cause of action
22 thereof, is barred in whole or in part because Plaintiff could have, by reviewing the wage
23 statements in question, identified all items required pursuant to California Labor Code Sections
24 226 and/or 226.2.

25 AS AND FOR A FOURTEENTH, SEPARATE AND DISTINCT AFFIRMATIVE
26 DEFENSE, these answering Defendants allege that under Code of Civil Procedure Section
27 430.10(f) the Complaint is legally insufficient because it is uncertain.

28 AS AND FOR A FIFTEENTH SEPARATE AND DISTINCT AFFIRMATIVE

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1 DEFENSE, these answering Defendants allege that all conduct on the part of these Defendants
2 was either in conformance with any applicable federal, state, county, local, or other code, law,
3 statute, regulation, ordinance, or policy, or in accordance with what might reasonably be expected
4 of a person of ordinary prudence, acting under similar circumstances.

5 AS AND FOR A SIXTEENTH, SEPARATE AND DISTINCT AFFIRMATIVE
6 DEFENSE, these answering Defendants allege that Plaintiff failed and continues to fail to mitigate
7 her damages, if any, and therefore said alleged damages should be barred and/or diminished
8 accordingly.

9 AS AND FOR A SEVENTEENTH, SEPARATE AND DISTINCT AFFIRMATIVE
10 DEFENSE, these answering Defendants allege that Plaintiff's Prayer for Relief as stated in the
11 Complaint is neither appropriate nor justified in the circumstances of this case.

12 AS AND FOR AN EIGHTEENTH, SEPARATE AND DISTINCT AFFIRMATIVE
13 DEFENSE, these answering Defendants allege that with respect to the damages alleged in the
14 Complaint, if any, these answering Defendants are entitled to a set-off for, and to recoup, in this
15 action: (a) any and all monies previously paid to Plaintiff; (b) any and all sums owed to them by
16 Plaintiff; and/or (c) that amount which will compensate Defendants for any and all damages
17 wrongfully caused by Plaintiff.

18 AS AND FOR A NINETEENTH, SEPARATE AND DISTINCT AFFIRMATIVE
19 DEFENSE, these answering Defendants allege that Plaintiff lacks standing to bring one or more
20 of the causes of action stated in the Complaint.

21 AS AND FOR A TWENTIETH, SEPARATE AND DISTINCT AFFIRMATIVE
22 DEFENSE, these answering Defendants allege that the damages and penalties sought in
23 Plaintiff's Complaint violate the Due Process and Equal Protection Clauses of the Constitutions
24 of the United States and California.

25 AS AND FOR A TWENTY-FIRST, SEPARATE AND DISTINCT AFFIRMATIVE
26 DEFENSE, these answering Defendants allege that the damages and penalties sought in
27 Plaintiff's Complaint violate the Excessive Fines Clauses of the Constitutions of the United
28 States and California.

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1 AS AND FOR A TWENTY-SECOND, SEPARATE AND DISTINCT AFFIRMATIVE
2 DEFENSE, these answering Defendants allege that the damages and penalties sought in
3 Plaintiff's Complaint are tantamount to an award of punitive damages, and Plaintiff's Complaint
4 fails to state sufficient facts to sustain the imposition of punitive damages under California Civil
5 Code Section 3294.

6 AS AND FOR A TWENTY-THIRD, SEPARATE AND DISTINCT AFFIRMATIVE
7 DEFENSE, these answering Defendants allege that Plaintiff's Complaint is barred by her failure
8 to comply with Labor Code Section 2699.3(c)(1)(A).

9 AS AND FOR A TWENTY-FOURTH, SEPARATE AND DISTINCT AFFIRMATIVE
10 DEFENSE, this answering Defendant alleges Plaintiff's right to recover penalties pursuant to
11 Sections 226(e)(1) and/or 2699(f)(2) of the Labor Code, if any, is barred by the one-year statute
12 of limitations codified in California Code of Civil Procedure Section 340(a).

13 AS AND FOR A TWENTY-FIFTH, SEPARATE AND DISTINCT AFFIRMATIVE
14 DEFENSE, these answering Defendants reserve the right to allege other affirmative defenses as
15 may be warranted following discovery.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, Defendants MILAGROS RESTAURANT LLC and GREGORY
18 HAROLD ST. CLAIRE pray for judgment against Plaintiff ORLANDO PEREZ AVALOS as
19 follows:

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San Jose, CA 95113
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- (Case No. 22-CIV-01222)

1 **Orlando Perez Avalos v. Milagros Restaurant, LLC, et al.**
2 **San Mateo County Superior Court Case No.: 22-CIV-01222**

3 **PROOF OF SERVICE**

4 State of California)
5 County of Santa Clara) xx

6 I am a citizen of the United States and an employee of the County aforesaid. I am
7 over the age of eighteen years and not a party to the within action. My business address is 225
8 West Santa Clara Street, Suite 1500, San Jose, California 95113-1752. On the date mentioned
9 below, I caused a true copy(ies) of the following document(s) to be served on the parties below
10 using the method(s) checked:

11 • **DEFENDANTS' ANSWER TO UNVERIFIED COMPLAINT**

12 On the Addressee(s) below named in said action by:

13 ☒ **First Class Mail** - I am familiar with the regular mail collection and
14 processing practices of the business. The mail will be deposited with the United
15 States Postal Service on the same day following ordinary business practices. I
16 enclosed the above-mentioned document(s) in a sealed envelope with postage
17 thereon fully prepaid in the United States Post Office mail box at San Jose,
18 California. ****As to Attorney for Plaintiff ONLY****

19 ☐ **Facsimile**- sent to the fax numbers shown after each name below.

20 ☐ **By Personal Delivery.**

21 ☐ **By Federal Express pursuant to Code of Civil Procedure § 1005.**

22 ☒ **Electronic Mail Pursuant to Code of Civil Procedure § 1010.6** – sent
23 electronically serving the document(s) to the electronic email address(s) set forth
24 below.

25 **Addressee(s):**

26 Harout Messrelian, Esq.
27 MESSRELIAN LAW INC.
28 500 N. Central Ave., Suite 840
Glendale, CA 091203
T: 818-484-6531
F: 818-956-1983
hm@messrelianlaw.com

Attorneys for Plaintiff
Orlando Perez Avalos

29 **Courtesy Copies to Dept. 2**
30 Hon. Marie S. Weiner
31 dept2@sanmateocourt.org
32 complexcivil@sanmateocourt.org

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San Jose, CA 95113
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1 I declare under penalty of perjury, under the laws of the State of California, that the
2 foregoing is true and correct. Executed on May 23, 2022, at San Jose, California.

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Yvonne M. Leon

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EXHIBIT 6

ORLANDO PEREZ AVALOS v. MILAGROS RESTAURANT, LLC - ATTORNEY WORK HOURS

DATE:	ATTORNEY:	DESCRIPTION:	HOURS:	HOURLY RATE:	ATTORNEY YEARS:	COST OF TIME:
10/4/2021	Harout Messrelian	Read email with client lead	0.1	\$500.00	(10th year)	\$ 50.00
10/4/2021	Harout Messrelian	Forwarded lead email to secretary to get further info for client intake	0.1	\$500.00	(10th year)	\$ 50.00
10/4/2021	Harout Messrelian	Reviewed secretary's intake notes and asked secretary to contact client re moving forward	0.1	\$500.00	(10th year)	\$ 50.00
10/4/2021	Harout Messrelian	Read email from legal assistant re sending client retainer	0.1	\$500.00	(10th year)	\$ 50.00
10/4/2021	Harout Messrelian	Sent email to legal assistant re sending client retainer	0.1	\$500.00	(10th year)	\$ 50.00
10/6/2021	Harout Messrelian	Emailed secretary and legal assistant re getting signed retainer back from client	0.1	\$500.00	(10th year)	\$ 50.00
10/6/2021	Harout Messrelian	Read email from secretary re client having difficult time signing retainer electronically	0.1	\$500.00	(10th year)	\$ 50.00
10/6/2021	Harout Messrelian	Sent email to secretary re helping client sign retainer electronically	0.1	\$500.00	(10th year)	\$ 50.00
10/6/2021	Harout Messrelian	Read email from secretary with update re client trying to sign retainer agreement electronically	0.1	\$500.00	(10th year)	\$ 50.00
10/13/2021	Harout Messrelian	Sent email to secretary re following up with client re signed retainer	0.1	\$500.00	(10th year)	\$ 50.00
10/14/2021	Harout Messrelian	Read email from secretary that client's daughter will help client sign retainer	0.1	\$500.00	(10th year)	\$ 50.00
10/18/2021	Harout Messrelian	Sent email to secretary following up on client signed retainer	0.1	\$500.00	(10th year)	\$ 50.00
10/19/2021	Harout Messrelian	Sent email to secretary following up on client signed retainer	0.1	\$500.00	(10th year)	\$ 50.00
10/20/2021	Harout Messrelian	Read email from legal assistant re trying to get a hold of the client	0.1	\$500.00	(10th year)	\$ 50.00
10/20/2021	Harout Messrelian	Read email from secretary that client will be signing retainer today	0.1	\$500.00	(10th year)	\$ 50.00
10/20/2021	Harout Messrelian	Read email from legal assistant re trying to get a hold of the client today to finalize retainer	0.1	\$500.00	(10th year)	\$ 50.00
10/21/2021	Harout Messrelian	Sent email to legal assistant re following up with client re signed retainer	0.1	\$500.00	(10th year)	\$ 50.00
10/21/2021	Harout Messrelian	Read email from secretary with attached photo of retainer with no signature but a typed name where the signature line is	0.1	\$500.00	(10th year)	\$ 50.00
10/21/2021	Harout Messrelian	Read email from legal assistant re sending client a different link to sign retainer	0.1	\$500.00	(10th year)	\$ 50.00
10/21/2021	Harout Messrelian	Read email from secretary re client having difficulty using new link to sign retainer	0.1	\$500.00	(10th year)	\$ 50.00
10/21/2021	Harout Messrelian	Read email from secretary re following up with client once again	0.1	\$500.00	(10th year)	\$ 50.00
10/21/2021	Harout Messrelian	Read email from legal assistant advising secretary to mail out retainer to client due to client having such difficulty signing electronically	0.1	\$500.00	(10th year)	\$ 50.00
10/26/2021	Harout Messrelian	Sent email to secretary re whether client signed mailed retainer	0.1	\$500.00	(10th year)	\$ 50.00
10/26/2021	Harout Messrelian	Read email from secretary re not being able to connect with client re signed mailed retainer	0.1	\$500.00	(10th year)	\$ 50.00
10/26/2021	Harout Messrelian	Read email from secretary re not being able to connect with client re signed mailed retainer	0.1	\$500.00	(10th year)	\$ 50.00
10/26/2021	Harout Messrelian	Sent email to secretary to follow up with client on Thursday re signed mailed retainer	0.1	\$500.00	(10th year)	\$ 50.00
10/26/2021	Harout Messrelian	Read email from legal assistant with images of client's signed retainer	0.1	\$500.00	(10th year)	\$ 50.00
10/26/2021	Harout Messrelian	Sent email to secretary to make new physical legal file for client and open up a new dropbox file	0.1	\$550.00	(11th year)	\$ 55.00
10/27/2021	Harout Messrelian	Researched defendant company on PAGA database and through secretary of state website and did PPP funds search	0.3	\$550.00	(11th year)	\$ 165.00
10/27/2021	Harout Messrelian	Drafted and electronically filed the PAGA notice and also drafted requests for personnel file and pay records	0.9	\$550.00	(11th year)	\$ 495.00
10/27/2021	Harout Messrelian	Emailed secretary to prepare envelopes for certified mailing of the PAGA notice	0.1	\$550.00	(11th year)	\$ 55.00
12/30/2021	Harout Messrelian	Emailed secretary to get authorization from client for lawsuit filing	0.1	\$550.00	(11th year)	\$ 55.00
12/31/2021	Harout Messrelian	Read email from secretary that client had authorized filing of lawsuit	0.1	\$500.00	(10th year)	\$ 50.00

1/6/2022	Harout Messrelian	Drafted complaint including individual causes of action and PAGA cause of action	1.2	\$550.00	(11th year)	\$ 660.00
1/6/2022	Harout Messrelian	Emailed legal assistant with word version of complaint to get it filed in San Mateo County	0.1	\$550.00	(11th year)	\$ 55.00
3/22/2022	Harout Messrelian	Read email from filing service with notification that summons and complaint had been filed	0.1	\$550.00	(11th year)	\$ 55.00
3/23/2022	Harout Messrelian	Read email from legal assistant re summons and complaint being accepted for filing	0.1	\$550.00	(11th year)	\$ 55.00
4/24/2022	Harout Messrelian	Read email from legal assistant to filing company re serving summons and complaint on Defendants	0.1	\$550.00	(11th year)	\$ 55.00
5/2/2022	Harout Messrelian	Read email from legal assistant to filing company re serving summons and complaint on Defendants	0.1	\$550.00	(11th year)	\$ 55.00
5/6/2022	Harout Messrelian	Read email from filing company with attached POS' for Defendants	0.1	\$550.00	(11th year)	\$ 55.00
5/13/2022	Harout Messrelian	Sent email to legal assistant to calendar CMC statement due date of 5/17/22	0.1	\$550.00	(11th year)	\$ 55.00
5/13/2022	Harout Messrelian	Sent follow up email to legal assistant re compiled CMC statement due on 5/17/22	0.1	\$550.00	(11th year)	\$ 55.00
5/16/2022	Harout Messrelian	Sent email to Maralle Messrelian, Esq. re drafting of the CMC statement	0.1	\$550.00	(11th year)	\$ 55.00
5/17/2022	Harout Messrelian	Read email from filing service re filing of CMC statement	0.1	\$550.00	(11th year)	\$ 55.00
5/18/2022	Harout Messrelian	Read email from defense counsel for the first time with attached CMC statement for Defendant; reviewed defense CMC statement	0.2	\$550.00	(11th year)	\$ 110.00
5/23/2022	Harout Messrelian	Read email from legal assistant to defense counsel trying to set up time for attorneys to chat	0.1	\$550.00	(11th year)	\$ 55.00
5/23/2022	Harout Messrelian	Read email from defense counsel re availability to chat about the case telephonically	0.1	\$550.00	(11th year)	\$ 55.00
5/23/2022	Harout Messrelian	Read email from legal assistant to defense counsel trying to set up time for attorneys to chat	0.1	\$550.00	(11th year)	\$ 55.00
5/23/2022	Harout Messrelian	Read email from defense counsel re availability to chat about the case telephonically	0.1	\$550.00	(11th year)	\$ 55.00
5/31/2022	Harout Messrelian	Call with defense counsel re case and next steps	0.2	\$550.00	(11th year)	\$ 110.00
11/6/2022	Harout Messrelian	Read email from filing service re joint CMC Statement to being filed	0.1	\$550.00	(11th year)	\$ 55.00
12/15/2022	Harout Messrelian	Read email from legal assistant re sending out check for Plaintiff's portion of mediation fees	0.1	\$550.00	(11th year)	\$ 55.00
12/15/2022	Harout Messrelian	Read email from legal assistant re sending out check for Plaintiff's portion of mediation fees	0.1	\$550.00	(11th year)	\$ 55.00
12/29/2022	Harout Messrelian	Read email from legal assistant following up on whether mediation fees check had been sent out by me	0.1	\$550.00	(11th year)	\$ 55.00
12/29/2022	Harout Messrelian	Sent email to legal assistant re mediation fee payment still outstanding and not sent out by me	0.1	\$550.00	(11th year)	\$ 55.00
1/5/2023	Harout Messrelian	Read email from legal assistant to mediation office re follow up on mediation fees	0.1	\$550.00	(12th year)	\$ 55.00
1/5/2023	Harout Messrelian	Read email from legal assistant to secretary re printing out invoice and envelope for me to write mediation fees check	0.1	\$550.00	(12th year)	\$ 55.00
1/6/2023	Harout Messrelian	Sent email to legal assistant that mediation fee check was mailed	0.1	\$550.00	(12th year)	\$ 55.00
1/6/2023	Harout Messrelian	Read email from legal assistant to mediator's office that mediation fees check had been sent	0.1	\$550.00	(12th year)	\$ 55.00
1/15/2023	Harout Messrelian	mediation prep; review data analysis, policies, Plaintiff's personnel file and pay records; review MM mediation statement to mediator	1.5	\$550.00	(12th year)	\$ 825.00
1/16/2023	Harout Messrelian	Read multiple emails from filing service re CMC filings being accepted by the clerk	0.1	\$550.00	(12th year)	\$ 55.00
1/16/2023	Harout Messrelian	zoom mediation with Eleanor Barr, Esq.	8.0	\$550.00	(12th year)	\$ 4,400.00
1/16/2023	Harout Messrelian	review MM emails re settlement administration bid requests to TPAs	0.1	\$550.00	(12th year)	\$ 55.00
1/26/2023	Harout Messrelian	read MM emails re settlement administration bid requests	0.1	\$550.00	(12th year)	\$ 55.00
1/26/2023	Harout Messrelian	read MM email to OC re status of long form settlement and bids	0.2	\$550.00	(12th year)	\$ 110.00
1/27/2023	Harout Messrelian	read MM email to OC re TPA bids	0.1	\$550.00	(12th year)	\$ 55.00
1/28/2023	Harout Messrelian	read email from OC re TPA selection	0.1	\$550.00	(12th year)	\$ 55.00
1/31/2023	Harout Messrelian	review OC email re draft agreements	0.1	\$550.00	(12th year)	\$ 55.00
2/8/2023	Harout Messrelian	review MM redlines to settlement agreement	0.2	\$550.00	(12th year)	\$ 110.00
2/16/2023	Harout Messrelian	read MM email to OC re long form settlement status	0.1	\$550.00	(12th year)	\$ 55.00
2/16/2023	Harout Messrelian	read response from OC	0.1	\$550.00	(12th year)	\$ 55.00

2/22/2023	Harout Messrelian	read MM follow up email to OC	0.1	\$550.00	(12th year)	\$ 55.00
2/22/2023	Harout Messrelian	read OC email re status of agreements	0.1	\$550.00	(12th year)	\$ 55.00
2/28/2023	Harout Messrelian	read MM email to OC re settlement agreements	0.1	\$550.00	(12th year)	\$ 55.00
3/3/2023	Harout Messrelian	read OC email; review finalized settlement agreement	0.2	\$550.00	(12th year)	\$ 110.00
3/9/2023	Harout Messrelian	read MM email to OC re final agreements for execution to defense and Plaintiff	0.1	\$550.00	(12th year)	\$ 55.00
3/9/2023	Harout Messrelian	read team emails re client signatures	0.1	\$550.00	(12th year)	\$ 55.00
3/9/2023	Harout Messrelian	read email to OC from legal assistant re signed agreements	0.1	\$550.00	(12th year)	\$ 55.00
3/10/2023	Harout Messrelian	read emails w legal assistant and MM re: refiling a NOS	0.1	\$550.00	(12th year)	\$ 55.00
3/13/2023	Harout Messrelian	review email to clerk re PAGA approval motion hearing date	0.1	\$550.00	(12th year)	\$ 55.00
3/14/2023	Harout Messrelian	read OC email re signature status for settlements	0.1	\$550.00	(12th year)	\$ 55.00
3/14/2023	Harout Messrelian	read emails bw MM and legal assistant re NOS	0.1	\$550.00	(12th year)	\$ 55.00
3/21/2023	Harout Messrelian	read email from clerk re mx paga approval hearing date	0.1	\$550.00	(12th year)	\$ 55.00
3/21/2023	Harout Messrelian	read emails b/w MM and legal assistant re motion date and deadline	0.1	\$550.00	(12th year)	\$ 55.00
3/24/2023	Harout Messrelian	read OC email; review fully executed settlement agreement	0.2	\$550.00	(12th year)	\$ 110.00
4/2/2023	Harout Messrelian	read MM email to legal assistant rereserving motion date	0.1	\$550.00	(12th year)	\$ 55.00
4/2/2023	Harout Messrelian	read email to clerk re motion date	0.1	\$550.00	(12th year)	\$ 55.00
4/17/2023	Harout Messrelian	review MM draft PAGA Notice letter	0.2	\$550.00	(12th year)	\$ 110.00
4/21/2023	Harout Messrelian	read MM and simpluris emails; review simpluris declaration	0.1	\$550.00	(12th year)	\$ 55.00
4/20/2023	Harout Messrelian	emails w MM and team re Avalos signatures	0.1	\$550.00	(12th year)	\$ 55.00
4/21/2023	Harout Messrelian	talk with MM re PAGA Motion	0.1	\$550.00	(12th year)	\$ 55.00
4/23/2023	Harout Messrelian	review PAGA motion papers	0.8	\$550.00	(12th year)	\$ 440.00

Total Hours: Harout Messrelian			22		\$	11,960.00
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ORLANDO PEREZ AVALOS v. MILAGROS RESTAURANT, LLC - ATTORNEY WORK HOURS

DATE:	ATTORNEY:	DESCRIPTION:	HOURS:	HOURLY RATE:	ATTORNEY YEARS:	COST OF TIME:
5/16/2022	Maralle Messrelian	read reply email from HM re complex CMC statement	0.1	\$350.00	5th year	\$ 35.00
5/16/2022	Maralle Messrelian	review POS re service; emails w/ legal secretary re the filing status of POS	0.2	\$350.00	5th year	\$ 70.00
5/16/2022	Maralle Messrelian	draft prose CMC stmt; send to HM for review	0.4	\$350.00	5th year	\$ 140.00
5/16/2022	Maralle Messrelian	read HM email re CMC stmt	0.1	\$350.00	5th year	\$ 35.00
5/17/2022	Maralle Messrelian	email HM re info on CMC stmt	0.1	\$350.00	5th year	\$ 35.00
5/17/2022	Maralle Messrelian	email team re handling CMC	0.1	\$350.00	5th year	\$ 35.00
5/17/2022	Maralle Messrelian	review HM email re filing of CMC	0.1	\$350.00	5th year	\$ 35.00
5/17/2022	Maralle Messrelian	read legal secretary email to team re CMC filing	0.1	\$350.00	5th year	\$ 35.00
5/17/2022	Maralle Messrelian	read legal secretary email to clerk re courtesy copies CMC stmt	0.1	\$350.00	5th year	\$ 35.00
5/17/2022	Maralle Messrelian	read email from clerk re CMC & legal secretary reply	0.1	\$350.00	5th year	\$ 35.00
5/18/2022	Maralle Messrelian	review email from OC re Def. CMC stmt	0.1	\$350.00	5th year	\$ 35.00
5/18/2022	Maralle Messrelian	emails w HM re OC appearance	0.1	\$350.00	5th year	\$ 35.00
5/24/2022	Maralle Messrelian	email team re CMC on calendar	0.1	\$350.00	5th year	\$ 35.00
5/24/2022	Maralle Messrelian	read HM email re change in CMC date	0.1	\$350.00	5th year	\$ 35.00
5/24/2022	Maralle Messrelian	check docket; reply email to HM re calendar	0.1	\$350.00	5th year	\$ 35.00
6/2/2022	Maralle Messrelian	review HM informal discovery list to OC	0.1	\$350.00	5th year	\$ 35.00
7/12/2022	Maralle Messrelian	review OC email re sample list	0.1	\$350.00	5th year	\$ 35.00
7/15/2022	Maralle Messrelian	review OC email re sample list	0.1	\$350.00	5th year	\$ 35.00
7/15/2022	Maralle Messrelian	read HM email to legal secretary re sample selection	0.1	\$350.00	5th year	\$ 35.00
7/16/2022	Maralle Messrelian	review legal secretary email re sample selection and Plaintiff's personnel file	0.1	\$350.00	5th year	\$ 35.00
7/17/2022	Maralle Messrelian	read OC reply re Plaintiff's personnel file	0.1	\$350.00	5th year	\$ 35.00
7/19/2022	Maralle Messrelian	read OC email re personnel file; download and review	0.3	\$350.00	5th year	\$ 105.00
8/4/2022	Maralle Messrelian	read OC email re update re additional docs/information requested	0.1	\$350.00	5th year	\$ 35.00
8/15/2022	Maralle Messrelian	email team re joint CMC stmt deadline	0.1	\$350.00	5th year	\$ 35.00
8/15/2022	Maralle Messrelian	emails w/HM re status of negotiations/scheduling mediation	0.2	\$350.00	5th year	\$ 70.00
8/15/2022	Maralle Messrelian	email OC re joint CMC stmt	0.1	\$350.00	5th year	\$ 35.00
8/15/2022	Maralle Messrelian	draft joint CMC stmt; email to HM for review	0.3	\$350.00	5th year	\$ 105.00
8/16/2022	Maralle Messrelian	read OC email re joint CMC stmt	0.1	\$350.00	5th year	\$ 35.00
8/16/2022	Maralle Messrelian	revise cmc stmt to reflect joint stmt; email to OC	0.2	\$350.00	5th year	\$ 70.00
8/16/2022	Maralle Messrelian	review OC redlines to joint CMC stmt	0.2	\$350.00	5th year	\$ 70.00
8/16/2022	Maralle Messrelian	email OC re redlines; finalizing joint CMC stmt	0.1	\$350.00	5th year	\$ 35.00
8/16/2022	Maralle Messrelian	emails w/ OC and legal secretary re signatures and filing joint CMC stmt	0.2	\$350.00	5th year	\$ 70.00
8/16/2022	Maralle Messrelian	review legal secretary email to clerk re courtesy copy of joint cmc stmt	0.1	\$350.00	5th year	\$ 35.00
8/17/2022	Maralle Messrelian	review email from legal secretary re continued CMC	0.1	\$350.00	5th year	\$ 35.00
9/12/2022	Maralle Messrelian	review OC email and additional document and information production	0.3	\$350.00	5th year	\$ 105.00
9/12/2022	Maralle Messrelian	read emails b/w HM & legal secretary re sample records/sending to data analyst	0.1	\$350.00	5th year	\$ 35.00
9/12/2022	Maralle Messrelian	review email to data analyst re analysis	0.1	\$350.00	5th year	\$ 35.00
9/27/2022	Maralle Messrelian	read emails to/from data analyst	0.1	\$350.00	5th year	\$ 35.00
10/13/2022	Maralle Messrelian	email OC re scheduling a call	0.1	\$350.00	5th year	\$ 35.00
10/13/2022	Maralle Messrelian	read OC reply re scheduling call and dates; reply with date	0.1	\$350.00	5th year	\$ 35.00
10/14/2022	Maralle Messrelian	read OC reply	0.1	\$350.00	5th year	\$ 35.00
10/17/2022	Maralle Messrelian	call OC; email OC re trying to reach her	0.1	\$350.00	5th year	\$ 35.00
10/17/2022	Maralle Messrelian	call w OC re next steps	0.3	\$350.00	5th year	\$ 105.00
10/17/2022	Maralle Messrelian	email OC list of proposed mediators	0.1	\$350.00	5th year	\$ 35.00
10/18/2022	Maralle Messrelian	read OC reply re mediators	0.1	\$350.00	5th year	\$ 35.00
10/28/2022	Maralle Messrelian	follow up email to OC re mediators	0.1	\$350.00	5th year	\$ 35.00
10/28/2022	Maralle Messrelian	read OC reply re mediator selection and reply to OC	0.1	\$350.00	5th year	\$ 35.00
10/31/2022	Maralle Messrelian	read OC email re mediation /agreeable mediators; email legal secretary re obtaining availability	0.2	\$350.00	5th year	\$ 70.00

11/3/2022	Maralle Messrelian	review emails to/from mediators re availability	0.2	\$350.00	5th year	\$ 70.00
11/4/2022	Maralle Messrelian	draft joint CMC stmt	0.3	\$350.00	5th year	\$ 105.00
11/4/2022	Maralle Messrelian	email draft joint CMC stmt to OC	0.1	\$350.00	5th year	\$ 35.00
11/4/2022	Maralle Messrelian	read emals from/to Eleanor Barr case manager re mediation	0.1	\$350.00	5th year	\$ 35.00
11/4/2022	Maralle Messrelian	read OC reply to joint cmc stmt; send reply email	0.1	\$350.00	5th year	\$ 35.00
11/4/2022	Maralle Messrelian	email legal secretary re filing CMC stmt	0.1	\$350.00	5th year	\$ 35.00
11/6/2022	Maralle Messrelian	follow up email to legal secretary re filing CMC stmt	0.1	\$350.00	5th year	\$ 35.00
11/6/2022	Maralle Messrelian	read legal secretary email to clerk re courtesy copy CMC stmt	0.1	\$350.00	5th year	\$ 35.00
11/8/2022	Maralle Messrelian	send reply emails to Barr and Latin case managers re type of case	0.1	\$350.00	5th year	\$ 35.00
11/8/2022	Maralle Messrelian	send follow up email to JJ Johnston re mediation availability	0.1	\$350.00	5th year	\$ 35.00
11/8/2022	Maralle Messrelian	review emails from mediator case managers	0.1	\$350.00	5th year	\$ 35.00
11/9/2022	Maralle Messrelian	review email from Barr case manager	0.1	\$350.00	5th year	\$ 35.00
11/9/2022	Maralle Messrelian	compile information re mediation availability and emailthem to OC	0.1	\$350.00	5th year	\$ 35.00
11/9/2022	Maralle Messrelian	read OC reply re mediators	0.1	\$350.00	5th year	\$ 35.00
11/13/2022	Maralle Messrelian	email OC re CMC vacated and follow up re mediator selection	0.1	\$350.00	5th year	\$ 35.00
11/15/2022	Maralle Messrelian	read OC email re mediator/ reply	0.1	\$350.00	5th year	\$ 35.00
11/15/2022	Maralle Messrelian	email Barr case manager re holding date for mediation	0.1	\$350.00	5th year	\$ 35.00
11/15/2022	Maralle Messrelian	review emails b/w secretary and assistant re contacting client about mediation date	0.1	\$350.00	5th year	\$ 35.00
11/17/2022	Maralle Messrelian	emails w OC re confirmation of mediation date	0.1	\$350.00	5th year	\$ 35.00
11/18/2022	Maralle Messrelian	email Barr case manager re confirmation of mediation	0.1	\$350.00	5th year	\$ 35.00
11/21/2022	Maralle Messrelian	read email from case manager re caption page	0.1	\$350.00	5th year	\$ 35.00
11/21/2022	Maralle Messrelian	review legal assistant email to case manager	0.1	\$350.00	5th year	\$ 35.00
11/22/2022	Maralle Messrelian	review email from case manager re details of mediation	0.1	\$350.00	5th year	\$ 35.00
1/8/2023	Maralle Messrelian	review emails and doc production to date; email OC re outstanding information	0.2	\$400.00	6th year	\$ 80.00
1/8/2023	Maralle Messrelian	review OC email containing data points	0.1	\$400.00	6th year	\$ 40.00
1/9/2023	Maralle Messrelian	review all doc production in prep for mediation	0.5	\$400.00	6th year	\$ 200.00
1/9/2023	Maralle Messrelian	emails w HM and legal assistant re mediation day	0.1	\$400.00	6th year	\$ 40.00
1/9/2023	Maralle Messrelian	email case manager re participant information	0.1	\$400.00	6th year	\$ 40.00
1/9/2023	Maralle Messrelian	email OC re doc production	0.1	\$400.00	6th year	\$ 40.00
1/10/2023	Maralle Messrelian	reas/reply OC email; review OC EE handbook	0.4	\$400.00	6th year	\$ 160.00
1/12/2023	Maralle Messrelian	read/reply OC email re mediation briefs	0.1			\$ -
1/12/2023	Maralle Messrelian	email HM re sharing briefs	0.1	\$400.00	6th year	\$ 40.00
1/12/2022	Maralle Messrelian	mediation prep; draft and email mediation statement to mediator	0.5	\$400.00	6th year	\$ 200.00
1/14/2023	Maralle Messrelian	read email from mediator re reviewing mediation statement	0.1	\$400.00	6th year	\$ 40.00
1/16/2023	Maralle Messrelian	email legal assistant re total costs to date	0.1	\$400.00	6th year	\$ 40.00
1/16/2023	Maralle Messrelian	review total costs to date; emails w legal assistant	0.2	\$400.00	6th year	\$ 80.00
1/16/2023	Maralle Messrelian	email mediator Plaintiff's email address re docusign	0.1	\$400.00	6th year	\$ 40.00
1/16/2023	Maralle Messrelian	zoom mediation with Eleanor Barr, Esq.	8.0	\$400.00	6th year	\$ 3,200.00
1/16/2023	Maralle Messrelian	draft settlement administration bid requests and email to TPAs	0.2	\$400.00	6th year	\$ 80.00
1/17/2023	Maralle Messrelian	review and organize bid requests	0.1	\$400.00	6th year	\$ 40.00
1/26/2023	Maralle Messrelian	follow up emails re settlement administration bid requests	0.1	\$400.00	6th year	\$ 40.00
1/26/2023	Maralle Messrelian	organize bids; email OC re status of long form settlement and bids	0.2	\$400.00	6th year	\$ 80.00
1/27/2023	Maralle Messrelian	review simpluris bid	0.1	\$400.00	6th year	\$ 40.00
1/27/2023	Maralle Messrelian	email OC re TPA bids	0.1	\$400.00	6th year	\$ 40.00

1/28/2023	Maralle Messrelian	review email from OC re TPA selection	0.1	\$400.00	6th year	\$ 40.00
1/31/2023	Maralle Messrelian	read OC email re draft agreements	0.1	\$400.00	6th year	\$ 40.00
2/8/2023	Maralle Messrelian	review and redline settlement agreements	0.8	\$400.00	6th year	\$ 320.00
2/16/2023	Maralle Messrelian	email OC re status of reviewing redlines re long form settlement agreement	0.1	\$400.00	6th year	\$ 40.00
2/16/2023	Maralle Messrelian	read OC response email re settlement& reply	0.1	\$400.00	6th year	\$ 40.00
2/22/2023	Maralle Messrelian	follow up email to OC re settlement agreements	0.1	\$400.00	6th year	\$ 40.00
2/22/2023	Maralle Messrelian	read OC reply re status settlement agreement	0.1	\$400.00	6th year	\$ 40.00
2/28/2023	Maralle Messrelian	follow up email to OC re settlement agreements	0.1	\$400.00	6th year	\$ 40.00
3/3/2023	Maralle Messrelian	read OC email re finalized settlement agreement; review final settlement agreements	0.2	\$400.00	6th year	\$ 80.00
3/9/2023	Maralle Messrelian	finalize settlement agreements and send to OC for execution and team for Plaintiff's signature	0.3	\$400.00	6th year	\$ 120.00
3/9/2023	Maralle Messrelian	review emails b/w secretary and assistant re contacting client about signatures	0.1	\$400.00	6th year	\$ 40.00
3/9/2023	Maralle Messrelian	review legal assistant email to OC re signed agreements	0.1	\$400.00	6th year	\$ 40.00
3/10/2023	Maralle Messrelian	emails w legal assistant re: refiling a NOS	0.1	\$400.00	6th year	\$ 40.00
3/13/2023	Maralle Messrelian	review assistant email to clerk re motion hearing date	0.5	\$400.00	6th year	\$ 200.00
3/14/2023	Maralle Messrelian	read OC email re status of def sigs on settlement agreements	0.1	\$400.00	6th year	\$ 40.00
3/14/2023	Maralle Messrelian	emails w legal assistant re NOS	0.1	\$400.00	6th year	\$ 40.00
3/21/2023	Maralle Messrelian	review email from clerk re mx paga approval hearing date	0.1	\$400.00	6th year	\$ 40.00
3/21/2023	Maralle Messrelian	emails w legal assistant re motion date and deadline	0.1	\$400.00	6th year	\$ 40.00
3/24/2023	Maralle Messrelian	read OC email; review fully executed settlement agreement	0.2	\$400.00	6th year	\$ 80.00
4/2/2023	Maralle Messrelian	email legal assistant re emailing clerk re reserving motion date	0.1	\$400.00	6th year	\$ 40.00
4/2/2023	Maralle Messrelian	read email to clerk re motion date	0.1	\$400.00	6th year	\$ 40.00
4/17/2023	Maralle Messrelian	draft PAGA Notice letter and email to OC for review	0.5	\$400.00	6th year	\$ 200.00
4/19/2023	Maralle Messrelian	emails w/OC re PAGA Notice	0.1	\$400.00	6th year	\$ 40.00
4/19/2023	Maralle Messrelian	email Simpluris re decl. re PAGA Approval motion; send caption page	0.2	\$400.00	6th year	\$ 80.00
4/19/2023	Maralle Messrelian	work on PAGA Motion papers	2.5	\$400.00	6th year	\$ 1,000.00
4/19/2023	Maralle Messrelian	read/review Simpluris declaration;	0.2	\$400.00	6th year	\$ 80.00
4/20/2023	Maralle Messrelian	emails w legal secretary re avalos signature for declaration	0.1	\$400.00	6th year	\$ 40.00
4/20/2023	Maralle Messrelian	work on PAGA Motion papers	3.0	\$400.00	6th year	\$ 1,200.00
4/21/2023	Maralle Messrelian	Gather and compile exhibits for PAGA Motion	1.2	\$400.00	6th year	\$ 480.00
4/21/2023	Maralle Messrelian	speak w HM re PAGA Motion	0.2	\$400.00	6th year	\$ 80.00
4/22/2023	Maralle Messrelian	finalize PAGA Motion papers; email to HM	2.0	\$400.00	6th year	\$ 800.00

Total Hours: Maralle Messrelian	34.2	\$ 13,185.00
Total Hours: Harout Messrelian	22.0	\$ 11,960.00
TOTAL TIME SPENT:	56.2	FEE TOTAL: \$25,145.00

FEES REQUESTED	\$43,333.33
MULTIPLIER	1.723

EXHIBIT 7

Orlando Perez Avalos v. Milagros Restaurant LLC, et al
(Superior Court of California, San Mateo County, Case No. 22CIV01222)

Messrelian Law Inc. Costs and Expenses	Total
LWDA Notice Filing Fee	\$ 75.00
Court Costs	\$ 1,509.80
Service Costs	\$ 220.00
Mediator Fees	\$ 5,750.00
Data Analyst for Mediation	\$ 800.00
Current Costs through 4/17/2023	\$ 8,354.80

EXHIBIT 8

Helene A. Simvoulakis-Panos



Associate

P: 408.286.5100

CONTACT ME
([MAILTO:HSIMVOULAKIS@PAHL-MCCAY.COM](mailto:HSIMVOULAKIS@PAHL-MCCAY.COM))

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Assistant:

Yvonne Leon

Biography

Helene A. Simvoulakis-Panos is an associate with Pahl & McCay practicing in the areas of Business and Civil Litigation. Mrs. Panos received a Bachelor of Arts degree in American Literature and Culture from the University of California, Los Angeles in June of 2004. During law school, she interned at the Utah Federal Defender's Office where she conducted research and interviewed clients. In May of 2007, she earned her Juris Doctor from the University of Utah's S.J. Quinney College of Law.

Mrs. Panos is admitted to practice in the State of California and the District of Columbia.

Practice Areas

Business Litigation

Civil Litigation

Education

University of California at Los Angeles

B.A., 2004, American Literature
and Culture

University of Utah, S.J. Quinney

College of Law
J.D., 2007

Bar Admissions

California
District of Columbia

MAIL@PAHL-MCCAY.COM (MAILTO:MAIL@PAHL-MCCAY.COM)

PRACTICE AREAS	SAN JOSE	LOS ANGELES
Real Estate Law (/real-estate-law)	225 W. Santa Clara St. Suite 1500	201 Santa Monica Blvd.
Labor & Employment Law (/labor)	San Jose, CA 95113 Phone: (408) 286-	Suite 550 Santa Monica, CA
Business & Commercial Litigation (/business)	5100 Fax: (408) 286-	90401 Phone: (424) 217-
Commercial Banking & Financial Institutions Law (/commercial)	5722	1830 Fax: (424) 217-
Corporate Formation & General Counsel for Closely Held Businesses (/corporate)		1854

EXHIBIT 9

Servando R. Sandoval



Partner

P: 408.286.5100

CONTACT ME
(MAILTO:SSANDOVAL@PAHL-
MCCAY.COM)

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Assistant:

Estella
Chavarria

Practice Areas

Labor and Employment
Business Litigation
Commercial Litigation
Real Estate with emphasis on
multi-family housing operations

Education

**University of California at
Los Angeles** B.A., 1995,
Communication Studies with an
emphasis in Chicano Studies

Biography

Servando R. Sandoval is a partner with the firm. He has extensive experience in all facets of employment law and fair housing laws, including counseling clients as to day-to-day employment and housing issues, conducting investigations and defending claims before all Courts and in administrative hearings.

Mr. Sandoval graduated with honors from the University of California at Los Angeles in 1995 with a degree in Communication Studies with an emphasis in Chicano Studies. He received his Juris Doctor in 1999 from the UCLA School of Law, where he served as Editor for the Chicano-Latino Law Review. He is admitted to practice in the state of California, including the District Courts in and for the Northern and Central Districts of California, as well as the U.S. Court of Appeals, Ninth Circuit. Mr. Sandoval is the Immediate Past President of the Hispanic Chamber of Commerce Silicon Valley. Mr. Sandoval also serves on the Board of Directors for the San Jose Day Nursery.

Professional Associations and Activities

- Former Chairman, Board of Directors, Hispanic Chamber of Commerce Silicon Valley
- Member, Board of Directors, San Jose Day Nursery
- Member, Board of Directors, Voices College-Bound Language Academies
- Committee Member, Friends of Alum Rock Jazz

Speeches and Presentations

- State Bar of California, Public Accommodation Symposium, April 2016, Emotional Support Animals
- Affordable Housing Management Association Northern California & Hawaii, September 2015, legal Tips & Tricks for Property Managers

UCLA School of Law

J.D., 1999

- Mexican Consulate, San Jose Office, 2014-2015
Presented to Summer Entrepreneur Program at
Stanford University

Bar Admissions

California

Court Admissions

U.S. District Court, Northern
District of California

U.S. District Court, Central
District of California

U.S. Court of Appeals, Ninth
Circuit

Awards and Honors

- Silicon Valley Latino Cultural Ambassador
(<https://svlatino.com/blogs/cultura-ambassador/cultura-ambassador-servando-r-sandoval>)



PAHL & McCAY
A Professional Law Corporation

MAIL@PAHL-MCCAY.COM (MAILTO:MAIL@PAHL-MCCAY.COM)

PRACTICE AREAS

Real Estate Law (/real-estate-law)

Labor & Employment Law
(/labor)

Business & Commercial

Litigation (/business)

Commercial Banking & Financial
Institutions Law (/commercial)

SAN JOSE

225 W. Santa Clara St.
Suite 1500

San Jose, CA 95113
Phone: (408) 286-
5100

Fax: (408) 286-
5722

LOS ANGELES

201 Santa Monica
Blvd.

Suite 550
Santa Monica, CA
90401

Phone: (424) 217-

EXHIBIT 10

Case Name: Orlando Perez Avalos v. Milagros Restaurant LLC et al.

Requesting Attorneys Name:	Maralle Messrelian
E-Mail:	maralle@messrelianlaw.com
ILYM Contact:	Sean Hartranft
E-Mail:	Sean@ilymgroup.com

ASSUMPTIONS

Total Number of Aggrieved Employees	186
Certified Spanish Translation	Yes
Case Duration (Years)	1

Activity	Rate Type	Unit Cost	Volume	Amount
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CASE STARTUP

Initial Setup - <i>Import and Formatting of Data*</i>	Hourly	\$150.00	3	\$450.00
Project Manager (Case notification and maintenance)	Hourly	\$120.00	4	\$480.00
Toll Free Phone Support	Flat Rate	\$35.00	1	\$35.00
NCOA	Flat Rate	\$14.20	1	\$14.20
Certified Spanish Translation	Flat Rate	\$750.00	1	\$750.00

*ILYM assumes that data will be in a standard format. Client will be notified immediately if not in standard format to correct data or ILYM can convert to standard format @ \$150.00 per hour.

Subtotal \$1,729.20

DISTRIBUTION (Includes EIN, Bank Acct /QSF Setup)*

Distribution Setup & Management	Hourly	\$150.00	2	\$300.00
Account Reconciliation & Distribution Reporting	Hourly	\$125.00	2	\$250.00
Fulfillment of Notice & Check - (including 1099)	Per Check	\$2.00	186	\$372.00
USPS First Class Postage	Per Piece	\$0.60	186	\$111.60
Remails (Forward/Skip Trace Undeliverables)	Per Piece	\$2.00	19	\$37.20
Preparation of Taxes	Hourly	\$125.00	10	\$1,250.00
Annual Filing of Tax Return	Per Year	\$1,250.00	1	\$1,250.00

*Additional Bank fees may apply

Subtotal \$3,570.80

CASE CONCLUSION

Data Manager Final Reporting	Hourly	\$100.00	2	\$200.00
Process Unclaimed Funds to State Controller	Flat Rate	\$750.00	1	\$750.00
Declaration	Hourly	\$125.00	2	\$250.00

Subtotal \$1,200.00

Will Not Exceed: \$6,500.00

Terms and Conditions

All services to be provided by ILYM Group, Inc. (hereinafter, "ILYM") to Client shall be subject to the following terms and conditions:

Services: Subject to the terms hereof, ILYM agrees to provide the Client with Administration Services (hereinafter, "services") as specified in the Proposal provided to Client to which these Terms and Conditions are attached. The estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make provision for any services or class members/size not delineated in the request for proposal or stipulations. Such services do not in any way constitute legal services or advice. ILYM is performing its services as an Independent Contractor and neither it nor its employees shall be deemed to be employees of the Client.

Mailing and Data Conversion: ILYM's database administration assumes the Client will provide complete data that includes all information required to send notifications and complete the administration process. Data must be provided in a complete, consistent, standardized electronic format. ILYM's standard format is Microsoft Excel, however, ILYM may accept other formats at its discretion. Further developments or enhancements to non-standardized data will be billed to Client by ILYM on a time and materials basis, according to ILYM's Standard Rates.

Charges for Services: Charges to the Client for services shall be on a time and materials basis at our prevailing rates, as the same may change from time to time. Any fee estimates set forth in the proposal are estimates only, based on information provided by Client to ILYM. Actual fees charged by ILYM to Client may be greater or less than such estimate, and Client shall be responsible for the payment of all such charges and expenses in accordance with Section 5 hereof. Charges incurred related to resolving post distribution withholdings and related corrective files due to voids and re-issues of payments and related correspondence with state and federal taxing authorities will not be charged to the Client to the extent that funds are received from the taxing authorities offset these charges. ILYM may derive financial benefits from financial institutions in connection with the deposit and investment of settlement funds with such institutions, including without limitation, discounts on eligible banking services and fees, and loans at favorable rates.

Indemnification: Client will indemnify and hold ILYM (and the officers, employees, affiliates and agents harmless against any Losses incurred by ILYM, arising out of, in connection with, or related to (i) any breach of the terms by Client; (ii) the processing and handling of any payment by ILYM in accordance with Client's instructions, including without limitation, the imposition of any stop payment or void payment on any check or the wrongful dishonor of a check by ILYM pursuant to Client's instructions.

Payment of Charges: ILYM reserves the right to request payment of postage charges and 50% of the final administration charges at the start of the case. ILYM bills are due upon receipt unless otherwise negotiated and agreed to with the Client. In the event settlement terms provide that ILYM is to be paid out of the Settlement Fund, ILYM will request that Counsel endeavor to make alternate payment arrangements for ILYM charges that are due at the onset of the case. The entire remaining balance is due and payable at the time the Settlement Account is funded by, or no later than the time of disbursement. Decisions of the court and actions of the parties, including disapproval or withdrawal of a settlement, do not affect the Client's liability to ILYM for payment of services. Services are not provided on a contingency fee basis.

Confidentiality: ILYM maintain reasonable and appropriate security measures and safeguards to protect the security and confidentiality of Client data provided to ILYM by Client in connection herewith. Should ILYM ever be notified of any judicial order or other proceedings in which a third party seeks to obtain access to the confidential data created by or for the Client, ILYM will promptly notify the Client, unless prohibited by applicable law. The Client shall have the option to (1) provide legal representation at the Client's expense to avoid such access or (2) promptly reimburse ILYM for any of its costs, including attorneys' fees, reasonably incurred in avoiding, attempting to avoid or providing such access and not paid by the entity seeking the data. If ILYM is required, pursuant to a court order, to produce documents, disclose data, or otherwise act in contravention of the obligations imposed by this Agreement, or otherwise, with respect to maintaining the confidentiality, proprietary nature and secrecy of the produced documents or disclosed data, ILYM will not be liable for breach of said obligation.

Data Rights: ILYM does not convey nor does the Client obtain any right in the programs, system data, or materials utilized or provided by ILYM in the ordinary course of business in the performance of this Agreement.

Document Retention: Unless directed otherwise in writing by Client, ILYM will destroy undeliverable mail on the effective date of the settlement or the date that the disposition of the case is no longer subject to appeal or review, whichever is later. ILYM will maintain claim forms and other correspondence for one year after final distribution of funds or benefits, or until the date that the disposition of the case is no longer subject to appeal or review, whichever is later.

Limitation of damages: ILYM is not responsible to the Client for any special, consequential or incidental damages incurred by Client. Any liability of ILYM to the Client shall not exceed the total amount billed to the Client for the particular services that give rise to any loss.

Termination: The services to be provided under this Agreement may be terminated, at will by the Client upon at least 30 calendar days' prior written notice to ILYM. The Client's obligation to pay for services or projects in progress at the time of notice of withdrawal shall continue throughout that 30 day period. ILYM may terminate this Agreement (i) with 10 calendar days' prior written notice, if the Client is not current in payment of charges or (ii) in any event, upon at least 3 months' prior written notice to the Client.

Notice: Any notice required or permitted hereunder shall be in writing and shall be delivered personally, or sent by registered mail, postage prepaid, or overnight courier service to the responsible officer or principal of ILYM or the Client, as applicable, and shall be deemed given when so delivered personally, or, if mailed, five days after the date of deposit in United States mail, or, if sent by courier, one business day after delivery to such courier service.

Force Majeure: To the extent performance by ILYM of any of its obligations hereunder is substantially prevented by reason of any act of God or by reason of any other matter beyond ILYM's reasonable control, then such performance shall be excused and this Agreement, at ILYM's option, be deemed suspended during the continuation of such condition and for a reasonable time thereafter.

Waiver of Rights: No failure or delay on the part of a party in exercising any right hereunder will operate as a waiver of, or impair, any such right. No single or partial exercise of any such right will preclude any other or further exercise thereof or the exercise of any other right. No waiver of any such right will be effective unless given in a signed writing.

Jurisdiction: The parties hereto submit to the jurisdiction of the Court of the applicable case for purposes of any suit, action or proceeding to enforce any provision of, or based on any right arising out of, this Agreement. The parties hereto hereby waive any objection to the laying of venue of any such suit, action or proceeding in the Court.

Entire Agreement: These terms and conditions and the proposal embody the entire agreement between the parties with respect to the subject matter hereof, and cancels and supersedes all prior negotiations, representations, and agreements related thereto, either written or oral, except to the extent they are expressly incorporated herein. No changes in, additions to, or waivers of, the terms and conditions set forth herein will be binding upon any party, unless approved in writing by such party's authorized representative.

EXHIBIT 11



January 18, 2023

CASE ASSUMPTIONS

Class Members	186
Opt Out Rate	N/A
Opt Outs Received	
Total Class Claimants	186
Subtotal Admin Only	\$6,239.80

Flat Fee Total \$6,000.00

For 186 Class Members

Pricing Good for Scope of Estimate Only

All Aspects of Escheating to the State of CA Included

Spanish Translation, Printing & Mailing Included

Case: Avalos v. Milagros Restaurant LLC, PAGA Administration

Phoenix Contact: Michael E. Moore
Contact Number: 949.331.0131
Email: mike@phoenixclassaction.com

Requesting Attorney: Maralle Messralian
Firm: MESSRELIAN LAW INC
Contact Number: 818.484.6531
Email: maralle@messrelianlaw.com

Assumptions and Estimate are based on information provided by counsel. If class size changes, PSA will need to adjust this Estimate accordingly. Estimate is based on **186** Class Members. PSA assumes class data will be sent in Microsoft Excel or other usable format with no or reasonable additional formatting needed. A rate of \$150 per hour will be charged for any additional analysis or programming.

Case & Database Setup / Toll Free Setup & Call Center / NCOA (USPS)

Administrative Tasks:	Rate	Hours/Units	Line Item	Estimate
Programming Manager	\$100.00	2		\$200.00
Programming Database & Setup	\$100.00	1		\$100.00
Toll Free Setup*	\$100.00	1		\$100.00
Call Center & Long Distance	\$2.50	30		\$74.40
NCOA (USPS)	\$46.50	1		\$46.50
Total				\$520.90

* Up to 120 days after disbursement

Data Merger & Scrub / Notice Packet, Check & Postage / Spanish Translation

Project Action	Rate	Hours/Units	Line Item	Estimate
Notice Packet Formatting	\$100.00	1		\$100.00
Spanish Translation	\$150.00	1		\$150.00
Data Merge & Duplication Scrub	\$0.09	186		\$16.74
Notice and Check Packet	\$1.00	186		\$186.00
Estimated Postage (up to 1 oz.)*	\$0.61	186		\$113.46
Total				\$566.20

* Prices good for 90 days. Subject to change with the USPS Rate or change in Notice pages or Translation, if any.



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

Skip Tracing & Remailing Notice Packets / Tracking & Programming Undeliverables

Project Action:	Rate	Hours/Units	Line Item	Estimate
Case Associate	\$55.00	3		\$165.00
Skip Tracing Undeliverables	\$0.75	47		\$34.88
Remail Notice Packets	\$0.65	44		\$28.28
Estimated Postage	\$0.61	44		\$26.54
Programming Undeliverables	\$50.00	1		\$50.00
Total				\$304.69

Database Programming

Project Action:	Rate	Hours/Units	Line Item	Estimate
Programming Claims Database	\$150.00	1		\$150.00
Case Associate	\$55.00	6		\$330.00
Case Manager	\$85.00	5		\$425.00
Total				\$905.00

Calculation & Disbursement Programming/ Create & Manage QSF/ Mail Checks

Project Action:	Rate	Hours/Units	Line Item	Estimate
Programming Calculations	\$135.00	2		\$270.00
Disbursement Review	\$135.00	2		\$270.00
Programming Manager	\$95.00	1		\$95.00
QSF Bank Account & EIN	\$135.00	1		\$135.00
Check Run Setup & Printing	\$135.00	4		\$540.00
Total				\$1,310.00

* Checks are printed on 8.5 x 11 in. sheets with W2/1099 Tax Filing



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

Tax Reporting & Reconciliation / Re-Issuance of Checks / Conclusion Reports and Declarations				
Project Action:	Rate	Hours/Units	Line Item	Estimate
Case Supervisor	\$115.00	3		\$345.00
Remail Undeliverable Checks (Postage Included)	\$1.50	35		\$53.01
Case Associate	\$55.00	3		\$165.00
Reconcile Uncashed Checks	\$85.00	6		\$510.00
Conclusion Reports	\$115.00	2		\$230.00
Case Manager Conclusion	\$85.00	2		\$170.00
Final Reporting & Declarations	\$115.00	4		\$460.00
QSF Annual Tax Reporting * (State Tax Reporting Included)	\$400.00	1		\$400.00
Check to Cy-Pres	\$150.00	1		Included
Uncashed Checks to the State of California Controllers Office Estimated <u>19</u> Total Class Members	\$300.00	1		\$300.00
Total				\$2,633.01

* All applicable California State & Federal taxes, which include SUI, ETT, and SDI, and FUTA filings. Additional taxes are Defendant's responsibility.

Estimate Total: \$6,239.80



TERMS AND CONDITIONS

Provisions: The case estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make any provision for any services or class size not delineated in the request for proposal or stipulations. Proposal rates and amounts are subject to change upon further review, with Counsel/Client, of the Settlement Agreement. Only pre-approved changes will be charged when applicable. No modifications may be made to this estimate without the approval of PSA (Phoenix Settlement Administrators). All notifications are mailed in English language only unless otherwise specified. Additional costs will apply if translation into other language(s) is required. Rates to prepare and file taxes are for Federal and California State taxes only. Additional charges will apply if multiple state tax filing(s) is required. **Pricing is good for ninety (90) days.**

Data Conversion and Mailing: The proposal assumes that data provided will be in ready-to-use condition and that all data is provided in a single, comprehensive Excel spreadsheet. PSA cannot be liable for any errors or omissions arising due to additional work required for analyzing and processing the original database. A minimum of two (2) business days is required for processing prior to the anticipated mailing date with an additional two (2) business days for a National Change of Address (NCOA) update. Additional time may be required depending on the class size, necessary translation of the documents, or other factors. PSA will keep counsel apprised of the estimated mailing date.

Claims: PSA's general policy is to not accept claims via facsimile. However, in the event that facsimile filing of claims must be accepted, PSA will not be held responsible for any issues and/or errors arising out of said filing. Furthermore, PSA will require disclaimer language regarding facsimile transmissions. PSA will not be responsible for any acts or omissions caused by the USPS. PSA shall not make payments to any claimants without verified, valid Social Security Numbers. All responses and class member information are held in strict confidentiality.

Payment Terms: All postage charges and 50% of the final administration charges are due at the commencement of the case and will be billed immediately upon receipt of the data and/or notice documents. PSA bills are due upon receipt unless otherwise negotiated and agreed to with PSA by Counsel/Client. In the event the settlement terms provide that PSA is to be paid out of the settlement fund, PSA will request that Counsel/Client endeavor to make alternate payment arrangements for PSA charges that are due at the onset of the case. The entire remaining balance is due and payable at the time the settlement account is funded by Defendant, or no later than the time of disbursement. Amounts not paid within thirty (30) days are subject to a service charge of 1.5% per month or the highest rate permitted by law.

Tax Reporting Requirements

PSA will file the necessary tax returns under the EIN of the QSF, including federal and state returns. Payroll tax returns will be filed if necessary. Under the California Employment Development Department, all taxes are to be reported under the EIN of the QSF with the exception of the following taxes: Unemployment Insurance (UI) and Employment Training Tax (ETT), employer-side taxes, and State Disability Insurance (SDI), an employee-side tax. These are reported under Defendant's EIN. Therefore, to comply with the EDD payroll tax filing requirements we will need the following information:

1. Defendant's California State ID and Federal EIN.
2. Defendant's current State Unemployment Insurance (UI) rate and Employment Training Tax (ETT) rate. This information can be found in the current year DE 2088, Notice of Contribution Rates, issued by the EDD.
3. Termination dates of the class members, or identification of current employee class members, so we can account for the periods that the wages relate to for each class member.
4. An executed Power of Attorney (Form DE 48) from Defendant. This form is needed so that we may report the UI, SDI, and ETT taxes under Defendant's EIN on their behalf. If this form is not provided we will work with the EDD auditors to transfer the tax payments to Defendant's EIN.
5. Defendant is responsible for reporting the SDI portion of the settlement payments on the class member's W-2. PSA will file these forms on Defendant's behalf for an additional fee and will issue an additional W-2 for each class member under Defendant's EIN, as SDI is reported under Defendant's EIN rather than the EIN of the QSF. The Power of Attorney (Form DE 48) will be needed in order for PSA to report SDI payments.

EXHIBIT 12



Estimate #:	155679	Prepared By:	Michael Sutherland
Estimate Date:	1/27/2023	Direct Dial #	321-223-5067
Expiration Date:	5/27/2023	Email:	msutherland@simpluris.com

Defense Attorney

Attorney/Client:
Firm:
Email:

With and without Spanish translation and mailing

Terms:
1) Estimated Fees assume that Simpluris will receive data in a Single Excel file with no substantial change in class size or response rate.

Undeliverable Rate:	10%
Call Rate:	5%
Redistribution:	None
States	One
Tax year	One

Data Compilation - Develop Case Specific Response Tracking - Error Reports

Total	\$215.00
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Setup a Disbursement Account

Print & Mail Checks to Class Members- 1099's-- File Reports with Appropriate Federal & State Taxing Authorities

Account Management & Reconciliation.

Total	\$3,501.91
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Send Final Reports to Counsel

Total	\$300.00
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Total Case Costs

\$4,016.91

All administration services to be provided by Simpluris to Client, are provided subject to the following terms and conditions:

1. **Services.** Simpluris agrees to provide Client those services set forth in the Bid (the "Services") to which these terms and conditions are attached and which has been provided to Client. As compensation for such Services, Client agrees to pay the fees for Services outlined in the Bid. However, Client such fees for Services are estimated based on the requirements provided by Client and actual fees charged by Simpluris may be greater or less than such estimate and Client will be responsible for the payment of all such fees.
2. **Billing and Payment.** Simpluris will invoice Client on a regular basis unless a specific timeframe is otherwise set forth in the Bid. Client shall pay all invoices within 30 days of receipt. Amounts unpaid after thirty (30) days are subject to a service charge at the rate of 1.5% per month or, if less, the highest rate permitted by law. Services are not provided on a contingency basis and Client shall remain liable to Simpluris for all fees for the Services, regardless of any court decisions, and/or actions by the parties, including disapproval or withdrawal of a settlement.
3. **Retention of Documents.** Unless directed otherwise in writing by the Client, Simpluris will destroy all undeliverable mail (except for undeliverable checks) on the date that it is processed and retained in Simpluris' system. Simpluris will maintain records to establish that the subject mail is undeliverable. Simpluris will retain undeliverable checks until the Qualified Settlement Fund is closed. Simpluris will also retain all other class member and putative class member correspondence (including without limitation, claims forms and opt out forms) for one year after final distribution of funds or benefits, or until the date that the disposition of the case is no longer subject to appeal or review, whichever is later. Lastly, Simpluris will retain bank & tax documents for such period of time as it determines is required to maintain compliance with various federal and state requirements.
4. **Limitation of Liability; Disclaimer of Warranties.** Simpluris warrants that it will perform the Services diligently, with competence and reasonable care. Simpluris' only obligation will be to correct any non-conformance with the foregoing warranty. In no event will Simpluris be liable for any lost profits/opportunities, business interruption or delay or, special, consequential, or incidental damages incurred by Client relating to the performance of the Services, regardless of whether Client's claim is for breach of contract, tort (including negligence and strict liability) or otherwise. Under no circumstances will Simpluris be liable to Client for any claims, losses, costs, penalties, fines, judgment or damages, including court costs and reasonable attorney's fees (collectively, "Losses"), whether direct or indirect, arising out of, related to, or in connection with Services in an amount in excess of the total fees charged or chargeable to Client for the particular portion of the Services affected by Simpluris' omission or error. THE WARRANTIES SET FORTH IN THIS SECTION ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE.
5. **Force Majeure.** To the extent performance by Simpluris of any of its obligations hereunder is substantially prevented by reason of any act of God or because of any other matter beyond Simpluris' reasonable control, then such performance shall be excused and this Agreement, at Simpluris' option, be deemed suspended during the continuation of such condition and for a reasonable time thereafter.
6. **Rights in Data.** Client agrees that it will not obtain, nor does Simpluris convey, any rights of ownership in the programs, system data, or materials provided or used by Simpluris in the performance of the Services.
7. **Electronic Communications.** During the provision of the Services the parties may wish to communicate electronically with each other at a business e-mail address. However, the electronic transmission of information cannot be guaranteed to be secure or error free and such information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete or otherwise be adversely affected or unsafe to use. Accordingly, each party agrees to use commercially reasonable procedures to check for the then most commonly known viruses and to check the integrity of data before sending information to the other electronically, but each party recognizes that such procedures cannot be a guarantee that transmissions will be virus free. It remains the responsibility of the party receiving an electronic communication from the other to carry out a virus check on any attachments before launching any documents whether received on disk or otherwise.
8. **Notice.** Any notice required or permitted hereunder shall be in writing and shall be delivered personally, by, or sent by registered mail, postage prepaid, or overnight courier and shall be deemed given when so delivered personally, or, if mailed, five days after the date of deposit in United States mail, or, if sent by courier, one business day after delivery to such courier service. Notice should be addressed to an officer or principal of Client and Simpluris, as the case may be.
9. **Waiver.** Failure or delay on the part of a party to exercise any right, power or privilege hereunder shall not operate as a waiver thereof or any of other subject, right, power or privilege.
10. **Termination.** Client may terminate the Services at anytime upon 30 days prior written notice to Simpluris. Termination of Services shall in no event relieve Client of its obligation make any payments due and payable to Simpluris in respect of Services rendered up to the effective date of Termination. Simpluris may terminate this Agreement (i) for any reason upon no less than 90 days prior written notice to the Client; or (ii) upon 15 calendar days' prior written notice, if the Client is not current in payment of fees.
11. **Jurisdiction.** The parties hereto irrevocably and unconditionally submit to the jurisdiction of the Court of the applicable case for purposes of any suit, action or proceeding to enforce any provision of, or based on any right arising out of, this Agreement. The parties hereto hereby irrevocably and unconditionally waive any objection to the laying of venue of any such suit, action or proceeding in such Court.
12. **Survival.** Any remedies for breach of this Agreement, this Section and the following Sections will survive any expiration or termination of this Agreement: Section 4 - Limitation of Liability; Disclaimer of Warranties, Section 6 – Rights in Data, and Section 12- Jurisdiction, 14 -Confidentiality, and Section 15 – Indemnification.
13. **Entire Agreement.** These Terms and Conditions and the proposal embody the entire agreement between the parties with respect to the subject matter hereof, and cancels and supersedes all prior negotiations, representations, and agreements related thereto, either written or oral, except to the extent they are expressly incorporated herein. No changes in, additions to, or waivers of, the terms and conditions set forth herein will be binding upon any party, unless approved in writing by such party's authorized representative.
14. **Confidentiality.** Simpluris maintains reasonable and appropriate safeguards to protect the confidentiality and security of data provided by Client to Simpluris in connection with the Services. If, pursuant to a court order or other proceeding, a third party requests that Simpluris to disclose any confidential data provided by or for Client, Simpluris will promptly notify the Client unless prohibited by applicable law. Client will then have the option to provide Simpluris with qualified legal representation at Client's expense to defend against such request. If, pursuant to a court order, Simpluris is required to disclose data, produce documents, or otherwise act in contravention of the obligation to maintain confidentiality set forth in these terms and conditions, Simpluris will not be liable for breach of said obligation.
15. **Indemnification.** Client will indemnify and hold Simpluris (and the officers, employees, affiliates and agents harmless against any Losses incurred by Simpluris, arising out of, in connection with, or related to (i) any breach of the terms by Client; (ii) the processing and handling of any payment by Simpluris in accordance with Client's instructions, including without limitation, the imposition of any stop payment or void payment on any check or the wrongful dishonor of a check by Simpluris pursuant to Client's instructions.
16. **Severability.** If any term or condition or provisions of this Agreement shall be held to be invalid, illegal, unenforceable or in conflict with the law of any jurisdiction, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
17. **Database Administration.** Simpluris' database administration for Client assumes that Client will provide complete data that includes all information required to send notifications and calculate and mail settlement payments. Data must be provided in a complete, consistent, standardized electronic format. Simpluris' standardized format is Microsoft Excel, however, Simpluris may accept other formats at its discretion. Further developments or enhancements to non-standardized data will be billed to Client by Simpluris on a time and materials basis according to Simpluris' Standard Rates.

Simpluris Security Summary – White Paper

Simpluris is committed to the security and overall protection of not only our data and information but our client's data and information, as well. As a demonstration of our commitment, we maintain SOC 2 Certification which requires strict adherence to policies and procedures surrounding information security, including processing and storage of confidential customer data. Simpluris supports a comprehensive, written Information Security Program that complies with all applicable laws and regulations (e.g. HIPAA, Gramm-Leach-Bliley Act, MA 201 CMR 17.00) and is designed to (a) ensure the security, privacy and confidentiality of Client and Class Member Information, (b) protect against any reasonably anticipated threats or hazards to the security or integrity of Client or Class Member Information, and (c) protect against unauthorized access to, use, deletion, or modification of Class Member Information. Simpluris has designated specific employees to be responsible for the administration of its Information Security Program. Also, Simpluris regularly and routinely monitors, tests, and updates our Information Security Program.

Simpluris uses Client and Class Member Information only for the purposes for which its' clients provide it, as described in any Agreements or Court Orders governing the provision of Simpluris' services in any particular case. Simpluris maintains a process for identifying, assessing, and mitigating the risks to Class Member Information in each relevant area of Simpluris' operations. At Simpluris, we continuously evaluate the effectiveness of the safeguards for controlling these risks to data and bank accounts. Simpluris restricts access to Class Member Information only to those employees, agents, or subcontractors who need to know the information to perform their jobs. Simpluris performs background checks of all its employees that will have access to Sensitive Personal Information, including a review of their references, employment eligibility, education, and criminal history to ensure they do not pose a risk to the security of Client or Class Member Information.

Simpluris adheres to the following industry best practices to safeguard its systems which process, store or transmit Client and Class Member Information:

- Identity and Access Management;
- Complex passwords are routinely and regularly changed;
- Role-based access control systems to limit individual employee access to network applications and systems based on their particular job role and function;
- Data Loss Prevention and Intrusion Prevention System software at multiple layers to prevent from internal and external threats of data leaks, malicious activity, and policy violations
- Encryption of Class Member Information if transmitted over public or wireless networks (e.g., via email, FTP, the Internet, etc.);
- Implementation of a Secure File Transfer system (using SSL encryption) for transmitting documents back and forth to clients;
- Encryption of servers, portable media, laptops, desktops, smartphones, mobile devices, and new technologies that store Class Member Information;
- Complex password authentication for remote access to Company's networks;
- Upon hire and annually after that, training of all employees with access to Class Member Information, (including any agents, and subcontractors with access to Class Member Information) about their obligations to implement the Information Security Program;
- Strict disciplinary measures for employees who violate the Information Security Program;
- Preventing terminated employees from accessing Class Member Information;
- Appropriately configured and updated firewall, antivirus, and spyware software;
- Prompt application of vendor-recommended security patches and updates to systems and other applications to avoid any adverse impact on Class Member Information;
- Separation of Duties;
- Infrastructure and Physical Security;
- Business Continuity Planning;
- Disaster Recovery Planning

EXHIBIT 13

CASE NAME: PEREZ AVALOS v MILAGROS RESTAURANT LLC

Date: January 27, 2023

Requesting Attorney: Maralle Messrelian

Plaintiff or Defense: Plaintiff

Firm Name: Messrelian Law Inc.

Telephone: (818) 484-6531

Email: maralle@messrelianlaw.com

PAGA Disbursement Only

Aggrieved Employees: 186

Postage Total: \$141.18

Grand Total: \$9,221.23

DISCOUNTED FLAT FEE: \$6,000.00

The services and numbers reflected herein are an estimate provided by counsel. If the actual services and number are different, our cost estimate will change accordingly.

The attached Terms and Conditions are included as part of our cost proposal. By accepting our costs proposal for this matter, you are thereby agreeing to the Terms and Conditions.

CASE SETUP

Upon Intake of the Data, CPT will Scrub all Records to a Useable Format to Reduce Duplicates, Anomalies and Increase the Success Rate of Deliverability of the Class Notice. Aggrieved Employees will be Assigned a Unique Mailing ID which will be Used Throughout Administration. CPT will Maintain a Toll-Free Phone Number with IVR Capabilities and Live Call Center Support Representatives During Normal Business Hours (Monday-Friday, 9:00 AM - 5:30 PM, PST). Spanish Translation will be Provided by CPT.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Project Manager: Case Intake & Review	\$95.00	1	\$95.00
Project Manager: Notice Format	\$95.00	1	\$95.00
Programming: Data Base Setup	\$150.00	1	\$150.00
Live Call Center Support Reps.*	\$3.00	38	\$114.00
Spanish Translation	\$500.00	1	\$500.00
TOTAL			\$954.00

* Up to 120 days after disbursement

SSN VERIFICATION

Verify SSN for Validity with IRS / IRS Backup Withholdings

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Programming: SSN Selection	\$150.00	1	\$150.00
Department Manager: Analysis & Reporting	\$95.00	3	\$285.00
IRS SSN Verification	\$0.20	186	\$37.20
TOTAL			\$472.20

DISTRIBUTION SERVICES

CPT will Establish and Manage the Qualified Settlement Fund (QSF) for up to One Year After Disbursement. Upon Approval, CPT will Perform all Necessary Calculations and Disburse Funds. CPT will Mail an 8.5"x11" MICR Check and Notice to Valid Aggrieved Employees. CPT Uses a Payee Positive Pay System to Reconcile Checks Cashed and Conducts Monthly Account Reconciliations for the QSF.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Programming: Calculation Totals	\$150.00	2	\$300.00
Project Supervisor: Review of Distribution	\$150.00	3	\$450.00
Project Manager: Correspondence w/Parties	\$95.00	2	\$190.00
Obtain EIN, Setup QSF/Bank Account	\$150.00	3	\$450.00
Programming: Setup & Printing of Checks	\$150.00	3	\$450.00
National Change of Address Search (NCOA)	\$135.00	1	\$135.00
Print & Mail Notice, Checks & 1099	\$3.00	186	\$558.00
First-Class Postage (up to 1 oz.)*	\$0.60	186	\$111.60
TOTAL			\$2,644.60

*Postage costs are subject to change at anytime. The final rate will be determined at the time of mailing.
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POST-DISTRIBUTION & TAX REPORTING

CPT Estimates that 8% of the Checks will be Returned Undeliverable and Skip Traced to Locate a Current Address and Remailed Accordingly. CPT will Process all Requests for Check Re-Issues Continuously. CPT Prepares Annual Tax Reporting on Behalf of the QSF. Throughout the Duration of Administration, CPT will Provide the Parties with Bi-Weekly Status Reports. Upon the Conclusion of the Disbursement, CPT will Issue a Due Process Declaration.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Re-Issue Checks as Required	\$5.00	2	\$10.00
Project Supervisor: Account Reconciliation	\$150.00	6	\$900.00
Skip Trace for Best Address	\$1.00	15	\$15.00
Remail Undeliverable Checks	\$3.00	15	\$45.00
First-Class Postage (up to 1 oz.)	\$0.60	17	\$10.20
Project Supervisor: Reconcile Uncashed Chk	\$150.00	1	\$150.00
Programming: Weekly & Final Reports	\$150.00	1	\$150.00
Project Manager: Account Files Sent to Atty	\$95.00	1	\$95.00
Project Supervisor: Final Declaration	\$150.00	1	\$150.00
Annual Tax Reporting to IRS*	\$1,000.00	1	\$1,000.00
QSF Annual Tax Reporting	\$500.00	1	\$500.00
TOTAL			\$3,025.20

*CPT will file Federal and California taxes in accordance to current state and federal regulations. Additional charges will apply if the Settlement/Order/parties require(s) multiple state tax filings.

SCO ESCHEATMENT PROCESSING

Escheatment Processing to the State Controller Unclaimed Property Division / Uncashed Check Rate 21%			
ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
UPEnterprise Reporting Services	\$0.15	39	\$5.85
Project Manager: SCO Fall Reporting	\$95.00	2	\$190.00
Project Supervisor: Review of SCO Reports	\$150.00	1	\$150.00
Certified Mail Report to SCO	\$8.53	1	\$8.53
Check Reissues for Winter/Spring QTR	\$5.00	4	\$20.00
First-Class Postage (up to 1 oz.)	\$0.58	4	\$2.32
Project Manager: June Remittance	\$95.00	2	\$190.00
Project Supervisor: June Remittance	\$150.00	1	\$150.00
Certified Mail Report to SCO	\$8.53	1	\$8.53
Add'l Account Recons	\$150.00	6	\$900.00
Add'l QSF Annual Tax Reporting	\$500.00	1	\$500.00
TOTAL			\$2,125.23

GRAND TOTAL **\$9,221.23**

TERMS AND CONDITIONS

These Terms and Conditions are made a part of, and incorporated by reference into, any cost proposal or Bid presented by CPT Group, Inc. to Client

1. Definitions.

- a) **"Affiliate"** means a party that partially (at least 50%) or fully controls, is partially or fully controlled by, or is under partial (at least 50%) or full common control with another party.
 - b) **"Approved Bank"** means a financial institution insured by the Federal Deposit Insurance Corporation with capital exceeding \$1 billion.
 - c) **"Case"** means the particular judicial matter identified by the name of plaintiff(s) and defendant(s) on the applicable Order.
 - d) **"Claims Administrator"** means CPT Group, Inc., a reputable third-party Claims Administrator selected by all the Parties (Plaintiff and Defense Counsel) to administer the Settlement or Notification Mailing.
 - e) **"Client"** means collectively Plaintiff Counsel and Defense Counsel.
 - f) **"Client Content"** means all Class Member written document communications relating to the Case, including claim forms, opt-out forms, and objections, which contain Client Data.
 - g) **"Client Data"** means proprietary or personal data regarding Client or any of its Class Members under this Agreement, as provided by Client.
 - h) **"Class Member"** means an individual who is eligible under the Settlement Agreement to receive a designated amount of the Settlement, including the named Plaintiff(s) in the Case and all other putative persons so designated or addressed therein.
 - i) **"Confidential Information"** means any non-public information of CPT or Client disclosed by either party to the other party, either directly or indirectly, in writing, orally or by inspection of tangible objects, or to which the other party may have access, which a reasonable person would consider confidential and/or which is marked "confidential" or "proprietary" or some similar designation by the disclosing party. Confidential Information shall also include the terms of this Agreement, except where this Agreement specifically provides for disclosure of certain items. Confidential Information shall not, however, include the existence of the Agreement or any information which the recipient can establish: (i) was or has become generally known or available or is part of the public domain without direct or indirect fault, action, or omission of the recipient; (ii) was known by the recipient prior to the time of disclosure, according to the recipient's prior written documentation; (iii) was received by the recipient from a source other than the discloser, rightfully having possession of and the right to disclose such information; or (iv) was independently developed by the recipient, where such independent development has been documented by the recipient.
 - j) **"Court Order"** means a legal command or direction issued by a court, judicial office, or applicable administrative body requiring one or more parties to the Case to carry out a legal obligation pursuant to the Case.
 - k) **"Defendant"** means the named party and/or parties in the Case against whom action is brought.
 - l) **"Defense Counsel"** means the attorney of record for the defendant(s) in the Case.
 - m) **"Intellectual Property Right"** means any patent, copyright, trade or service mark, trade dress, trade name, database right, goodwill, logo, trade secret right, or any other intellectual property right or proprietary information right, in each case whether registered or unregistered, and whether arising in any jurisdiction, including without limitation all rights of registrations, applications, and renewals thereof and causes of action for infringement or misappropriation related to any of the foregoing.
 - n) **"Order"** means a Product purchase in a schedule, statement of work, addendum, exhibit, or amendment signed by Client and CPT.
 - o) **"Parties"** shall mean collectively Defendants, Defense and Plaintiff as defined in the Settlement Agreement or Court Order.
 - p) **"Plaintiff"** means the named party and/or parties in the Case who are bringing the action.
 - q) **"Plaintiff Counsel"** means the attorney of record for plaintiff Class Members in the Case.
 - r) **"Products"** means any and all CPT Services, and work products resulting from Services.
 - s) **"Qualified Settlement Fund"** means the entity as defined by Treasury Regulation section 4686-1 under which a bank account is established to receive settlement funds from the Defendant in the Case, which such funds are then disbursed by CPT according to the Settlement Agreement and pursuant to Court Order.
 - t) **"Service"** means any service rendered by CPT specifically to Client, including, but not limited to: (i) notifications to Class Members; (ii) setting up a Qualified Settlement Fund with a financial institution; (iii) management of disbursement of funds from the Qualified Settlement Fund to applicable parties pursuant to the Settlement Agreement; (iv) provision of customer support relating to the Case; (v) management of Case claim forms and correspondence; and/or (vi) any administrative or consulting service.
 - u) **"Software"** means any and all of CPT's proprietary applications, including, without limitation, all updates, revisions, bug-fixes, upgrades, and enhancements thereto.
 - v) **"Settlement"** means the total dollar amount agreed to between parties to the Case, as negotiated by Plaintiff Counsel and Defense Counsel, to resolve the Case to mutual satisfaction.
 - w) **"Settlement Agreement"** means the contract between parties to the Case to resolve the same, which specifies amounts to be disbursed from the Qualified Settlement Fund to attorneys, CPT, and individual Class Members.
 - x) **"Term"** means the term of the Agreement, as set forth in the Order.
 - y) **"Transmission Methods"** means the secure authorized manner to send Client Data and/or Wire Information as specified on a schedule or Order hereto.
 - z) **"Wire Information"** means instructions for (i) Defense Counsel to transfer funds from Defendant to the Qualified Settlement Fund or (ii) CPT to transfer funds from the Qualified Settlement Fund to applicable parties pursuant to the Settlement Agreement.
2. Client Obligations. Client will ensure that it has obtained all necessary consents and approvals for CPT to access Client Data for the purposes permitted under this Agreement and shall only transmit Client Data and/or Wire Instructions to CPT via the Transmission Methods. Client shall use and maintain appropriate administrative, technical, and physical safeguards designed to protect Client Data provided under this Agreement. Client shall not send, or attempt to send, Client Data and/or Wire Instructions via email, facsimile, unprotected spreadsheet, USB flash drive or other external or removable storage device, cloud storage provider, or any other method not specified in the Transmission Methods. Notwithstanding the foregoing, Client acknowledges and understands that the electronic transmission of information cannot be guaranteed to be secure or error free, and such information could be intercepted, corrupted, lost, and/or destroyed. Client further warrants that any Client Data and/or Wire Instructions it transmits shall be free of viruses, worms, Trojan horses, or other harmful or disabling codes which could adversely affect the Client Data and/or CPT. If Client is in breach of this section, CPT may suspend Services, in addition to any other rights and remedies CPT may have at law or in equity.
3. Security. The Parties and CPT shall each use reasonable administrative, technical, and physical safeguards that are reasonably designed to: (a) protect the security and confidentiality of any personally identifiable information provided by Class Members and/or Client under this Agreement; (b) protect against any anticipated threats or hazards to the security or integrity of such personally identifiable information; (c) protect against unauthorized access to or use of such personally identifiable information that could result in substantial harm or inconvenience to any individual; and (d) protect against unauthorized access to or use of such personally identifiable information in connection with its disposal. Each Party will respond promptly to remedy any known security breach involving the personally identifiable information provided by you and/or Client under this Agreement and shall promptly inform the other Parties of such breaches.
4. CPT Obligations. Provided that Client complies with all provisions of Section "Client Obligations", CPT will (i) maintain appropriate safeguards for the protection of Client Data, including regular back-ups, security and incident response protocols, and (ii) not access or disclose Client Data except (A) as compelled by law, (B) to prevent or address service or technical issues, (C) in accordance with this Agreement or the provisions of the Settlement Agreement, or (D) if otherwise permitted by Client.
5. Mutual Obligations.
- a) Resources. Each party agrees to: (i) provide the resources reasonably necessary to enable the performance of the Services; (ii) manage its project staffing, milestones, and attendance at status meetings; and (iii) ensure completion of its project deliverables and active participation during all phases of a Service project. The parties acknowledge that failure to cooperate during a Service project may delay delivery of the Service.

If there is a delay, the party experiencing the delay will notify the other party as soon as reasonably practicable, and representatives of each party will meet to discuss the reason for the delay and applicable consequences. Changes beyond the scope of an Order and/or a party's delay in performing its obligations may require an amended Order.

- b) **Incident Notification.** Each party will promptly inform the other parties in the event of a breach of Client Data in their possession and shall utilize best efforts to assist the other parties to mitigate the effects of such incident.
6. **Qualified Settlement Fund Account.** At Client's request, CPT shall be authorized to establish one or more bank accounts at an Approved Bank. The amounts held at the Approved Bank under this Agreement are at the sole risk of Client. Without limiting the generality of the foregoing, CPT shall have no responsibility or liability for any diminution of the funds that may result from the deposit thereof at the Approved Bank, including deposit losses, credit losses, or other claims made against the Approved Bank. It is acknowledged and agreed that CPT has acted reasonably and prudently in depositing funds at an Approved Bank, and CPT is not required to conduct diligence or make any further inquiries regarding such Approved Bank.
7. **Fees and Payment.** Pricing stated within the proposal is good for 90 Days. All postage charges and 50% of the final administration charges are due at the commencement of the case and will be billed immediately upon receipt of the Client data and/or notice documents. Client will be invoiced for any remaining fees according to the applicable Order. Pricing stated within any proposal from CPT to Client is for illustrative purposes only and is only binding upon an Order executed by CPT and Client. Payment of fees will be due within 30 days after the date of the invoice, except where this Agreement expressly prescribes other payment dates. All fees set forth in an Order are in U.S. dollars, must be paid in U.S. dollars, and are exclusive of taxes and applicable transaction processing fees. Late payments hereunder will incur a late charge of 1.5% (or the highest rate allowable by law, whichever is lower) per month on the outstanding balance from the date due until the date of actual payment. In addition, Services are subject to suspension for failure to timely remit payment therefor. If travel is required to effect Services, Client shall reimburse CPT for pre-approved, reasonable expenses arising from and/or relating to such travel, including, but not limited to, airfare, lodging, meals, and ground transportation.
8. **Term and Termination.**
- a) **Term.** The Term is set forth in the Order. The Agreement may be renewed by mutual written agreement of the parties.
- b) **Termination for Cause.** Either party may immediately terminate this Agreement if the other party materially breaches its obligations hereunder, and, where capable of remedy, such breach has not been materially cured within forty-five (45) days of the breaching party's receipt of written notice describing the breach in reasonable detail.
- c) **Bankruptcy Events.** A party may immediately terminate this Agreement if the other party: (i) has a receiver appointed over it or over any part of its undertakings or assets; (ii) passes a resolution for winding up (other than for a bona fide scheme of solvent amalgamation or reconstruction), or a court of competent jurisdiction makes an order to that effect and such order is not discharged or stayed within ninety (90) days; or (iii) makes a general assignment for the benefit of its creditors.
- d) **Effect of Termination.** Immediately following termination of this Agreement, upon Client's written request, Client may retrieve Client Data via Client's secure FTP site in the same format in which the Client Data was originally inputted into the Software, at no additional charge. Alternatively, Client Data can be returned in a mutually agreed format at a scope and price to be agreed. CPT will maintain a copy of Client Data and Client Content for no more than four (4) years following the date of the final check cashing deadline for Class Members under the Settlement Agreement, after which time any Client Data and Client Content not retrieved will be destroyed.
- e) **Final Payment.** If Client terminates this Agreement due to Section "Termination", Client shall pay CPT all fees owed through the termination date. If CPT terminates the Agreement in accordance with Section "Termination," Client shall pay CPT all fees invoiced through the termination date, plus all fees remaining to be invoiced during the Term, less any costs CPT would have incurred had the Agreement not been terminated.

Confidentiality. Each of the parties agrees: (i) not to disclose any Confidential Information to any third parties except as mandated by law and except to those subcontractors of CPT providing Products hereunder who agree to be bound by confidentiality obligations no less stringent than those set forth in this Agreement; (ii) not to use any Confidential Information for any purposes except carrying out such party's rights and responsibilities under this Agreement; and (iii) to keep the Confidential Information confidential using the same degree of care such party uses to protect its own confidential information; provided, however, that such party shall use at least reasonable care. These obligations shall survive termination of this Agreement.

15. **Miscellaneous Provisions.**

- a) **Governing Law; Jurisdiction.** This Agreement will be governed by 20230117_Perez Avalos v Milagros Restaurant_PAGA Only_Maralle Messrelian

- a) **Compelled Disclosure.** If receiving party is compelled to disclose any Confidential Information by judicial or administrative process or by other requirements of law, such party shall (i) promptly notify the other party, (ii) reasonably cooperate with the other party in such party's efforts to prevent or limit such compelled disclosure and/or obtain confidential treatment of the items requested to be disclosed, and (iii) shall disclose only that portion of such information which each party is advised by its counsel in writing is legally required to be disclosed.
- b) **Remedies.** If either party breaches any of its obligations with respect to confidentiality or the unauthorized use of Confidential Information hereunder, the other party shall be entitled to seek equitable relief to protect its interest therein, including but not limited to, injunctive relief, as well as money damages.
10. **Intellectual Property.** As between the parties, CPT will and does retain all right, title and interest (including, without limitation, all Intellectual Property Rights) in and to the Products. Client retains all ownership rights to Client Data.
11. **Indemnification.** Client agrees to indemnify, defend, and hold harmless CPT, its Affiliates, and the respective officer, directors, consultants, employees, and agents of each (collectively, Covered CPT Parties") from and against any and all third party claims and causes of action, as well as related losses, liabilities, judgments, awards, settlements, damages, expenses and costs (including reasonable attorney's fees and related court costs and expenses) (collectively, "Damages") incurred or suffered by CPT which directly relate to or directly arise out of (i) Client's breach of this Agreement; (ii) CPT's performance of Services hereunder; (iii) the processing and/or handling of any payment by CPT; (iv) any content, instructions, information or Client Data provided by Client to CPT in connection with the Services provided by CPT hereunder. The foregoing provisions of this section shall not apply to the extent the Damages relate to or arise out of CPT's willful misconduct. To obtain indemnification, indemnitee shall: (i) give written notice of any claim promptly to indemnitor; (ii) give indemnitor, at indemnitor's option, sole control of the defense and settlement of such claim, provided that indemnitor may not, without the prior consent of indemnitee (not to be unreasonably withheld), settle any claim unless it unconditionally releases indemnitee of all liability; (iii) provide to indemnitor all available information and assistance; and (iv) not take any action that might compromise or settle such claim.
12. **Warranties.** Each party represents and warrants to the other party that, as of the date hereof: (i) it has full power and authority to execute and deliver the Agreement; (ii) the Agreement has been duly authorized and executed by an appropriate employee of such party; (iii) the Agreement is a legally valid and binding obligation of such party; and (iv) its execution, delivery and/or performance of the Agreement does not conflict with any agreement, understanding or document to which it is a party. CPT WARRANTS THAT ANY AND ALL SERVICES PROVIDED BY IT HEREUNDER SHALL BE PERFORMED IN A PROFESSIONAL MANNER CONSISTENT WITH PREVAILING INDUSTRY STANDARDS. TO THE EXTENT PERMITTED BY APPLICABLE LAW, CPT DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE.
13. **Liability.**
- a) **Liability Cap.** EXCEPT FOR A PARTY'S WILLFUL MISCONDUCT, EACH PARTY'S MAXIMUM AGGREGATE LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF THE THEORY OF LIABILITY, WILL BE LIMITED TO THE TOTAL CLAIMS ADMINISTRATOR FEES PAID OR PAYABLE BY CLIENT TO CPT HEREUNDER. THE EXISTENCE OF MORE THAN ONE CLAIM SHALL NOT EXPAND SUCH LIMIT. THE PARTIES ACKNOWLEDGE THAT THE FEES AGREED UPON BETWEEN CLIENT AND CPT ARE BASED IN PART ON THESE LIMITATIONS, AND THAT THESE LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ANY ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. THE FOREGOING LIMITATION SHALL NOT APPLY TO A PARTY'S PAYMENT OBLIGATIONS UNDER THE AGREEMENT.
- b) **Exclusion of Consequential Damages.** NEITHER PARTY WILL BE LIABLE FOR LOST PROFITS, LOST REVENUE, LOST BUSINESS OPPORTUNITIES, LOSS OF DATA, INTERRUPTION OF BUSINESS, OR ANY OTHER INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
14. **Communications.** CPT may list Client's name and logo alongside CPT's other clients on the CPT website and in marketing materials, unless and until Client revokes such permission. CPT may also list the Case name and/or number, and certain Qualified Settlement Fund information, on the CPT website and in marketing materials, unless stated otherwise in the Settlement Agreement.

and construed in accordance with the laws of the State of California and the federal laws of the United States of America, without regard to conflict of law principles. CPT and Client agree that any suit, action or proceeding arising out of, or with respect to, this Agreement or any judgment entered by any court in respect thereof shall be brought exclusively in the state or federal courts of the State of California located in the County of Orange, and each of CPT and Client hereby irrevocably accepts the exclusive personal jurisdiction and venue of those courts for the purpose of any suit, action or proceeding.

- b) Force Majeure. Neither party will be liable for any failure or delay in its performance under this Agreement due to any cause beyond its reasonable control, including without limitation acts of war, acts of God, earthquake, flood, weather conditions, embargo, riot, epidemic, acts of terrorism, acts or omissions of vendors or suppliers, equipment failures, sabotage, labor shortage or dispute, governmental act, failure of the Internet or other acts beyond such party's reasonable control, provided that the delayed party: (i) gives the other party prompt notice of such cause; and (ii) uses reasonable commercial efforts to correct promptly such failure or delay in performance.
- c) Counterparts. This Agreement may be executed in any number of counterparts and electronically, each of which shall be an original but all of which together shall constitute one and the same instrument.
- d) Entire Agreement. This Agreement contains the entire understanding of the parties in respect of its subject matter and supersedes all prior agreements and understandings (oral or written) between the parties with respect to such subject matter. The schedules and exhibits hereto constitute a part hereof as though set forth in full herein.
- e) Modifications. Any modification, amendment, or addendum to this Agreement must be in writing and signed by both parties.
- f) Assignment. Neither party may assign this Agreement or any of its rights, obligations, or benefits hereunder, by operation of law or otherwise, without the other party's prior written consent; provided, however, either party, without the consent of the other party, may assign this Agreement to an Affiliate or to a successor (whether direct or indirect, by operation of law, and/or by way of purchase, merger, consolidation or otherwise) to all or substantially all of the business or assets of such party, where the responsibilities or obligations of the other party are not increased by such assignment and the rights and remedies available to the other party are not adversely affected by such assignment. Subject to that restriction, this Agreement will be binding on, inure to the benefit of, and be enforceable against the parties and their respective successors and permitted assigns.
- g) No Third-Party Beneficiaries. The representations, warranties, and other terms contained herein are for the sole benefit of the parties hereto and their respective successors and permitted assigns and shall not be construed as conferring any rights on any other persons.
- h) Statistical Data. Without limiting the confidentiality rights and Intellectual Property Rights protections set forth in this

anonymized, and statistical data ("Statistical Data") derived from the operation of the Software, and nothing herein shall be construed as prohibiting CPT from utilizing the Statistical Data for business and/or operating purposes, provided that CPT does not share with any third-party Statistical Data which reveals the identity of Client, Client's Class Members, or Client's Confidential Information.

- i) Export Controls. Client understands that the use of CPT's Products is subject to U.S. export controls and trade and economic sanctions laws and agrees to comply with all such applicable laws and regulations, including the Export Administration Regulations maintained by the U.S. Department of Commerce and the trade and economic sanctions maintained by the Treasury Department's Office of Foreign Assets Control.
- j) Severability. If any provision of this Agreement is held by a court or arbitrator of competent jurisdiction to be contrary to law, such provision shall be changed by the court or by the arbitrator and interpreted so as to best accomplish the objectives of the original provision to the fullest extent allowed by law, and the remaining provisions of this Agreement shall remain in full force and effect.
- k) Notices. Any notice or communication required or permitted to be given hereunder may be delivered by hand, deposited with an overnight courier, sent by electronic delivery, or mailed by registered or certified mail, return receipt requested and postage prepaid to the address for the other party first written above or at such other address as may hereafter be furnished in writing by either party hereto to the other party. Such notice will be deemed to have been given as of the date it is delivered, if by personal delivery; the next business day, if deposited with an overnight courier; upon receipt of confirmation of electronic delivery (if followed up by such registered or certified mail); and five days after being so mailed.
- l) Independent Contractors. Client and CPT are independent contractors, and nothing in this Agreement shall create any partnership, joint venture, agency, franchise, sales representative or employment relationship between Client and CPT. Each party understands that it does not have authority to make or accept any offers or make any representations on behalf of the other. Neither party may make any statement that would contradict anything in this section.
- m) Subcontractors. CPT shall notify Client of its use of any subcontractors to perform Client-specific Services. CPT shall be responsible for its subcontractors' performance of Services under this Agreement.
- n) Headings. The headings of the sections of this Agreement are for convenience only, do not form a part hereof, and in no way limit, define, describe, modify, interpret, or construe its meaning, scope or intent.
- o) Waiver. No failure or delay on the part of either party in exercising any right, power or remedy under this Agreement shall operate as a waiver, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise or the exercise of any other right, power, or remedy.
- p) Survival. Sections of the Agreement intended by their nature and content to survive termination of the Agreement shall so survive.

EXHIBIT 14