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8 Attorneys for Plaintiff GABRIELA GUEVARA,
9 on behalf of herself and all others similarly situated
10 and on behalf of the general public

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **IN AND FOR THE COUNTY OF LOS ANGELES**

13 GABRIELA GUEVARA, on behalf of
14 herself and all others similarly situated, and
15 on behalf of the general public,

16 Plaintiffs,

17 v.

18 AGUILASMORALES, INC.; and DOES 2-
19 100,

20 Defendants.

Case No. 21STCV47592

[Related to Case No. 22STCV08424]

**DECLARATION OF DAVID MARA, ESQ.,
IN SUPPORT OF PLAINTIFF GABRIELA
GUEVARA'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
AND PAGA ACTION SETTLEMENT,
CONDITIONAL CERTIFICATION,
APPROVAL OF CLASS NOTICE, SETTING
OF FINAL APPROVAL HEARING DATE**

Date: December 13, 2023

Time: 10:30 a.m.

1 I, DAVID MARA, declare the following:

- 2 1. I am President of Mara Law Firm, PC, and counsel of record for the Class in this matter. I
3 am duly admitted to practice before all the courts of the state of California. The following
4 facts are within my personal knowledge and, if called to testify, I could and would
5 competently testify thereto.
- 6 2. I graduated from California Western School of Law and was admitted to practice law in
7 California in May 2004.
- 8 3. I extensively handle employment cases which involve violations of the California Labor
9 Code and Industrial Welfare Commission Wage Orders, such as wage and hour class
10 actions and cases alleging violations of the Private Attorneys General Act of 2004
11 (“PAGA”). I have litigated over three hundred and fifty (350) class action and PAGA
12 lawsuits over the course of nearly 20 years.
- 13 4. I was co-class counsel in *Hohnbaum v. Brinker Restaurant Corp.* (San Diego County
14 Superior Court, Case No. GIC834348) which was the underlying case in the California
15 Supreme Court’s landmark decision in *Brinker Restaurant Corp. v. Superior Court* (2012)
16 53 Cal.4th 1004, in which the California Supreme Court delineated the scope of employer
17 obligations to provide, and employee rights to receive, meal and rest periods under
18 California law.
- 19 5. I am frequently called upon to author Amicus Curiae briefs on behalf of Consumer
20 Attorneys of California (“CAOC”). For example, I authored the Amicus Curiae briefs on
21 behalf of CAOC in *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, (The
22 California Supreme Court ruling that, like meal periods, employers must relieve employees
23 of all duty and relinquish all control to satisfactorily discharge its obligation to authorize
24 and permit rest periods.); *Frlekin v. Apple, Inc.* (2020) 8 Cal.5th 1038 (The California
25 Supreme Court ruling that the time spent on the employer’s premises waiting for, and
26 undergoing, required exit searches of packages, bags, or personal technology devices
27 voluntarily brought to work is compensable hours worked within the meaning of the Wage
28 Orders.); *Oliver v. Superior Court* (2021) California Court of Appeal Case No. H049185

(A brief asking the California Court of Appeal for the Sixth Appellate District to determine whether mandatory drive time of personal vehicles should be considered hours worked within the meaning of the Wage Orders' suffered or permitted test.). *Davidson v. O'Reilly Auto Enterprises, LLC* (9th Cir., 2020; Docket No. 18-56188) (a brief seeking Review *En Banc* of an order denying class certification in a wage and hour matter). I am also a member of CAOC's Amicus Committee that determines the cases in which the organization will agree to provide amicus support.

6. My firm has been named as class counsel in a number of wage and hour class actions in which the Court granted the plaintiff's motion for class certification. For example, my firm has been named class counsel: *Mario Norona v. B&G Delivery System, Inc.* (Sacramento County Superior Court, Case No. 34-2015-00186826-CU-OE-GDS); *Jerald Schroeder v. YRC, Inc.; et al.* (Central District of California, Case No. 12-cv-01374-TJH); *John Martin v. Sysco Corporation, et al.* (Eastern District of California, Case No. 1:16-cv-00990-DAD-SAB); *William Smith v. Werner Enterprises, Inc. d/b/a C.L. Werner, Inc.* (District of Nebraska, Case No. 8:15-cv-287); *Thomas Perez v. City of San Diego* (San Diego County Superior Court, Case No. 37-2014-00016621-CU-OE-CTL); *Eric Mendez v. M&N Consulting, Inc. dba A-Line Messenger Service* (San Bernardino County Superior Court, Case No. CIVDS1923624); *Denson Sales v. Professional Auto Transport, Inc. et al.* (San Bernardino County Superior Court, Case No. CIVDS2010153); *Sonny Williams v. Hansen and Adkins Auto Transport, Inc.; et al.* (San Bernardino County Superior Court, Case No. CIVDS2020832); and *Bobby Williams v. Mohsen Transport, Inc.* (San Diego County Superior Court, Case No. 37-2019-00063361-CU-OE-CTL).

7. My firm has also been named as class counsel in numerous cases during the settlement process. Here is a non-exhaustive list of cases where my firm has been named as class counsel in cases during the settlement process: *Kenneth Cox v. 3PL Worx, et al.* (Yolo County Superior Court, Case No. CV-18-100); *Brian Davidson v. A&B Trucking Services, Inc.* (Kern County Superior Court Case No. BCV-16-102985); *Alex Vega, et al. v. Advance Beverage Co., Inc.* (Kern County Superior Court, Case No. BCV-16-100848); *Jaime Ruiz*

1 *v. Altura Centers for Health* (Kern County Superior Court, Case No. BCV-19-101577);
2 *George Zamudio v. AmeriPride Service, Inc.* (Alameda County Superior Court, Case No.
3 RG1809666); *Richard Hendricks v. Antonini Freight Express, Inc.* (San Joaquin County
4 Superior Court, Case No. STK-CV-UOE-2016-6999); *Alton Davis v. Apria Healthcare*
5 *Group, Inc.* (San Diego County Superior Court, Case No. 37-2014-00004724-CU-OE-
6 CTL); *Alan Atchison v. Ashley Furniture Industries, Inc., et al.* (Central District of
7 California, Case No. 17-cv-00528-JAK-SP); *Bernard Payton v. Atech Logistics, Inc.*
8 (Sonoma County Superior Court, Case No. SCV 258595); *Ramon Jenkins v. Compass*
9 *Group USA, Inc., et al.* (Yolo County Superior Court, Case No. CVCV-18-747); *Timothy*
10 *Spikes, et al. v. Bear Trucking, Inc., et al.* (San Bernardino County Superior Court, Case
11 No. CIVDS1715151); *Joshua Turpen v. Benjamin's Transfer Inc.* (Solano County Superior
12 Court, Case No. FCS048845); *Cesar Mendoza v. Bi-Rite Food Service, Inc.* (San Mateo
13 County Superior Court, Case No. 17CIV02044); *Terrance Bailey v. Blue Apron, LLC; et*
14 *al.* (Northern District of California, Case No. 18-cv-07000-VC); *Jeffrey Weast v.*
15 *California Aseptic Beverages, LLC* (San Bernardino County Superior Court, Case No.
16 CIVDS1825256); *Michael Valentich v. Hub Construction Specialties, Inc.* (San Bernardino
17 County Superior Court, Case No. JCCPDS4893); *Jose De Jesus Ortega Velazquez v.*
18 *Hunter Landscape, Inc.; et al.* (San Bernardino County Superior Court, Case No.
19 CIVDS1928062); *Adrian Diaz v. Keystone Automotive Operations, Inc.* (Riverside County
20 Superior Court, Case No. RIC1817450); *Arturo Gonzalez v. NCI Group, Inc. dba NCI*
21 *Building Systems* (Eastern District of California, Case No. 18-cv-00948-AWI-SKO); *Larry*
22 *Perez v. The Nielsen Company (US), LLC* (Orange County Superior Court, Case No. 30-
23 2021-01194324-CU-OE-CXC); *Erik Martinez v. Patrick Industries, Inc.* (San Bernardino
24 County Superior Court, Case No. CIVDS2009663); *Randolph Fitch v. Shaw Industries,*
25 *Inc.; et al.* (San Bernardino County Superior Court, Case No. CIVSB2024674); *Joshua*
26 *Rael v. Intercontinental Hotels Group Resources, Inc.* (Los Angeles County Superior
27 Court, Case No. 19STCV16010); and *Aaron Romero v. Vitro Flat Glass, LLC* (Kern
28 County Superior Court, Case No. BCV-21-101357).

- 1 8. I have also lectured as a panelist for California Employment Lawyers Association
2 regarding a host of wage and hour issues.
- 3 9. Matthew Crawford is a senior associate at Mara Law Firm, PC. He solely handles wage
4 and hour class actions and PAGA actions. Mr. Crawford graduated from Pepperdine
5 University Rick J. Caruso School of Law and was admitted to practice law in California in
6 June 2016 and received his undergraduate degree from University of California, San Diego
7 in 2011. Mr. Crawford has been litigating wage and hour class actions for almost seven (7)
8 years and has handled over one hundred (100) class action and PAGA lawsuits.
- 9 10. Mr. Crawford has been named as class counsel in the following certified cases as a result
10 of the court granting a motion for class certification: *John Martin v. Sysco Corporation*;
11 *Sysco Central California, Inc.* (Eastern District of California, Case No. 1:16-cv-00990-
12 DAD-SAB); *Eric Mendez v. M & N Consulting, Inc. dba A-Line Messenger Service* (San
13 Bernardino County Superior Court, Case No. CIVDS1923624); and *Denson M. Sales v.*
14 *Professional Auto Transport, Inc., et al.* (San Bernardino County Superior Court, Case No.
15 CIVDS2010153).
- 16 11. Mr. Crawford has also been named as class counsel in numerous cases during the
17 settlement process. Here is a non-exhaustive list of cases where Mr. Crawford has been
18 named as class counsel in cases during the settlement process: *Kenneth Cox v. 3PL Worx*,
19 *et al.* (Yolo County Superior Court, Case No. CV-18-100); *Brian Davidson v. A&B*
20 *Trucking Services, Inc.* (Kern County Superior Court Case No. BCV-16-102985); *Timothy*
21 *Spikes, et al. v. Bear Trucking, Inc., et al.* (San Bernardino County Superior Court, Case
22 No. CIVDS1715151); *Michael Valentich v. Hub Construction Specialties, Inc.* (San
23 Bernardino County Superior Court, Case No. JCCPDS4893); *Adrian Diaz v. Keystone*
24 *Automotive Operations, Inc.* (Riverside County Superior Court, Case No. RIC1817450);
25 *Jaime Ruiz v. Altura Centers for Health* (Kern County Superior Court, Case No. BCV-19-
26 101577); *Alicia Juarez, et al. v. Florexpco, LLC, et al.* (San Diego Superior Court, Case No.
27 37-2020-00015644-CU-OE-CTL); *Rick Frieri v. Sysco Corporation, et al.* (Southern
28 District of California, Case No. 16-cv-1432-JLS-NLS); *Francisco Mejia Calderon, et al.*

1 *v. Tapia Enterprises, Inc., et al.* (Los Angeles County Superior Court, Case No.
2 BC709635); *Jeremiah Villarreal, et al. v. Wildwood Express* (Fresno County Superior
3 Court, Case No. 18CECG00417); *Kenbron Fryer v. Transforce, Inc.* (Alameda County
4 Superior Court, Case No. RG20071048); *Toiyagaduh Stone v. Sysco Corporation, et al.*
5 (Inyo County Superior Court, Case No. SICVCV1659516); and *Scott Allen v. J.S. West*
6 *Hardister, LLC, et al* (Stanislaus County Superior Court, Case No. 9000289).

7 12. Defendant AguilasMorales, Inc. (“Defendant”) operates a restaurant in the Los Angeles
8 area under the name “Paseo San Miguel.” On December 30, 2021, Plaintiff commenced
9 this action by filing a class action complaint alleging causes of action against Defendant
10 for 1) Failure to Pay All Straight Time Wages; 2) Failure to Pay Overtime; 3) Failure to
11 Provide Meal Periods; 4) Failure to Authorize and Permit Rest Periods; 5) Knowing and
12 Intentional Failure to Comply with Itemized Employee Wage Statement Provisions; 6)
13 Failure to Pay all Wages Due at the Time of Termination; 7) Irregular Pay Periods; 8)
14 Failure to Adopt a Compliant Sick Pay Policy; and 9) Violation of Unfair Competition
15 Law.

16 13. On December 8, 2021, Plaintiff provided notice to the Labor and Workforce Development
17 Agency (“LWDA”) and Defendant in accordance with the Private Attorneys General Act
18 of 2004 (“PAGA”).¹ On March 8, 2022, Plaintiff filed a PAGA action which seeks civil
19 penalties pursuant to Cal. Lab. Code 2699 *et seq.* for 1) Failure to Pay All Straight Time
20 Wages; 2) Failure to Pay Overtime; 3) Failure to Provide Meal Periods; 4) Failure to
21 Authorize and Permit Rest Periods; 5) Knowing and Intentional Failure to Comply with
22 Itemized Employee Wage Statement Provisions; 6) Failure to Pay all Wages Due at the
23 Time of Termination; 7) Failure to Pay All Wages Twice Per Month; and 8) Failure to
24 Adopt a Compliant Sick Pay Policy. The PAGA action was related with the class action on
25 or around June 8, 2022.

27 ¹ The Notice to the LWDA dated December 8, 2021 is attached to the Declaration of David Mara
28 as **Exhibit 2**. Plaintiff’s Amended Notice dated July 6, 2022 (naming the correct employer entity)
is attached to the Declaration of David Mara as **Exhibit 3**.

1 14. After filing, the Parties engaged in discovery. These discovery efforts led to Defendant
2 producing policy documents, such as the employee handbooks that covered employees'
3 employment with Defendant, and time and wage records. Included within these documents
4 were Defendant's wage and hour policies, including its meal and rest period policies.
5 Defendant also produced time and wage records for an approximate 57% sampling of the
6 Class Members which Plaintiff's Counsel had analyzed with the assistance of an expert.
7 These records consisted of the entirety of the time and wage records from 2017 through
8 2021. As such, the sampling should be reflective of the entire Class. With the assistance of
9 her expert, Plaintiff was able to use these records to obtain the data points needed to
10 establish a potential exposure model in preparation for mediation. Defendant further
11 produced Plaintiff's personnel file and time and pay records. The Parties also engaged in
12 the *Belaire-West* notice process to obtain the contact information for the putative class
13 members. From this discovery, Plaintiff and her Counsel were able to analyze Defendant's
14 liability in this action and prepare a realistic damage model.

15 15. The Parties attended an all-day mediation presided over by Honorable Joan Lewis (Ret.)
16 on July 21, 2023. This mediation was successful. The Parties then met and conferred over
17 all the terms of the settlement and finalized their settlement in the Parties' Agreement. The
18 Parties seek preliminary approval of the Agreement in the instant motion.

19 16. Here, Plaintiff contends that Defendant has consistently and systematically denied
20 employees their rights to meal and rest periods throughout the entire class period.
21 Employees are routinely told by their supervisors and managers that they need to work
22 through their meal and rest periods, as it is "too busy" for them to be allowed to take them.

23 17. Defendant asserts that its meal and rest period policies are lawful and provide employees
24 with meal and rest periods in compliance with California law. Defendant alleges that if
25 litigation continues it would be able to show that it adequately advised employees of their
26 rights to meal and rest periods, that employees were provided the opportunity to take
27 legally compliant meal and rest periods, and employees were relieved of all work duties
28 during such meal and rest periods. Defendant also contends that if litigation were to

1 continue, it would provide declarations from employees stating that they knew they were
2 entitled to meal and rest periods in accordance with California law and that they were able
3 to take these meal and rest periods without any interference from Defendant.

4 18. In addition, Defendant argues that in order for Plaintiff to demonstrate the existence of its
5 purported unlawful policy, the Court would have to ask each employee what it thought
6 Defendant's meal and rest period policies were. As such, individualized issues would
7 predominate, rendering the matter unsuitable for class certification.

8 19. Plaintiff contends that, here, the time records show non-compliant meal and rest periods.
9 In these shifts, under *Donohue*, Plaintiff contends that it is presumed that meal period
10 violations occurred, and while *Donohue* does not apply to rest periods, records showing of
11 non-compliant rest periods can indisputably be used as further evidence of Defendant's
12 failure to provide complaint rest periods.

13 20. Defendant again points out that its meal and rest period policies are lawful and that it
14 provides employees with meal and rest periods in compliance with California law, and that
15 Defendant would be able to provide declarations from employees stating that they were
16 able to take these meal and rest periods without any interference from Defendant. As such,
17 any records reflecting non-complaint meal and rest periods would be insufficient to
18 demonstrate any purported violations, and Defendant would be able rebut the presumption
19 under *Donohue v. AMN Services, LLC* for meal periods and defeat Plaintiff's rest period
20 claims on the merits.

21 21. Here, Defendant has an unlawful rounding policy that is not fair and neutral in practice.
22 Defendant's rounding policy results in employees systematically being undercompensated.
23 An analysis of the sampling of time records reveals that the majority of employees were
24 underpaid by the rounding policy by several minutes across a significant number of shifts.

25 22. Defendant argues that Plaintiff's analysis only focuses on the shifts in which employee's
26 are underpaid and ignores the instances in which an employee's compensation is neutral or
27 is being overcompensated as a result of the rounding policy. Defendant contends that when
28 the records are considered as a whole, the rounding policy is indisputably fair, neutral, and

properly compensates employees over time for all hours worked in compliance with California law.

23. Here, Plaintiff contends that employees are routinely told by their supervisors and managers that that they need to clock out before they reach the eight (8) hour mark in their shifts so they do not work overtime. However, Defendant then requires them to continue working off the clock anyway, all in order to avoid having to pay employees overtime.

24. Defendant argues that beyond the limited accusations of Plaintiff, there is no evidence that employees performed *any* work-related tasks for which they were not compensated, and that Defendant has uniform practices and policies *forbidding* employees from working off the clock. Defendant claims that Plaintiff's "investigation" is wholly inaccurate, and that employees are instructed to clock in before performing any work related tasks, and that they are trained on how to accurately log their time so that they can be paid for all time worked. Defendant further argues that the Court would have to ask each employee if this purported unlawful practice existed, and that individualized issues would predominate as a result, rendering the matter unsuitable for class certification.

25. Plaintiff also pursued claims for failure to provide accurate itemized wage statements and waiting time penalty claims. These claims are derivative of Plaintiff's underlying claims outlined above. Should Plaintiff's underlying claims fail, these claims would also fail.

26. In addition, Defendant contends that even if Plaintiff were successful in her underlying claims, she would have to prove Defendant "willfully" failed to pay employees the appropriate wages and premiums due upon separation of employment. "A willful failure to pay wages within the meaning of Labor Code Section 203 occurs when an employer intentionally fails to pay wages to an employee when those wages are due. However, a good faith dispute that any wages are due will preclude imposition of waiting time penalties under Section 203." Cal. Code Regs. Tit. 8 § 13520. "A 'good faith dispute' that any wages are due occurs when an employer presents a defense, based in law or fact, which would preclude any recovery on the part of the employee. The fact that a defense is ultimately unsuccessful will not preclude a finding that a good faith dispute did exist." *Id.* Defendant

1 contends that any failure to pay wages due at the separate of employment was not willful.
2 Defendant argues that it would not be liable for waiting time penalties because a “good
3 faith dispute” exists over the payment of those wages.

4 27. Defendant also argues that Plaintiff’s meal and rest period claims cannot form the basis of
5 her wage statement claim. Defendant relies on the case *Maldonado v. Epsilon Plastics, Inc.*
6 (2018) 22 Cal.App.5th 1308, for the position that employees do not suffer injury under
7 California Labor Code § 226(a) so long as the wage statements correctly reflected the hours
8 worked and the pay received even if the pay is later determined to be inaccurate.

9 28. Plaintiff alleges that Defendant failed to provide employees with meal periods in
10 accordance with California law because Plaintiff asserts that employees were told by
11 Defendant that the restaurant was too busy for employees to be able take them. Plaintiff
12 points to Defendant’s own records, which show that 24,944 shifts over five (5) hours in
13 length worked by employees indicate that a complaint meal period was not provided. If
14 Plaintiff were to prevail on this claim, Plaintiff and the Class Members would be entitled
15 to the following **maximum** potential damages: \$374,160 (24,944 shifts x \$15.00 average
16 hourly rate = \$374,160).

17 29. Plaintiff contends that Defendant failed to provide employees with rest periods in
18 accordance with California law because Plaintiff asserts that employees were told by
19 Defendant that the restaurant was too busy for employees to be able take them. Plaintiff
20 points to Defendant’s own records, which show that 28,604 shifts over three and a half
21 (3.5) hours in length worked by employees indicate that a complaint rest period was not
22 provided. If Plaintiff were to prevail on this claim, Plaintiff and the Class Members would
23 be entitled to the following **maximum** potential damages: \$429,060 (28,604 shifts x \$15.00
24 per hour = \$429,060).

25 30. Plaintiff further alleges that Defendant operates under an unlawful rounding policy. With
26 the assistance of her expert, Plaintiff determined that employees were underpaid an average
27 of 2.7 minutes, or 0.045 hours, across 13,212 shifts. If Plaintiff were to prevail on this
28 claim, Plaintiff and the Class Members would be entitled to the following **maximum**

1 potential damages: \$8,918 (13,212 shifts x 0.045 hours x \$15.00 per hour = \$8,918).

2 31. Plaintiff further contends that Defendant fails to pay its employees for all overtime worked.

3 Plaintiff claims that employees are routinely told by their supervisors and managers to
4 clock out before they reach the eight (8) hour mark in their shifts and to continue working
5 off the clock for about an hour on average in approximately 20% of their shifts in order to
6 avoid having to pay employees overtime. If Plaintiff were to prevail on this claim, Plaintiff
7 and the Class Members would be entitled to the following **maximum** potential damages:
8 \$139,545 (6,202 shifts x \$22.50 overtime hourly rate = \$139,545).

9 32. If Plaintiff were to prevail on her underlying claims, Plaintiff may be entitled to penalties
10 for inaccurate wage statements. The statute of limitations for Plaintiff's wage statement
11 claim is one year. Under California Labor Code § 226(e)(1), the damages for breach of this
12 section are fifty dollars (\$50) for the initial pay period in which a violation occurs and one
13 hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to
14 exceed an aggregate penalty of four thousand dollars (\$4,000). If Plaintiff were to prevail
15 on this claim and assume that all current employees are entitled to the maximum penalty
16 of \$4,000, the **maximum** damages would be \$104,000 (\$4,000 x 26 employees =
17 \$104,000).

18 33. If Plaintiff were to prevail on her underlying claims, she and the Class Members may also
19 be entitled to waiting time penalties. Plaintiff calculates the potential **maximum** exposure
20 under her waiting time penalties cause of action as \$216,000 (60 former employees within
21 the three-year statute of limitations x 30 days x 8 hour shift x \$15.00 average hourly rate =
22 \$ 216,000).

23 34. Plaintiff alleges that Defendant has five (5) violations –failure to pay all time worked,
24 failure to pay overtime, failure to provide meal periods, failure to provide rest periods, and
25 failure to provide accurate wage statements –which give rise to PAGA penalties. The
26 statute of limitations for PAGA violations go back one year. Therefore, the maximum
27 potential damages under Plaintiff's PAGA claim is: \$100 x 5 PAGA violations x 1,443 pay
28 periods = \$721,500.

1 35. Thus, not taking into account any of its defenses or arguments, Plaintiff estimated that if
2 she were successful in her core claims, Defendant's total exposure would be approximately
3 \$951,683 [\$374,160 (meal period exposure) + \$429,060 (rest period exposure) + \$8,918
4 (unpaid wages due to rounding) + \$139,545 (unpaid overtime) = \$951,683]. If Plaintiff is
5 successful in her underlying claims, she may also be entitled to damages for wage
6 statements and waiting time penalties in the amount of \$320,000 [\$104,000 (wage
7 statements) and \$216,000 (waiting time penalties) = \$320,000]. If Plaintiff's claims are
8 successful, she may also be entitled to PAGA penalties in the amount of \$721,500.

9 36. In light of the risks Plaintiff's claims faced, Plaintiff and her Counsel believe that the
10 settlement amount of \$350,000 – **with an average settlement share amount estimated**
11 **at \$1,758.33** – is a reasonable and fair settlement amount.

12 37. A true and correct copy of the Settlement Agreement is attached hereto as **Exhibit 1**. A
13 true and correct copy of the proposed Class Notice is attached to **Exhibit 1** as **Exhibit A**.

14 38. A true and correct copy of the notice to the LWDA dated, December 8, 2021, submitted by
15 Plaintiff is attached hereto as **Exhibit 2**.

16 39. A true and correct copy of the amended notice to the LWDA, dated July 6, 2022, submitted
17 by Plaintiff is attached hereto as **Exhibit 3**.

18 40. A true and correct copy of the filing receipt from Plaintiff's upload of the preliminary
19 approval motion and supporting documents to the LWDA is attached as **Exhibit 4**.

20 41. A true and correct copy of the confirmation that the upload of Plaintiff's preliminary
21 approval motion was received by the LWDA is attached as **Exhibit 5**.

22 42. A true and correct copy of the proposed order granting final approval that Plaintiff intends
23 to file in conjunction with her motion for final approval is attached as **Exhibit 6**.

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1 43. A true and correct copy of the proposed judgment that Plaintiff intends to file in
2 conjunction with her motion for final approval is attached as **Exhibit 7**.

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

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6 Dated: November 16, 2023

MARA LAW FIRM, PC

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David Mara, Esq.

9 Attorneys for Plaintiff GABRIELA GUEVARA on
10 behalf of herself, all others similarly situated, and on
11 behalf of the general public
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Exhibit 1

JOINT STIPULATION AND SETTLEMENT AGREEMENT

Subject to final approval by the Court, this Settlement Agreement is between Gabriela Guevara (“Plaintiff”), and Defendant AguilasMorales, Inc. (“Defendant”). Plaintiff and Defendant collectively are referred to in this Agreement as the “Parties.” This Agreement is intended to settle the cases entitled *Gabriela Guevara v. AguilasMorales, Inc.* (Los Angeles County Superior Court Case No. 21STCV47592) (“Class Action”) and *Gabriela Guevara v. AguilasMorales, Inc.* (Los Angeles County Superior Court Case No. 22STCV08424) (“PAGA Action”) (collectively referred to as the “Actions”).

I. **DEFINITIONS**

In addition to the other terms defined in this Agreement, the terms below have the following meaning:

- A. **Administration Costs:** The costs incurred by the Settlement Administrator to administer this Settlement, which shall not exceed \$10,000. All Administration Costs shall be paid from the Gross Settlement Amount. If the Court awards less than the amount requested, any amount not awarded will become part of the Net Settlement Amount for distribution to Participating Class Members.
- B. **Agreement, Settlement Agreement, Joint Stipulation, or Settlement:** The settlement agreement reflected in this document, titled “Joint Stipulation and Settlement Agreement.”
- C. **Aggrieved Employees:** All non-exempt, hourly employees employed by Defendant in the State of California at any time from December 28, 2020 through September 19, 2023.
- D. **Attorney Fee Award:** The amount, not to exceed one-third of the Gross Settlement Amount or One Hundred Sixteen Thousand Six Hundred Sixty-Six Dollars and Sixty-Six Cents (\$116,666.66), finally approved by the Court and awarded to Class Counsel. The Attorney Fee Award shall be paid from the Gross Settlement Amount and will not be opposed by Defendant. If the Court awards less than the amount requested, any amount not awarded will become part of the Net Settlement Amount for distribution to Participating Class Members.
- E. **Class:** All non-exempt, hourly employees employed by Defendant in the State of California at any time from December 30, 2017 through September 19, 2023.
- F. **Class Counsel:** David Mara and Matthew Crawford of Mara Law Firm, PC.
- G. **Class Data:** Refers to the data Defendant shall deliver to the Settlement Administrator in the form of an electronic database, which will list for each Class Member: (1) first and last name; (2) last known mailing address; (3) social

security number; (4) hire and termination dates; (5) last known email address; and (6) the total number of weeks during which the Class Member performed any actual work during the Class Period as a member of the Class. If any or all of this information is unavailable to Defendant, Defendant will so inform Class Counsel and the Parties will make their best efforts to reconstruct or otherwise agree upon how to deal with the unavailable information. The Settlement Administrator will conduct a skip trace for the address of all Class Members who are former employees of Defendant. The Database shall be based on Defendant's payroll, personnel, and other business records. The Settlement Administrator shall maintain the Database and all data contained within the Database as private and confidential.

- H. **Class Member**: Each person eligible to participate in this Settlement who is a member of the Class as defined above.
- I. **Class Notice or Notice**: The Notice of Class Action Settlement, substantially similar to the form attached hereto as **Exhibit A**, subject to Court approval.
- J. **Class Period**: December 30, 2017 through September 19, 2023.
- K. **Class Representative or Plaintiff**: Gabriela Guevara.
- L. **Class Representative Enhancement Payment**: The amount the Court awards to Plaintiff, which will not exceed Seven Thousand Five Hundred Dollars (\$7,500). This payment shall be paid from the GSA and will not be opposed by Defendant. This payment is offered in consideration for the Plaintiff's actions in conferring a benefit upon the State of California and the Class, the time and effort Plaintiff put into pursuing the litigation. If the Court awards less than the amount requested, any amount not awarded will become part of the NSA for distribution to Participating Class Members.
- M. **Class Settlement**: Refers to the Settlement of Claims in the Class Release for which Participating Class Members will receive an Individual Class Settlement Payment.
- N. **Cost Award**: The amount that the Court orders Defendant to pay Class Counsel for payment of actual litigation costs, which shall not exceed \$20,000. The Cost Award will be paid from the Gross Settlement Amount and will not be opposed by Defendant. The Cost Award is subject to Court approval. If the Court awards less than the amount requested, any amount not awarded will become part of the Net Settlement Amount for distribution to Participating Class Members.
- O. **Counsel for Defendant**: John A. S. Baik of Baik Law Group APC.
- P. **Defendant**: AguilasMorales, Inc.

- Q. Effective Final Settlement Date:** The effective date of this Settlement will be when the final approval of the settlement can no longer be appealed, or, if there are no objectors and no plaintiffs in intervention at the time the court grants final approval of the settlement, the date the court enters judgment granting final approval of the settlement.
- R. Employer Taxes:** Defendants' portion of payroll taxes as the Class Members' current or former employer (including the employer's payment of applicable FICA, FUTA, and SUI contributions, etc.) owed to the appropriate local, state, and federal taxing authorities. Defendants will pay its portion of payroll taxes separate and apart from the Gross Settlement Amount.
- S. Final Judgment or Final Approval:** The final order entered by the Court finally approving this Agreement.
- T. First Disbursement:** Within ten (10) calendar days after receiving the First Installment, the Settlement Administrator shall disburse: (1) 42.85% of the Net Settlement Amount to Participating Class Members; (2) 42.85% of the Attorneys Fee Award and Cost Award to Class Counsel; (3) 42.85% of the Class Representative Enhancement Payment to the Class Representative; (4) 42.85% of the Administration Costs to itself; and (5) 42.85% of the PAGA Payment to the LWDA and PAGA Aggrieved Employees.
- U. First Installment:** The First Installment shall be comprised of \$150,000, plus the applicable Employer Taxes. Defendant shall fund and deliver to the Settlement Administrator the First Installment either sixty (60) calendar days after the Effective Final Settlement Date, or May 21, 2024, whichever is later.
- V. Gross Settlement Amount or GSA:** The total value of the Settlement is a non-reversionary Three Hundred Fifty Thousand Dollars (\$350,000). This is the gross amount Defendants are required to pay under this Settlement Agreement, in addition to its obligation to pay its share of Employer Taxes. The Gross Settlement Amount includes: (1) the Net Settlement Amount to be paid to Participating Class Members; (2) the Attorney Fee Award and Cost Award to Class Counsel for attorneys' fees and costs, as approved by the Court; (3) the Class Representative Enhancement Payments paid to the Class Representatives, as approved by the Court; (4) the Administration Costs, as approved by the Court; (5) the PAGA Payment to the LWDA and to Aggrieved Employees, as approved by the Court. No portion of the Gross Settlement Amount will revert to Defendants for any reason.
- W. Individual Class Settlement Share(s):** The amount payable to each Participating Class Member under the terms of this Settlement Agreement. Class Members are not required to submit a claim form to receive their Individual Settlement Shares pursuant to this Agreement. Rather, Participating

Class Members will receive an Individual Class Settlement Share automatically, without the return of a claim form.

- X. **Individual PAGA Settlement Share(s)**: The amount payable to each Aggrieved Employee under the terms of this Settlement Agreement. Aggrieved Employees are not required to submit a claim form to receive their Individual Settlement Shares pursuant to this Agreement. Also, even if an Aggrieved Employee requests exclusion from the Class Settlement as described in this Agreement, the Aggrieved Employee will receive an Individual PAGA Settlement Share. Therefore, Aggrieved Employees will receive an Individual PAGA Settlement Share automatically, without the return of a claim form and regardless of whether they request to be excluded from the Class Settlement.
- Y. **LWDA**: California Labor and Workforce Development Agency.
- Z. **LWDA Payment**: Refers to the Seventy-five percent (75%) of the PAGA Payment (\$15,000) that is to be paid to the LWDA as described in this Settlement
- AA. **Net PAGA Settlement Amount or NPSA**: The total amount of money for payout to Aggrieved Employees, which is the PAGA Payment less the LWDA Payment.
- BB. **Net Settlement Amount or NSA**: The total amount of money available for payout to Participating Class Members, which is the GSA less the Attorney Fee Award, Cost Award, Class Representative Enhancement Payments, the PAGA Payment, and Administration Costs. In other words, the NSA is the portion of the GSA that will be distributed to Class Members who do not request exclusion from the Settlement. The payment of employee-side taxes on the portion of the settlement shares earmarked as wages shall be paid out of the Net Settlement Amount. Thus, the individual settlement shares that are paid out of the Net Settlement Amount shall be reduced by the employee's tax liability for the share.
- CC. **PAGA**: The California Labor Code Private Attorneys General Act of 2004 (Cal. Labor Code §§ 2698 *et seq.*).
- DD. **PAGA Data**: Refers to the data Defendants shall deliver to the Settlement Administrator in the form of an electronic database, which will list for each Aggrieved Employee: (1) first and last name; (2) last known mailing address; (3) social security number; (4) hire and termination dates; (5) last known email address; and (6) the total number of weeks during which the Aggrieved Employee performed any actual work during the PAGA Period as a member of the Aggrieved Employees. If any or all of this information is unavailable to Defendants, Defendants will so inform Class Counsel and the Parties will make their best efforts to reconstruct or otherwise agree upon how to deal with the

unavailable information. The Settlement Administrator will conduct a skip trace for the address of all Aggrieved Employees who are former employees of Defendants. The Database shall be based on Defendants' payroll, personnel, and other business records. The Settlement Administrator shall maintain the Database and all data contained within the Database as private and confidential.

- EE. **PAGA Payment**: The PAGA Payment consists of Twenty Thousand Dollars (\$20,000) of the GSA allocated to satisfy the PAGA penalties claim as alleged in the in the Complaint. Seventy-five percent (75%) of the PAGA Payment (\$15,000) shall be paid to the LWDA, and twenty-five percent (25%) (\$5,000) of the PAGA Payment shall be part of the Net PAGA Settlement Amount distributed to Participating Class Members.
- FF. **PAGA Settlement**: Refers to the Settlement of PAGA Claims in the Released PAGA Claims for which Aggrieved Employees will receive an Individual PAGA Settlement Payment.
- GG. **PAGA Period**: December 28, 2020 through September 19, 2023.
- HH. **Participating Class Members**: All Class Members who do not submit a valid and timely request to exclude themselves from this Settlement.
- II. **Preliminary Approval or Preliminary Approval Order**: The Court's order preliminarily approving the proposed Settlement.
- JJ. **Qualified Settlement Fund or QSF**: The Parties agree that the Gross Settlement Amount is intended to be a "Qualified Settlement Fund" under Section 468B of the Code and Treasury Regulations § 1.4168B-1, 26 C.F.R. § 1.468B-1 *et seq.*, and will be administered by the Settlement Administrator as such. The Parties and Settlement Administrator shall treat the QSF as coming into existence as a Qualified Settlement Fund on the earliest date permitted as set forth in 26 C.F.R. § 1.468B-1, and such election statement shall be attached to the appropriate returns as required by law.
- KK. **Released Class Claims**: Class Members who do not opt out of the settlement will release any and all claims, debts, liabilities, demands, obligations, penalties, guarantees, costs, expenses, attorney's fees, damages, action or causes of action of whatever kind or nature, whether known or unknown, contingent or accrued, that are alleged or could have been alleged during the Class Period based upon a reasonable interpretation of the facts alleged in the Class Action against Defendant. The release as to these claims will be deemed effective when Defendant funds the settlement.
- LL. **Released PAGA Claims**: Aggrieved Employees, regardless of whether they requested exclusion from/opted-out of the Class Settlement, will release any and all claims for civil penalties under the California Labor Code and the

Private Attorneys General Act predicated upon the Labor Code violations asserted, as well as any potential penalties, interest or attorneys' fees associated with those violations under California law, to the extent such claims are predicated on claims made or that could have been made during the PAGA Period based on the facts and circumstances alleged in the PAGA Action and Plaintiff's notice to the LWDA against Defendant. Aggrieved Employees will release the Released PAGA Claims even if they opted-out/requested exclusion from the Class Settlement. The release as to these claims will be deemed effective when Defendant funds the settlement.

- MM. Released Parties:** Defendant and its past, present and/or future, direct and/or indirect, officers, directors, employees, representatives, administrators, attorneys, agents, parent companies, subsidiaries and affiliated corporations and entities, including Paseo San Miguel, LLC, consultants, shareholders, joint ventures, predecessors, successors, and/or assigns.
- NN. Response Deadline:** Forty-five (45) calendar days from the initial mailing of the Notice.
- OO. Second Disbursement:** Within ten (10) calendar days after receiving the Second Installment, the Settlement Administrator shall disburse: (1) 57.15% of the Net Settlement Amount to Participating Class Members; (2) 57.15% of the Attorneys Fee Award and Cost Award to Class Counsel; (3) 57.15% of the Class Representative Enhancement Payment to the Class Representative; (4) 57.15% of the Administration Costs to itself; and (5) 57.15% of the PAGA Payment to the LWDA and PAGA Aggrieved Employees.
- PP. Second Installment:** The Second Installment shall be comprised of \$200,000, plus the applicable Employer Taxes. Defendant shall fund and deliver to the Settlement Administrator the Second Installment ten (10) months after the First Installment was funded.
- QQ. Settlement Administration:** The Settlement Administrator will conduct a skip trace for the address of all former employee Class Members. The Settlement Administrator will mail the Notice by first class U.S. mail to all Class Members at the address Defendant has on file for those Class Members and to all former employee Class Members at the address resulting from the skip trace. The Notice will inform Class Members that they have until the Response Deadline to either object to the Settlement or to opt-out of the Settlement. Any Class Member who does not receive Notice after the steps outlined above have been taken will still be bound by the Settlement and/or judgment.
- RR. Settlement Administrator:** The third party administrator agreed upon by Parties to administer this Settlement is Apex Class Action LLC.
- SS. Superior Court:** Los Angeles County Superior Court.

II. RECITALS

- A. The Class Action was filed by Plaintiff on December 30, 2021. The Class Action alleges causes of action against Defendant for: 1) Failure to Pay All Straight Time Wages; 2) Failure to Pay Overtime; 3) Failure to Provide Meal Periods; 4) Failure to Authorize and Permit Rest Periods; 5) Knowing and Intentional Failure to Comply with Itemized Employee Wage Statement Provisions; 6) Failure to Pay all Wages Due at the Time of Termination; 7) Irregular Pay Periods; 8) Failure to Adopt a Compliant Sick Pay Policy; and 9) Violation of Unfair Competition Law.
- B. Plaintiff submitted her Notice of Labor Code Violations to the LWDA on December 8, 2021. Thereafter, the PAGA Action was filed by Plaintiff (as an agent of the LWDA) on March 8, 2022. The complaint sought civil penalties under the PAGA in relation to the following alleged violations suffered by allegedly similar aggrieved employees: 1) Failure to Pay All Straight Time Wages; 2) Failure to Pay Overtime; 3) Failure to Provide Meal Periods; 4) Failure to Authorize and Permit Rest Periods; 5) Knowing and Intentional Failure to Comply with Itemized Employee Wage Statement Provisions; 6) Failure to Pay all Wages Due at the Time of Termination; 7) Failure to Pay All Wages Twice Per Month; and 8) Failure to Adopt a Compliant Sick Pay Policy.
- C. The parties met and conferred regarding the cases on multiple occasions and then agreed to attend a mediation. Prior to the mediation, Defendant provided class-wide data, documents, and information permitting Plaintiff and her lawyers to fully evaluate class-wide exposure.
- D. On July 21, 2023, the Parties attended an all-day mediation with mediator Hon. Joan Lewis (Ret.), which resulted in the settlement that is reflected in this Agreement.
- E. **Benefits of Settlement to Class Members.** Plaintiff and Class Counsel recognize the expense and length of continued proceedings necessary to continue the litigation against Defendant through trial and through any possible appeals. Plaintiff and Class Counsel also have taken into account the uncertainty and risk of further litigation, the potential outcome, and the difficulties and delays inherent in such litigation. Plaintiff and Class Counsel have conducted extensive settlement negotiations. Based on the foregoing, Plaintiff and Class Counsel believe the Settlement set forth in this Agreement is a fair, adequate, and reasonable settlement, and is in the best interests of the Class Members.
- F. **Defendant's Reasons for Settlement.** Defendant recognizes that the defense of this litigation will be protracted and expensive. Substantial amounts of time, energy, and resources of the Defendant have been and, unless this Settlement is made, will continue to be devoted to the defense of the claims asserted by

Plaintiff. Defendant, therefore, has agreed to settle in the manner and upon the terms set forth in this Agreement to put to rest the Released Claims.

- G. Defendant's Denial of Wrongdoing.** Defendant generally and specifically denies any and all liability or wrongdoing of any sort with regard to any of the claims alleged, makes no concessions or admissions of liability of any sort, and contends that for any purpose other than settlement, the actions are not appropriate for class treatment. Defendant asserts a number of defenses to the claims, and has denied any wrongdoing or liability arising out of any of the alleged facts or conduct in the actions. Neither this Agreement, nor any document referred to or contemplated herein, nor any action taken to carry out this Agreement, is or may be construed as, or may be used as an admission, concession, or indication by or against Defendant or any of the Released Parties of any fault, wrongdoing, or liability whatsoever. There has been no final determination by any court as to the merits of the claims asserted by Plaintiff against Defendant or as to whether a class or classes should be certified, other than for settlement purposes only.
- H. Plaintiff's Claims.** Plaintiff asserts that Defendant's defenses are without merit. Neither this Agreement nor any documents referred to or contemplated herein, nor any action taken to carry out this Agreement is, may be construed as, or may be used as an admission, concession or indication by or against Plaintiff, Class Members, or Class Counsel as to the merits of any claims or defenses asserted, or lack thereof, in the Action. However, in the event that this Settlement is finally approved by the Court, the Plaintiff, Class Members, and Class Counsel will not oppose Defendant's efforts to use this Agreement to prove that Plaintiff and Class Members have resolved and are forever barred from re-litigating the Released Claims.

III. SETTLEMENT TERMS AND CONDITIONS

- A. Gross Settlement Amount.** Subject to the terms and conditions of this Agreement, the maximum Gross Settlement Amount that Defendant is obligated to pay under this Settlement Agreement is Three Hundred Fifty Thousand Dollars (\$350,000), with the exception of its obligation to separately pay Employer Taxes.
- B. Class Certification for Settlement Purposes Only.** Solely for the purposes of this Settlement, the Parties stipulate and agree to certification of the claims asserted on behalf of Class Members. As such, the Parties stipulate and agree that in order for this Settlement to occur, the Court must certify the Class as defined in this Agreement. Defendant maintains unimpaired all of its defenses to class certification for all other purposes other than a possible settlement. Defendant contends that the facts do not justify class, collective, or representative treatment under the governing legal standards. If the Court does not grant either preliminary or final approval of the Settlement, the fact that the

Parties were willing to stipulate to class certification for the purposes of this Agreement shall not have any bearing on, or be admissible in connection with, the issue of whether any class should be certified in a non-settlement context. It is not, and it should not be construed as, any admission of fact or law in this matter or any other matter that class, collective, or representative treatment is appropriate.

- C. Conditional Nature of Stipulation for Certification.** The Parties stipulate and agree to the certification of the claims asserted on behalf of Plaintiff and Class Members for purposes of this Settlement only. If the Settlement does not become effective, the fact that the Parties were willing to stipulate to certification as part of the Settlement shall not be admissible or used in any way in connection with, the question of whether the Court should certify any claims in a non-settlement context in this Action or in any other lawsuit. If the Settlement does not become effective, Defendant reserves the right to contest any issues relating to class certification and liability.
- D. Appointment of Class Representatives.** Solely for the purposes of this Settlement, the Parties stipulate and agree Plaintiff Gabriela Guevara shall be appointed as representatives for the Class.
- E. Appointment of Class Counsel.** Solely for the purpose of this Settlement, the Parties stipulate and agree that the Court appoint Class Counsel to represent the Class.
- F. Individual Class Settlement Share.** Subject to the terms and conditions of this Agreement, the Settlement Administrator will pay an Individual Settlement Share from the Net Settlement Amount to each Participating Class Member.

1. Calculation.

- a. Individual Class Settlement Share Calculation.** Each Participating Class Member will receive a proportionate share of the Net Settlement Amount that is equal to (i) the number of weeks he or she worked for Defendant in California based on the Class data provided by Defendant, divided by (ii) the total number of weeks worked by all Participating Class Members based on the same Class data, which is then multiplied by the Net Settlement Amount. One day worked in a given week will be credited as a week for purposes of this calculation. Therefore, the value of each Class Member's Individual Settlement Share ties directly to the amount of weeks that he or she worked.
- 2. Tax Withholdings.** Each putative class member's gross settlement award will be apportioned as follows: 33 1/3% wages, 33 1/3% interest, and 33 1/3% penalties. The amounts paid as wages shall be subject to all tax

withholdings customarily made from an employee's wages and all other authorized and required withholdings and shall be reported by W-2 forms. Payment of all amounts will be made subject to backup withholding unless a duly executed W-9 form is received from the payee(s). The amounts paid as penalties and interest shall be subject to all authorized and required withholdings other than the tax withholdings customarily made from employees' wages and shall be reported by IRS 1099 forms. Only the employee share of payroll tax withholdings shall be from each persons' Individual Settlement Share; Defendant will separately pay the employers' share of payroll taxes.

G. Individual PAGA Settlement Share

1. Calculation.

a. Individual PAGA Settlement Share Calculation. Each Aggrieved Employee will receive a proportionate share of the Net PAGA Settlement Amount that is equal to (i) the number of weeks he or she worked for Defendant in California based on the PAGA Data provided by Defendant, divided by (ii) the total number of weeks worked by all Aggrieved Employees based on the same PAGA data, which is then multiplied by the Net PAGA Settlement Amount. One day worked in a given week will be credited as a week for purposes of this calculation. Therefore, the value of each Aggrieved Employee's Individual PAGA Settlement Share ties directly to the amount of weeks that he or she worked.

2. Tax Withholdings. Each Aggrieved Employee's Individual PAGA Settlement Share will be apportioned as 100% penalties. The Individual PAGA Settlement Shares shall therefore be subject to all authorized and required withholdings other than the tax withholdings customarily made from employees' wages and shall be reported by IRS 1099 forms.

H. Constituents of GSA Disbursement. Subject to the terms and conditions of this Agreement, the Settlement Administrator shall disburse the GSA as directed later on herein to the following:

1. To the Named Plaintiff: In addition to her Individual Class Settlement Shares and Individual PAGA Settlement Share, and subject to the Court's approval, the named Plaintiff, Gabriela Guevara, will receive up to Seven Thousand Five Hundred Dollars (\$7,500). The Settlement Administrator will pay the Class Representative Enhancement Payment out of the GSA. Payroll tax withholdings and deductions will not be taken from the Class Representative Enhancement Payment. An IRS Form 1099 will be issued to the Plaintiff with respect to her Class Representative Enhancement Payment.

- 2. To Class Counsel.** Class Counsel will apply to the Court for, and Defendant agrees not to oppose, a total Attorney Fee Award not to exceed 33.33%, or \$116,666.66, of the GSA and a Cost Award not to exceed \$20,000. The Settlement Administrator will pay the court-approved amounts for the Attorney Fee Award and Cost Award out of the Gross Settlement Fund. Settlement Administrator may purchase an annuity to utilize US treasuries and bonds or other attorney fee deferral vehicles for Class Counsel. Payroll tax withholding and deductions will not be taken from the Attorney Fee Award or the Cost Award. IRS Forms 1099 will be issued to Class Counsel with respect to the Attorney Fee Award. In the event the Court does not approve the entirety of the application for the Attorney Fee Award and/or Cost Award, the Settlement Administrator shall pay whatever amount the Court awards, and neither Defendant nor the Settlement Administrator shall be responsible for paying the difference between the amount requested and the amount awarded. If the amount awarded is less than the amount requested by Class Counsel for the Attorney Fee Award and/or Cost Award, the difference shall become part of the NSA and be available for distribution to Participating Class Members.
- 3. To the Responsible Tax Authorities.** The Settlement Administrator will pay the amount of the Class Members' portion of normal payroll withholding taxes out of each person's Individual Class Settlement Share. The Settlement Administrator will calculate the amount of the Class Members' portion of payroll withholding taxes and forward those amounts to the appropriate taxing authorities. The Settlement Administrator will also calculate Defendant's portion of payroll withholding taxes payable on the wage portion of each Class Member's Individual Class Settlement Share and forward those amounts to Defendant and the appropriate taxing authorities.
- 4. To the Settlement Administrator.** The Settlement Administrator will pay to itself Administration Costs (reasonable fees and expenses) approved by the Court not to exceed \$10,000. This will be paid out of the Gross Settlement Amount. If the actual amount of Administration Costs is less than the amount estimated and/or requested, the difference shall become part of the NSA and be available for distribution to Participating Class Members.
- 5. To the LWDA.** The Settlement Administrator will pay \$20,000 of the Gross Settlement Amount allocated to satisfy the PAGA penalties claim as alleged in the operative complaint. Seventy-five percent (75%) of the PAGA Payment shall be paid to the LWDA, and twenty-five percent (25%) of the PAGA Payment shall be part of the NSA distributed to Participating Class Members.

- 6. To Class Members.** The Settlement Administrator will pay Participating Class Members according to the Individual Class Settlement Share calculations set forth above.

I. Appointment of Settlement Administrator. Solely for the purposes of this Settlement, the Parties stipulate and agree to the appointment of the Settlement Administrator. The Settlement Administrator shall be responsible for preparing, translating to Spanish, printing, and mailing the Notice to the Class Members; maintaining a website which posts the Notice and other important documents in the case, including the posting of any Final Judgment or Final Approval Order issued by the Court; keeping track of any objections or requests for exclusion from Class Members; receiving Class Data and PAGA Data; performing skip traces and remailing Notices and Individual Class Settlement Shares to Class Members and Individual PAGA Settlement Shares to Aggrieved Employees; calculating any and all payroll tax deductions as required by law; calculating each Class Member's Individual Class Settlement Share; calculating each Aggrieved Employee's Individual PAGA Settlement Share; providing weekly status reports to Defendant's Counsel and Class Counsel, which is to include updates on any objections or requests for exclusion that have been received; providing a due diligence declaration for submission to the Court prior to the Final Approval hearing; mailing Individual Class Settlement Shares to Participating Class Members; mailing Individual PAGA Settlement Shares to Aggrieved Employees; calculating and mailing the LWDA Payment to the LWDA; distributing the Attorney Fee Award and Cost Award to Class Counsel; calculating and paying amounts owed to the appropriate tax authorities; printing and providing Participating Class Members, Aggrieved Employees, and Plaintiffs with W-2s and 1099 forms as required under this Agreement and applicable law; providing a due diligence declaration for submission to the Superior Court upon the completion of the Settlement; providing any funds remaining in the QSF as a result of uncashed checks to the State of California unclaimed property fund in the name of the Class Member and/or Aggrieved Employee, in the amounts directed per this Settlement, including the administration of related tax reimbursements; and for such other tasks as the Parties mutually agree. The Parties each represent that they do not have any financial interest in the Settlement Administrator or otherwise have a relationship with the Settlement Administrator that could create a conflict of interest.

J. Procedure for Approving Settlement.

1. Motion for Preliminary Approval and Conditional Certification.

- a.** Plaintiff will move for an order conditionally certifying the Class for settlement purposes only, giving Preliminary Approval of the Settlement, setting a date for the Final Approval hearing, and approving the Class Notice.

- b. At the Preliminary Approval hearing, the Plaintiff will appear, support the granting of the motion, and submit a proposed order granting conditional certification of the Class and Preliminary Approval of the Settlement; appointing the Class Representative, Class Counsel, and Settlement Administrator; approving the Class Notice; and setting the Final Approval hearing.
 - c. **Effect of Denial of Preliminary Approval.** Should the Court decline to conditionally certify the Class or to Preliminarily Approve all material aspects of the Settlement, the Settlement will be null and void, and the Parties will have no further obligations under it. Provided, however, that the amounts of the Attorney Fee Award, Cost Award, Administration Costs, and Class Representative Enhancement Payment shall be determined by the Court, and the Court's determination on these amounts shall be final and binding, and that the Court's approval or denial of any amount requested for these items are not conditions of this Settlement Agreement, and are to be considered separate and apart from the fairness, reasonableness, and adequacy of the Settlement. Any order or proceeding relating to an application for the Attorney Fee Award, Cost Award, Administration Costs, and Class Representative Enhancement Payment shall not operate to terminate or cancel this Settlement Agreement. Nothing in this Agreement shall limit Plaintiff's or Class Counsel's ability to appeal any decision by the Court to award less than the requested Attorney Fee Award, Cost Award, Administration Costs, and Class Representative Enhancement.
- 2. **Notice to Class Members and Aggrieved Employees.** After the Court enters its Preliminary Approval Order, every Class Member and Aggrieved Employee will be provided with the Class Notice (in both English and Spanish) in accordance with the following procedure:
 - a. **Class Data and PAGA Data.** Within fifteen (15) business days after entry of the Preliminary Approval Order, Defendant shall deliver to the Settlement Administrator an electronic database, which will list for each Class Member and Aggrieved Employee: (1) first and last name; (2) last known mailing address; (3) social security number; (4) hire and termination dates; (5) last known email address; and (6) the total number of weeks during which the Class Member and/or Aggrieved Employee performed any actual work during the Class Period and/or PAGA Period as a member of the Class and/or as an Aggrieved Employee ("Database"). If any or all of this information is unavailable to Defendant, Defendant will so inform Class Counsel and the Parties will make their best efforts to reconstruct or otherwise agree upon how to

deal with the unavailable information. The Settlement Administrator will conduct a skip trace for the address of all Class Members who are former employees of Defendant. The Database shall be based on Defendant's payroll, personnel, and other business records. The Settlement Administrator shall maintain the Database and all data contained within the Database as private and confidential.

- b. Notice Mailing.** Within ten (10) calendar days after receipt off the Class and PAGA Data, the Settlement Administrator will mail the Class Notice to all identified Class Members via first-class regular U.S. Mail, using the mailing address information provided by Defendant and the results of the skip trace performed on all former Defendant's employee Class Members.
- c. Returned Notices.** If a Class Notice is returned because of an incorrect address, within five (5) business days from receipt of the returned Notice, the Settlement Administrator will conduct a search for a more current address for the Class Member and re-mail the Class Notice to the Class Member. The Settlement Administrator will use the National Change of Address Database and skip traces to attempt to find the current address. The Settlement Administrator will be responsible for taking reasonable steps to trace the mailing address of any Class Member for whom a Class Notice is returned by U.S. Postal Service as undeliverable. These reasonable steps shall include, at a minimum, the tracking of all undelivered mail; performing address searches for all mail returned without a forwarding address; and promptly re-mailing to Class Members for whom new addresses are found. The Settlement Administrator is unable to locate a better address, the Class Notice shall be re-mailed to the original address. If the Class Notice is re-mailed, the Settlement Administrator will note for its own records the date and address of each re-mailing. Class Members who received a re-mailed Notice will have their Response Deadline extended fifteen (15) calendar days from the original Response Deadline.
- d. Weekly Status Reports.** The Settlement Administrator shall provide a weekly status report to the Parties. As part of its weekly status report, the Settlement Administrator will inform Class Counsel and Defendant's Counsel of the number of Notices mailed and emailed (if applicable), the number of Notices returned as undeliverable, the number of Notices re-mailed, and the number of requests for exclusion or objections received.

- e. Settlement Administrator's Declaration.** No later than fourteen (14) calendar days after the Response Deadline or at the request of the Parties, whichever comes first, the Settlement Administrator will provide the Parties a declaration of due diligence setting forth its compliance with its obligations under this Agreement. The declaration from the Settlement Administrator shall also be filed with the Court by Class Counsel at the time the Motion for Final Approval is filed. Before the Final Approval Hearing, the Settlement Administrator will supplement its declaration of due diligence if any material changes occur from the date of the filing of its prior declaration.
- 3. Objections to Settlement.** The Class Notice will provide the method and timing for objections to the Settlement.
 - a. Timing.** The objection must be submitted to the Settlement Administrator by mail, postmarked by the Response Deadline.
 - b. Format.** Any Objections shall state: (a) the case name (e.g. *Gabriela Guevara v. Aguila Morales, Inc.*) and case numbers (21STCV47592 and 22STCV08424); (b) the objecting person's or his/her attorney's full name, address, and telephone number; (c) the words "Notice of Objection" or "Formal Objection;" (d) describe, in clear and concise terms, the legal and factual arguments supporting the objection; (e) list identifying witness(es) the objector may call to testify at the Final Approval Hearing; (f) provide true and correct copies of any exhibit(s) the objector intends to offer at the Final Approval Hearing; and (g) state whether the objection applies only to the objector, to a specific subset of the Class, or to the entire Class.
- 4. Request for Exclusion from the Class Settlement ("Opt-Out").** The Class Notice will provide that Class Members who wish to exclude themselves from the Class Settlement must mail to the Settlement Administrator a written request for exclusion by the Response Deadline. The written request for exclusion must: (a) state the Class Member's name, address, telephone number, and social security number or employee identification number; (b) state the Class Member's intention to exclude themselves from or opt-out of the Settlement (e.g. "I want to exclude myself from this settlement. I also understand that I retain all rights to sue the Defendant for the class claims asserted in this lawsuit and those included in the Class Release."); (c) be addressed to the Settlement Administrator; (d) be signed by the Class Member or his or her lawful representative; (e) be postmarked no later than the Response Deadline and (f) state that opting out/requesting exclusion from the Class Settlement only pertains to the Class Settlement and not the PAGA Settlement and that Class Members

who do opt-out/Request Exclusion from the Class Settlement will still receive an Individual PAGA Settlement Payment as approved by the Court.

- a. **Effect of “Opt-Out.”** Any Class Member who returns a timely, valid, and executed request for exclusion will not participate in or be bound by the Settlement and subsequent judgment and will not receive an Individual Settlement Share or any benefit of this Settlement. If the Class Member is also an Aggrieved Employee as defined in this Agreement, he or she will still be bound by the PAGA Settlement and will receive an Individual PAGA Settlement Payment as approved by the Court. Aggrieved Employees have no rights to opt-out of the PAGA Settlement.
 - b. **Failure to “Opt-Out.”** A Class Member who does not complete and mail a timely request for exclusion will automatically be included in the Class Settlement, will receive an Individual Class Settlement Share, and be bound by all terms and conditions of the Class Settlement, if the Class Settlement is approved by the Court, and by the subsequent judgment, regardless of whether he or she has objected to the Settlement.
 - c. **Confirmation of Authenticity.** If there is a question about the authenticity of a signed request for exclusion, the Settlement Administrator may demand additional proof of the Class Member’s identity.
 - d. **Report.** No later than five (5) business days after the Response Deadline, the Settlement Administrator will provide the Parties with a complete and accurate accounting of the number of Notices mailed to Class Members, the number of Notices returned as undeliverable, the number of Notices re-mailed to Class Members, the number of re-mailed Notices returned as undeliverable, the number of Class Members who objected to the Class Settlement and copies of their submitted objections, the number of Class Members who returned valid requests for exclusion, and the number of Class Members who returned invalid requests for exclusion.
5. **No Solicitation of Objections or Requests for Exclusion.** Neither the Parties nor their respective counsel will solicit or otherwise encourage directly or indirectly any Class Member to object to the Class Settlement, request exclusion from the Class Settlement, or appeal from the Judgment.
 6. **Class Member Disputes.** If a Class Member disputes the basis for the calculation of their Individual Class Member Settlement Share, the Class Member must provide notice, in writing, to the Settlement Administrator

before the Response Deadline. Any such challenge shall include the reasons supporting the challenge, as well as any documentation supporting his or her contention that the Individual Settlement Share calculation is incorrect. In the absence of such evidence, the Class Data will be controlling. The Settlement Administrator will consult with the Parties about how to resolve the challenge, evaluate the information provided, and will make a final and unappealable decision as to the outcome of the challenge. If the Individual Class Settlement Share calculation is adjusted following a challenge, then the Settlement Administrator shall notify the Class Member of the adjustment.

7. **Aggrieved Employee Disputes.** If an Aggrieved Employee disputes the basis for the calculation of their Individual PAGA Settlement Share, the Aggrieved Employee must provide notice, in writing, to the Settlement Administrator before the Response Deadline. Any such challenge shall include the reasons supporting the challenge, as well as any documentation supporting his or her contention that the Individual Settlement Share calculation is incorrect. In the absence of such evidence, the PAGA Data will be controlling. The Settlement Administrator will consult with the Parties about how to resolve the challenge, evaluate the information provided, and will make a final and unappealable decision as to the outcome of the challenge. If the Individual PAGA Settlement Share calculation is adjusted following a challenge, then the Settlement Administrator shall notify the Aggrieved Employee of the adjustment.

8. **Motion for Final Approval.**

- a. Class Counsel will file unopposed motions and memorandums in support thereof for Final Approval of the Settlement and the following payments in accord with the terms of the Settlement: (1) the Attorney Fee Award; (2) the Cost Award; (3) Administrative Costs; (4) the Class Representative Enhancement Payment; and (5) PAGA Payment. Class Counsel will also move the Court for an order of Final Approval (and associated entry of Judgment) releasing and barring any Released Claims of the Participating Class Members.
- b. **Denial or Appeal of Final Approval.** If the Court does not grant Final Approval of the Settlement, or if the Court's Final Approval of the Settlement is reversed or materially modified on appellate review, then this Settlement will become null and void. If that occurs, the Parties will have no further obligations under the Settlement, including any obligation by Defendant to pay the Gross Settlement Amount or any amounts that otherwise would have been owed under this Agreement. Further, should this occur, the Parties agree they shall be equally responsible for the

Settlement Administrator's Administration Costs through that date. An award by the Court of a lesser amount than sought by Plaintiff and Class Counsel for the Class Representative Enhancement Payment, Attorney Fee Award, Cost Award, will not constitute a material modification to the Settlement within the meaning of this paragraph.

- c. **Proposed Order and Judgment.** Upon Final Approval of the Settlement, the Parties shall present to the Court a proposed Final Approval Order, approving of the Settlement and entering Judgment in accordance therewith. After entry of Judgment, the Court shall have continuing jurisdiction over the Action for purposes of: (1) enforcing this Settlement Agreement; (2) addressing settlement administration matters; and (3) addressing such post-Judgment matters as may be appropriate under Court rules and applicable law.
- 9. **Waiver of Right to Appeal.** Provided that the Judgment is consistent with the terms and conditions of this Agreement, if Class Members do not timely object to the Class Settlement, then the Parties and their respective counsel waive any and all rights to appeal from the Judgment, including, but not limited to, all rights to any post-judgment proceeding and appellate proceeding, such as a motion to vacate or set aside judgment, and any extraordinary writ, and the Judgment will become non-appealable at the time it is entered. The waiver of appeal does not include any waiver of the right to oppose any appeal, appellate proceeding, or post-judgment proceeding.
- 10. **Vacating, Reversing, or Modifying Judgment on Appeal.** If, after a notice of appeal, the reviewing court vacates, reverses, or modifies the Judgment such that there is a material modification to the Settlement, and that court's decision is not completely reversed and the Judgment is not fully affirmed on review by a higher court, then this Settlement will become null and void and the Parties will have no further obligations under it. A material modification would include, but not necessarily be limited to, any alteration of the Gross Settlement Amount, an alteration in the calculation of the Net Settlement Amount or Net PAGA Settlement Amount, and any change to the calculation of the Individual Settlement Share.
- 11. **Disbursement of Settlement Shares and Payments.** Subject to the Court finally approving the Settlement, the Settlement Administrator shall distribute funds pursuant to the terms of this Agreement and the Court's Final Approval Order and Judgment. The maximum amount Defendants can be required to pay under this Settlement for any purpose is the Gross Settlement Amount. The Settlement Administrator shall keep Defendant's Counsel and Class Counsel apprised of all distributions from the Gross

Settlement Amount. The Settlement Administrator shall respond to questions from Defendant's Counsel and Class Counsel. No person shall have any claim against Defendant, Defendant's Counsel, Plaintiff, Class Counsel, or the Settlement Administrator based on the distributions and payments made in accordance with this Agreement.

- a. **Funding the Settlement:** Defendant shall fund and deliver to the Settlement Administrator the First Installment either sixty (60) calendar days after the Effective Final Settlement Date, or May 21, 2024, whichever is later.

Defendant shall fund and deliver to the Settlement Administrator the Second Installment no later than ten (10) months after the funding of the First Installment.

- b. **Disbursement:** Within ten (10) calendar days after receiving the First Installment, the Settlement Administrator shall disburse: (1) 42.85% of the Net Settlement Amount to Participating Class Members; (2) 42.85% of the Attorneys Fee Award and Cost Award to Class Counsel; (3) 42.85% of the Class Representative Enhancement Payment to the Class Representative; (4) 42.85% of the Administration Costs to itself; and (5) 42.85% of the PAGA Payment to the LWDA and PAGA Aggrieved Employees.

Within ten (10) calendar days after receiving the Second Installment, the Settlement Administrator shall disburse: (1) 57.15% of the Net Settlement Amount to Participating Class Members; (2) 57.15% of the Attorneys Fee Award and Cost Award to Class Counsel; (3) 57.15% of the Class Representative Enhancement Payment to the Class Representative; (4) 57.15% of the Administration Costs to itself; and (5) 57.15% of the PAGA Payment to the LWDA and PAGA Aggrieved Employees.

- 12. Final Report by Settlement Administrator.** Within ten (10) business days after the disbursement of all funds, the Settlement Administrator will serve on the Parties a declaration providing a final report on the disbursements of all funds.

- 13. Uncashed Checks.** Participating Class Members and Aggrieved Employees must cash or deposit their Individual Class Settlement Share and Individual PAGA Settlement Share checks within one hundred and eighty (180) calendar days after the checks are mailed to them.

- a. **Reminder Postcard.** If any checks are not redeemed or deposited within ninety (90) calendar days after mailing, the Settlement Administrator will send a reminder postcard indicating that unless

the check is redeemed or deposited in the next ninety (90) days, it will expire and become non-negotiable, and offer to replace the check if it was lost or misplaced.

- b. If any checks remain uncashed or not deposited by the expiration of the 90-day period after mailing the reminder notice, the Settlement Administrator will, within two hundred (200) calendar days after the checks are mailed, cancel the checks. All funds associated with the Individual Class Settlement Share and PAGA Settlement Share checks returned as undeliverable and funds associated with those checks remaining un-cashed, shall escheat to the State of California Controller's Office under the Unclaimed Property Statutes in the name of the Class Member and/or Aggrieved Employee.

14. Defendant's Legal Fees. Defendant is responsible for paying for all of Defendant's own legal fees, costs, and expenses incurred in this Action outside of the Gross Settlement Fund.

K. Release of Claims. As of the date Defendant funds the settlement, Class Members who do not submit a timely and valid request for exclusion, release the Released Parties from the Released Class Claims. Participating Class Members agree not to sue or otherwise make a claim against any of the Released Parties for any of the Released Class Claims. As of the date Defendant funds the settlement, Aggrieved Employees will release the Released Parties from the Released PAGA Claims, regardless of whether they requested exclusion from/opted-out of the Class Settlement.

L. Plaintiff's Release of Claims and General Release. As of the Effective Final Settlement Date, Plaintiff shall give the following general release of claims for herself and her respective spouse, heirs, successors and assigns, forever release the Released Parties from any and all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts, penalties and expenses of any nature whatsoever, from the beginning of time through the date of his, her, or their signature on this Agreement, known or unknown, suspected or unsuspected, whether in tort, contract, equity, or otherwise, for violation of any federal, state or local statute, rule, ordinance or regulation, including but not limited to all claims arising out of, based upon, or relating to her employment with Defendant or the remuneration for, or termination of, such employment. Plaintiff's Release of Claims also includes a waiver of California Civil Code section 1542, which provides as follows:

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.

Excluded from this release are any claims for breach of this Settlement Agreement and any claims that cannot be waived by law, including but not limited to the right to file a charge with, or participate in an investigation conducted by, the Equal Employment Opportunity Commission (“EEOC”) and/or the California Civil Rights Department (“CRD”). Plaintiff waives, however, her right to any monetary recovery or other relief should any agency pursue claims on Plaintiff’s behalf that arose on or before the date of this Settlement Agreement.

M. Miscellaneous Terms

- 1. No Admission of Liability.** Defendant makes no admission of liability or wrongdoing by virtue of entering into this Agreement. Additionally, Defendant reserves the right to contest any issues relating to class certification and liability if the Settlement is not approved. Defendant denies that it has engaged in any unlawful activity, has failed to comply with the law in any respect, has any liability to anyone under the claims asserted in the Action, or that but for the Settlement, a Class should be certified in the Action. This Agreement is entered into solely for the purpose of compromising highly disputed claims. Nothing in this Agreement is intended or will be construed as an admission by Defendant of liability or wrongdoing. This Settlement and Plaintiff’s and Defendant’s willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (other than solely in connection with this Settlement).
- 2. Advice of Counsel.** The Parties to this Settlement Agreement are represented by competent counsel, and they have had an opportunity to consult with their counsel. The Parties to this Settlement Agreement also agree that it reflects their good faith compromise of the claims raised or that could have been raised in the Actions, based upon their assessment of the mutual risks and costs of further litigation and the assessments of their respective counsel.
- 3. No Effect on Employee Benefits.** The Class Representative Enhancement Payment, Individual Class Settlement Shares, and/or Individual PAGA Settlement Shares paid to Plaintiff, Participating Class Members, and Aggrieved Employees shall not be deemed to be pensionable earnings and shall not have any effect on the eligibility for, or calculation of, any of the employee benefits (*e.g.*, vacation, holiday pay, retirement plans, etc.) of Plaintiff, Participating Class Members, or Aggrieved Employees. The Parties agree that any Class Representative Enhancement Payment,

Individual Class Settlement Shares, and/or Individual PAGA Settlement Share paid to Plaintiff, Participating Class Members, or Aggrieved Employees under the terms of this Agreement do not represent any modification of Plaintiff's, Participating Class Members', or Aggrieved Employees' previously credited hours of service or other eligibility criteria under any employee pension benefit plan or employee welfare benefit plan sponsored by Defendant. Further, any Class Representative Enhancement Payment shall not be considered "compensation" in any year for purposes of determining eligibility for, or benefit accrual within, an employee pension benefit plan or employee welfare benefit plan sponsored by Defendant.

4. **Integrated Agreement.** After this Agreement is signed and delivered by all Parties and their counsel, this Agreement and its exhibits will constitute the entire Agreement between the Parties relating to the Settlement, and it will then be deemed that no oral representations, warranties, covenants, or inducements have been made to any party concerning this Agreement or its exhibits, other than the representations, warranties, covenants, and inducements expressly stated in this Agreement and its exhibits.
5. **Authorization to Enter Into Settlement Agreement.** Class Counsel and Defendant's Counsel 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 under this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement. In the event the Parties are unable to reach agreement on the form or content of any document needed to implement this Agreement, or on any supplemental provisions that may become necessary to effectuate the terms of this Agreement, the Parties will seek the assistance of the Court, and in all cases, all such documents, supplemental provisions, and assistance of the Court will be consistent with this Agreement.
6. **Exhibits and Headings.** The terms of this Agreement include the terms set forth in the attached exhibits, which are incorporated by this reference as though fully set forth herein. Any exhibits to this Agreement are an integral part of the Settlement and must be approved substantially as written. The descriptive headings of any paragraphs or sections of this Agreement are inserted for convenience of reference only and do not constitute a part of this Agreement.
7. **Interim Stay of Proceedings.** The Parties agree to stay and hold all proceedings in the Action in abeyance, except such proceedings necessary to implement and complete the Settlement, pending the Final Approval hearing to be conducted by the Superior Court.

- 8. Amendment or Modification of Agreement.** This Agreement, and any and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by counsel for all Parties or their successors-in-interest.
- 9. Agreement Binding on Successors and Assigns.** This Agreement will be binding upon, and inure to the benefit of, the successors and assigns of the Parties, as previously defined.
- 10. No Prior Assignment.** Plaintiff hereby represents, covenants, and warrants that she has not directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or rights herein released and discharged.
- 11. Applicable Law.** All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the laws of the State of California, without giving effect to any conflict of law principles or choice of law principles.
- 12. Fair, Adequate, and Reasonable Settlement.** The Parties and their respective counsel believe and warrant that this Agreement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at this Agreement through arms-length negotiations, taking into account all relevant factors, current and potential.
- 13. No Tax or Legal Advice.** The Parties make no representations as to the tax treatment or legal effect of the payments called for hereunder, and Settlement Class Members and Aggrieved Employees are not relying on any statement or representation by the Parties, Class Counsel and Defense Counsel in this regard. Settlement Class Members and Aggrieved Employees understand and agree that they will be responsible for the payment of any employee taxes and penalties assessed on the Individual Class Settlement Payments and Individual PAGA Settlement Payments described herein and will hold the Parties, Class Counsel and Defense Counsel free and harmless from and against any claims, liabilities, costs and expenses, including attorney's fees, resulting in any way from personal tax treatment of the payments made pursuant to this Agreement.
- a. Circular 230 Disclaimer.** Each Party to this Agreement (for purposes of this section, the "acknowledging party" and each Party to this Agreement other than the acknowledging party, an "other party") acknowledges and agrees that: (1) no provision of this Agreement, and no written communication or disclosure between or among the Parties or their attorneys and other advisers,

is or was intended to be, nor shall any such communication or disclosure constitute or be construed or be relied upon as, tax advice within the meaning of United States Treasury Department circular 230 (31 CFR part 10, as amended); (2) the acknowledging party (a) has relied exclusively upon his, her or its own, independent legal and tax counsel for advice (including tax advice) in connection with this Agreement, (b) has not entered into this Agreement based upon the recommendation of any other Party or any attorney or advisor to any other Party, and (c) is not entitled to rely upon any communication or disclosure by any attorney or adviser to any other party to avoid any tax penalty that may be imposed on the acknowledging party, and (3) no attorney or adviser to any other Party has imposed any limitation that protects the confidentiality of any such attorney's or adviser's tax strategies (regardless of whether such limitation is legally binding) upon disclosure by the acknowledging party of the tax treatment or tax structure of any transaction, including any transaction contemplated by this Agreement.

14. Jurisdiction of the Court. The Court shall retain jurisdiction with respect to the interpretation, implementation, and enforcement of the terms of this Agreement and all orders and judgment entered in connection therewith, and the Parties and their counsel hereto submit to the jurisdiction of the Court for purposes of interpreting, implementing, and enforcing the Settlement embodied in this Agreement and all orders and judgments in connection therewith.

15. Invalidity of Any Provision; Severability. Before declaring any provision of this Agreement invalid, the Parties request that the Superior Court first attempt to construe the provisions valid to the fullest extent possible consistent with applicable precedents, so as to define all provisions of this Agreement valid and enforceable. In the event any provision of this Agreement shall be found unenforceable, the unenforceable provision shall be deemed deleted, and the validity and enforceability of the remaining provisions shall not be affected thereby.

16. 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.

17. Execution in Counterpart. This Agreement may be executed in one or more counterparts. All executed counterparts, and each of them, will be deemed to be one and the same instrument provided that counsel for the Parties will exchange between themselves original signed counterparts. Facsimile or PDF signatures will be accepted. Any executed counterpart

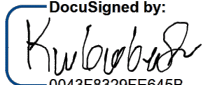
will be admissible in evidence to prove the existence and contents of this Agreement.

IV. EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel execute this Agreement.

Dated: 10/30/2023

GABRIELA GUEVARA

DocuSigned by:

0043E8329EE645B

Plaintiff

Dated: _____

AGUILASMORALES, INC.

Defendant

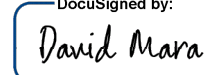
Name:

Title:

APPROVED AS TO FORM:

Dated: 10/30/2023

MARA LAW FIRM, PC

DocuSigned by:

4579A5166C10447...

David Mara, Esq.
Matthew Crawford, Esq.
Attorneys for Plaintiffs

Dated: _____

BAIK LAW GROUP APC

John A. S. Baik, Esq.
Attorneys for Defendant

will be admissible in evidence to prove the existence and contents of this Agreement.

IV. EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel execute this Agreement.

Dated: _____

GABRIELA GUEVARA

Plaintiff

Dated: 10.31.23

AGUILASMORALES, INC.

Carlos Aguila

Defendant

Name: Carlos Aguila

Title: president.

APPROVED AS TO FORM:

Dated: _____

MARA LAW FIRM, PC

David Mara, Esq.

Matthew Crawford, Esq.

Attorneys for Plaintiffs

Dated: 11/2/2023

BAIK LAW GROUP APC

John A. S. Baik, Esq.

Attorneys for Defendant

Exhibit A

CALIFORNIA SUPERIOR COURT, COUNTY OF LOS ANGELES
Gabriela Guevara, Plaintiff, v. AguilasMorales, Inc., Defendant
Case Nos. 21STCV47592 and 22STCV08424

NOTICE OF CLASS ACTION SETTLEMENT

*A court authorized this notice. This is not a solicitation.
This is not a lawsuit against you and you are not being sued.
However, your legal rights are affected by whether you act or don't act.*

TO: All non-exempt, hourly employees employed by Defendant AguilasMorales, Inc. in the State of California at any time from December 30, 2017 through September 19, 2023.

The California Superior Court, County of Los Angeles has granted preliminary approval to a proposed settlement ("Settlement") of the above-captioned actions ("Actions"). Because your rights may be affected by this Settlement, it is important that you read this Notice of Class Action Settlement ("Notice") carefully.

The Court has certified the following class for settlement purposes ("Class" or "Class Members"):

All non-exempt, hourly employees employed by Defendant AguilasMorales, Inc. in the State of California at any time from December 30, 2017 through September 19, 2023.

The purpose of this Notice is to provide a brief description of the claims alleged in the Class Action, the key terms of the Settlement, and your rights and options with respect to the Settlement.

YOU MAY BE ENTITLED TO MONEY UNDER THE PROPOSED CLASS ACTION SETTLEMENT. PLEASE READ THIS NOTICE CAREFULLY; IT INFORMS YOU ABOUT YOUR LEGAL RIGHTS.

WHAT INFORMATION IS IN THIS NOTICE

1. Why Have I Received This Notice?.....	Page 1
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1. Why Have I Received This Notice?

AguilasMorales, Inc.'s (hereinafter referred to as "Defendant") records indicate that you may be a Class Member. The settlement will resolve all Class Members' Released Claims, as described in Section No. 9 below, from December 30, 2017 through September 19, 2023 (the "Class Period").

A Preliminary Approval Hearing was held on [the date of Preliminary Approval], in the California Superior Court, County of Los Angeles. The Court conditionally certified the Class for settlement purposes only and directed that you receive this Notice.

The Court will hold a Final Fairness Hearing concerning the proposed settlement on [the date of final approval hearing], 2024 at [time a.m./p.m.], before Judge Stuart M. Rice, located at 312 North Spring Street Los Angeles, CA 90012, Department 1.

2. What Is This Case About?

The class action (Case Number 21STCV47592) was filed on December 30, 2021 in the Los Angeles County Superior Court. This action was brought against Defendant seeking damages, restitution, penalties, interest, costs and attorney's fees and other relief based on the following alleged causes of action: 1) Failure to Pay All Straight Time Wages; 2) Failure to Pay Overtime; 3) Failure to Provide Meal Periods; 4) Failure to Authorize and Permit Rest Periods; 5) Knowing and Intentional Failure to Comply with Itemized Employee Wage Statement Provisions; 6) Failure to Pay all Wages Due at the Time of Termination; 7) Irregular Pay Periods; 8) Failure to Adopt a Compliant Sick Pay Policy; and 9) Violation of Unfair Competition Law.

The PAGA action on (Case Number 22STCV08424) was filed on March 8, 2022 in the Los Angeles County Superior Court after Plaintiff submitted her Notice of Labor Code Violations to the LWDA on December 8, 2021. seeking similar relief. This actopm sought civil penalties under the PAGA in relation to the following alleged violations suffered by allegedly similar aggrieved employees: 1) Failure to Pay All Straight Time Wages; 2) Failure to Pay Overtime; 3) Failure to Provide Meal Periods; 4) Failure to Authorize and Permit Rest Periods; 5) Knowing and Intentional Failure to Comply with Itemized Employee Wage Statement Provisions; 6) Failure to Pay all Wages Due at the Time of Termination; 7) Failure to Pay All Wages Twice Per Month; and 8) Failure to Adopt a Compliant Sick Pay Policy.

The Court has not made any determination as to whether the claims advanced by the Plaintiff have any merit. In other words, the Court has not determined whether any laws have been violated, nor has it decided in favor of Plaintiff or Defendant; instead, both sides agreed to resolve the lawsuit with no decision or admission of who is right or wrong. By agreeing to resolve the lawsuit, all parties avoid the risks and cost of a trial. Defendant expressly denies that it did anything wrong or that it violated the law and further deny any liability whatsoever to Plaintiff or to the Class.

3. Am I A Class Member? Am I An Aggrieved Employee?

You are a Class Member if you worked for Defendant in the State of California as an hourly non-exempt employee from December 30, 2017 through September 19, 2023.

If you worked for Defendant in the State of California as an hourly non-exempt employee from December 28, 2020 through September 19, 2023 you are also an "Aggrieved Employee" under the settlement.

4. How Does This Class Action Settlement Work?

Plaintiff Gabriela Guevara bring this action behalf of herself and all other similarly situated employees who were employed by Defendant as hourly non-exempt employees in California at any time during the Class Period. Plaintiff and these other current and former employees comprise a "Class" and are "Class Members." The settlement of this Action resolves the Released Claims of all Class Members, as defined in the Settlement

Agreement and Final Judgment, except for those who exclude themselves from the Class by requesting to be excluded in the manner set forth below.

Plaintiff and Class Counsel believe the settlement is fair and reasonable. The Court must also review the terms of the settlement and determine if it is fair and reasonable to the Class. The Court file has the settlement documents, which explain the settlement in greater detail. If you would like copies of the settlement documents, you can obtain them for a nominal fee by visiting the Los Angeles Superior Court website by visiting <http://www.lacourt.org/casesummary/ui/index.aspx?casetype=civil> and inputting the case number 21STCV47592, or you can contact Plaintiff's counsel, whose contact information is below, and they will provide you with a copy free of charge.

5. Who Are the Attorneys Representing the Parties?

Attorneys for Plaintiff and the Class	Attorneys for Defendant
MARA LAW FIRM, PC David Mara Matthew Crawford 2650 Camino Del Rio North, Suite 302 San Diego, California 92108 Telephone: (619) 234-2833 Facsimile: (619) 234-4048	BAIK LAW GROUP APC John A. S. Baik 3250 Wilshire Boulevard, Suite 601 Los Angeles, CA 90010 Telephone: (213) 427-6800 Facsimile: (213) 382-0760

The Court has decided that Mara Law Firm, PC is qualified to represent you and all other Class Members simultaneously.

You do not need to hire your own attorney because Class Counsel is working on your behalf. But, if you want your own attorney, you may hire one at your own cost.

6. What Are My Options?

The purpose of this Notice is to inform you of the proposed settlement and of your options. Each option has its consequences, which you should understand before making your decision. Your rights regarding each option, and the steps you must take to select each option, are summarized below and explained in more detail in this Notice.

Important Note: *Defendant will not retaliate against you in any way for either participating or not participating in this Settlement.*

- **DO NOTHING:** If you do nothing and the Court grants final approval of the Settlement, you will become part of this Class Action and may receive a payment from the Settlement. You will be bound to the release of the Released Class Claims and Released PAGA Claims as defined in the Settlement Agreement and the Final Judgment. You will also give up your right to pursue the Released Class Claims and Released PAGA Claims as defined in Section No. 9 below.
- **OPT OUT:** If you do not want to participate as a Class Member, you may “opt out,” which will remove you from the Class and this Class Action. If the Court grants final approval of the Settlement, you will not receive a Settlement payment and you will not give up the

right to sue Defendants and the Released Parties for the Released Class Claims. If you are an Aggrieved Employee, you will receive a portion of the PAGA Payment and be bound by the Released PAGA Claims, even if you opt-out of the settlement.

- **OBJECT:** You may file a legal objection to the proposed settlement. If you would like to object, you may not opt out of this case.

7. *How Do I Opt Out Or Exclude Myself From This Settlement?*

If you do not want to take part in the Settlement, you must mail a written Request for Exclusion to the Settlement Administrator. The written request for exclusion must: (a) state your name, address, telephone number, and social security number or employee identification number; (b) state your intention to exclude yourself from or opt-out of the Settlement; (c) be addressed to the Settlement Administrator at [address]; (d) be signed by you or your lawful representative; and (e) be postmarked no later than [the Response Deadline].

If the Court approves the Settlement at the Final Approval Hearing, the Court will enter a Judgment. If you do not request exclusion from the Settlement, the Judgment will bind you to the terms of the Settlement. If you are an Aggrieved Employee, you will receive a portion of the PAGA Payment and be bound by the Released PAGA Claims, even if you opt-out of the settlement.

8. *How Do I Object To The Settlement?*

If you are a Class Member who does not opt out of the Settlement, you may object to the Settlement, personally or through an attorney, by submitting your objection in writing, signed, dated, and mailed to the Settlement Administrator postmarked no later than [the Response Deadline]. The objection must state: (a) the case name; (b) your full name, address, and telephone number; (c) the words “Notice of Objection” or “Formal Objection;” (d) describe, in clear and concise terms, the legal and factual arguments supporting the objection; (e) list identifying witness(es) the objector may call to testify at the Final Approval hearing; (f) provide true and correct copies of any exhibit(s) the objector intends to offer at the Final Approval hearing; and (g) state whether the objection applies only to you, to a specific subset of the Class, or to the entire Class. The objection will not be valid if it objects only to the appropriateness of the action or its merits.

Class Members may appear at the Final Approval Hearing, either in person or through the objector’s own counsel. If the Court rejects the objection, he/she will receive an Individual Settlement Share payment and will be bound by the terms of the Settlement.

9. *How Does This Settlement Affect My Rights? What are the Released Claims?*

If the proposed settlement is approved by the Court, a Final Judgment will be entered by the Court. All Class Members who do not opt out of the Settlement will be bound by the Court’s Final Judgment and will release Defendants and the Released Parties¹ from the Released Class Claims. The Released Class Claims are:

Any and all claims, debts, liabilities, demands, obligations, penalties, guarantees, costs, expenses, attorney’s fees, damages, action or causes of action of whatever kind or nature, whether known or

¹ “Released Parties” means Defendant and its past, present and/or future, direct and/or indirect, officers, directors, employees, representatives, administrators, attorneys, agents, parent companies, subsidiaries and affiliated corporations and entities, including Paseo San Miguel, LLC, consultants, shareholders, joint ventures, predecessors, successors, and/or assigns.

unknown, contingent or accrued, that are alleged or could have been alleged during the Class Period based upon a reasonable interpretation of the facts alleged in the Class Action against Defendant. The release as to these claims will be deemed effective when Defendant funds the settlement.

If you are an Aggrieved Employee, you will be bound by the Final Judgment and will release the Released Parties from the Released PAGA Claims, even if you opt-out of the settlement. The Released PAGA Claims are:

Any and all claims for civil penalties under the California Labor Code and the Private Attorneys General Act predicated upon the Labor Code violations asserted, as well as any potential penalties, interest or attorneys' fees associated with those violations under California law, to the extent such claims are predicated on claims made or that could have been made during the PAGA Period based on the facts and circumstances alleged in the PAGA Action and Plaintiff's notice to the LWDA against Defendant. Aggrieved Employees will release the Released PAGA Claims even if they opted-out/requested exclusion from the Class Settlement. The release as to these claims will be deemed effective when Defendant funds the settlement.

10. How Much Can I Expect to Receive From This Settlement?

The total maximum amount that Defendant could be required to pay under this Agreement shall be up to but no more than \$350,000 ("Gross Settlement Amount" or "GSA").

A. Deductions from the Settlement

The "Net Settlement Amount" or "NSA" means the portion of the Gross Settlement Amount, available for distribution to Class Members after the deduction of (1) the Class Representative Enhancement Payment to the named Plaintiff in an amount up to \$7,500, for prosecution of the Actions, risks undertaken for the payment of attorneys' fees and costs, and a general release of all claims; (2) the Settlement Administration Costs to the Settlement Administrator in an amount estimated not to exceed \$10,000; (3) a payment of \$20,000 allocated to the PAGA claims; and (4) payment to Class Counsel in an amount not to exceed \$116,666.66 (one-third of the Gross Settlement Amount) for attorneys' fees and an amount not to exceed \$20,000 for litigation costs. All of these payments are subject to court approval.

B. How Class Member Settlement Payments are Calculated

Each Participating Class Member² will receive a proportionate share of the Net Settlement Amount that is equal to (i) the number of weeks he or she worked for Defendant in California based on the Class data provided by Defendant, divided by (ii) the total number of weeks worked by all Participating Class Members based on the same Class data, which is then multiplied by the Net Settlement Amount. One day worked in a given week will be credited as a week for purposes of this calculation. Therefore, the value of each Class Member's Individual Settlement Share ties directly to the amount of weeks that he or she worked.

C. How Aggrieved Employee Settlement Payments are Calculated

If you are an Aggrieved Employee under the settlement, you will also receive a portion of the PAGA Payment. Pursuant to PAGA, California's Labor and Workforce Development Agency ("LWDA") will receive a payment of \$15,000 (75% of the \$20,000 total PAGA Payment). The remaining \$5,000 is the Net PAGA Settlement

² A Participating Class Member is a Class Member who does not exclude themselves from the Settlement.

Amount and will be proportionately distributed amongst all Aggrieved Employees. Each Aggrieved Employee will receive a proportionate share of the Net PAGA Settlement Amount that is equal to (i) the number of weeks he or she worked for Defendant in California based on the PAGA Data provided by Defendant, divided by (ii) the total number of weeks worked by all Aggrieved Employees based on the same PAGA data, which is then multiplied by the Net PAGA Settlement Amount. One day worked in a given week will be credited as a week for purposes of this calculation. Therefore, the value of each Aggrieved Employee's Individual PAGA Settlement Share ties directly to the amount of weeks that he or she worked.

D. Your Estimated Settlement Payment

Although your exact share of the Net Settlement Amount as a Class Member cannot be precisely calculated until after the time during which individuals may object or seek exclusion from the Settlement concludes, based upon the calculation above, your approximate share of the Net Settlement Amount, is as follows: \$ [REDACTED], less taxes. This is based on the Class Data which shows you worked [REDACTED] workweeks during the Class Period.

If you are also an Aggrieved Employee, you will receive a share of the Net PAGA Settlement Amount. Based upon the calculation above, your approximate share of the Net PAGA Settlement Amount, is as follows: \$ [REDACTED]. This is based on the PAGA Data which shows you worked [REDACTED] workweeks during the PAGA Period.

E. How the Settlement Will Be Funded and Disbursed

Defendant will fund the Settlement in two installments. As a result, your Settlement Payment will also be paid in two installments, as detailed below.

The First Installment, which consists of \$150,000, or 42.85% of the Gross Settlement Amount, plus the applicable Employer Taxes, will be funded either sixty (60) calendar days after the Effective Final Settlement Date,³ or May 21, 2024, whichever is later. The First Installment will be disbursed within ten (10) calendar days after the Settlement Administrator receives the First Installment.

The Second Installment, which consists of \$200,000, or 57.15% of the Gross Settlement Amount, plus the applicable Employer Taxes, will be funded no later than ten (10) months after the funding of the First Installment. The Second Installment will be disbursed within ten (10) calendar days after the Settlement Administrator receives the Second Installment.

F. Tax Treatment of Your Settlement Payments

One-third (33 1/3 %) of each Individual Class Settlement Share is intended to settle each Class Member's claims for unpaid wages (the "Wage Portion"). The Wage Portion will be reduced by applicable payroll tax withholdings and deductions. Defendants' share of legally required payroll taxes for the Wage Portion will be calculated by the Settlement Administrator and paid by Defendants separately from the GSA. The Settlement Administrator will issue an IRS Form W-2 to each Participating Class Member with respect to the Wage Portion of his/her Individual Class Settlement Share.

One-third (33 1/3%) of the Individual Class Settlement Share is intended to settle each Class Member's claims for interest and one-third (33 1/3%) of the Individual Class Settlement Share is intended to settle each Class Member's claims for penalties ("Non-Wage Portion"). The Non-Wage Portion will not be reduced by payroll tax

³ The effective date of this Settlement will be when the final approval of the settlement can no longer be appealed, or, if there are no objectors and no plaintiffs in intervention at the time the court grants final approval of the settlement, the date the court enters judgment granting final approval of the settlement.

withholding and deductions. The Settlement Administrator will issue to each Participating Class Member an IRS Form 1099 with respect to the Non-Wage Portion of his/her Individual Class Settlement Share.

If you are an Aggrieved Employee, your Individual PAGA Settlement Share will be apportioned as 100% penalties. This will not be reduced by payroll tax withholding and deductions. The Settlement Administrator will issue to each Aggrieved Employee an IRS Form 1099 with respect to his/her Individual PAGA Settlement Share.

G. What Happens If You Don't Cash Your Check?

It is strongly recommended that upon receipt of your settlement check, you immediately cash it or cash it before the 180-day void date shown on each check. If any checks remain uncashed or not deposited by the expiration of the 180-day period, the Settlement Administrator will pay over the amount represented by the check to the State of California unclaimed property fund in your name.

11. *How Will the Attorneys for the Class and the Class Representative Be Paid?*

The attorneys for Plaintiff and the Class will be paid from the Gross Settlement Amount. Subject to Court approval, the attorneys for Plaintiff and the Class shall be paid an amount not to exceed one-third of the Gross Settlement Amount (\$116,666.66) for attorney fees and up to \$20,000 for litigation costs.

Defendant has paid all of its own attorneys' fees and costs.

Plaintiff will also be paid, subject to Court approval, an amount not to exceed \$7,500, as an enhancement for the initiation of and prosecution of this case, the risks undertaken for the payment of costs in the event this case had been lost, and a general release of all claims.

IF YOU NEED MORE INFORMATION OR HAVE ANY QUESTIONS, you may contact Class Counsel listed above, or the Settlement Administrator at the telephone number listed below, toll free. You can also obtain documents related to this case and this settlement by visiting [\[administrator website\]](#), a website maintained by the Settlement Administrator. Please refer to the AguilasMorales Class Action Settlement.

This Notice does not contain all of the terms of the proposed settlement or all of the details of these proceedings. For more detailed information, you may refer to the underlying documents and papers on file with the Court at 312 North Spring Street, Los Angeles, CA 90012 or obtain them for a nominal fee by visiting the Los Angeles Superior Court website by visiting <http://www.lacourt.org/casesummary/ui/index.aspx?casetype=civil> and inputting the case number 21STCV47592. You may also contact Plaintiff's counsel, whose contact information is above, and they will provide you with a copy of the settlement documents or case documents free of charge.

PLEASE DO NOT TELEPHONE THE COURT OR COURT'S CLERK FOR INFORMATION ABOUT THIS SETTLEMENT.

Exhibit 2

David Mara
Grace Campbell
Taylor Hanks
Jill Vecchi
Joann B. Gerrity
Matthew Crawford
Joana Ghoche
Taylor O'Donnell



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December 28, 2021

Via Upload to the LWDA Website and U.S. Certified Mail

**NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO
LABOR CODE SECTION 2699.3**

TO: California Labor and Workforce Development Agency; Paseo San Miguel, LLC

Gabriela Guevara, on behalf of herself, others similarly situated, and the general public v. Paseo San Miguel, LLC

Factual Statement and Theories of Labor Code Violations

Gabriela Guevara was formerly employed by Paseo San Miguel, LLC ("PSM") as a non-exempt hourly restaurant employee in Los Angeles, California. Ms. Guevara's employment with PSM ended in October 2021.

Ms. Guevara gives notice of her intent to file a lawsuit for violations of the Private Attorneys General Act of 2004 ("PAGA") for PSM's failure to comply with California's wage and hour requirements on behalf of herself and similarly aggrieved employees.

These claims are for Ms. Guevara and all similarly situated non-exempt hourly servers, cooks, line cooks, hostesses, hosts, bartenders, busboys, dishwashers, and/or any similar job designations and titles, and all other similarly situated non-exempt aggrieved employees who work and/or worked for PSM in California.

I. PSM Fails to Pay All Straight Time Wages Owed

It is fundamental that an employer must pay its employees for all time worked. *California Labor Code* sections 218 and 218.5 provide a right of action for nonpayment of wages. *California Labor Code* section 222 prohibits the withholding of part of a wage. *California Labor Code* section 223 prohibits the payment of less than a statutory or contractual wage scale. *California Labor Code* section 1197 prohibits the payment of less than the minimum wage. *California Labor Code* section 1194 states that an employee receiving less than the legal minimum wage is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage. *California Labor Code* section 1194.2 states that an employee receiving less than the legal minimum wage is entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon. *California Labor Code* section 224 only permits deductions from wages when the

employer is required or empowered to do so by state or federal law or when the deduction is expressly authorized in writing by the employee for specified purposes that do not have the effect of reducing the agreed upon wage.

PSM has a continuous policy of not compensating Ms. Guevara and similarly aggrieved employees for all hours worked. PSM has not paid Ms. Guevara and aggrieved employees for the time Ms. Guevara and similarly aggrieved employees worked throughout the day, including but not limited to, time before shifts start, after shifts end, and/or any other time in the day when the employees were performing work tasks, subject to the control of PSM and/or otherwise had work duties.

PSM also has a continuous policy of not paying Ms. Guevara and the aggrieved employees for all hours worked in that PSM automatically deducts thirty (30) minutes for meal periods and/or otherwise records a meal period for Ms. Guevara and the aggrieved employees, even though Ms. Guevara and the aggrieved employees have to perform work duties during their meal periods, are not relieved of all duties during meal periods, are not able to leave the work location during meal periods, and/or are subject to being called back to work at any time.

Likewise, Ms. Guevara and the aggrieved employees are informed and believe and thereon allege that PSM breached the legal duty to pay full wages to Ms. Guevara and the aggrieved employees by failing to pay for wages earned by Ms. Guevara and similarly aggrieved employees when they work through their meal periods, are not relieved of all work duties during their meal periods, and/or when PSM required Ms. Guevara and the aggrieved employees to record a meal period when no meal period was taken. Specifically, Ms. Guevara and the aggrieved employees worked through their meal periods to satisfy their demanding work duties imposed by PSM, thereby denying them the right to be completely free from employer control under California law and did not pay them for this time.

PSM committed the acts alleged herein knowingly and willfully, with the wrongful and deliberate intention of injuring Ms. Guevara and the aggrieved employees. PSM acted with malice or in conscious disregard of Ms. Guevara's and the aggrieved employees' rights.

These claims are for Ms. Guevara and all similarly situated non-exempt hourly servers, cooks, line cooks, hostesses, hosts, bartenders, busboys, dishwashers, and/or any similar job designations and titles, and all other similarly situated non-exempt aggrieved employees who work and/or worked for PSM in California.

Ms. Guevara, as a representative of the people of the State of California, will seek any and all penalties otherwise capable of being collected by the Labor Commission and/or the Department of Labor Standards Enforcement (DLSE). This includes each of the following, as set forth in *Labor Code* section 2699.5, which provides that section 2699.3(a) applies to any alleged violation of the following provisions: sections 510 and 1194.

II. PSM Failed to Pay Employees the Applicable Minimum Wage

Pursuant to Cal. Lab. Code § 1197.1, "[a]ny employer or other person acting individually as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a

wage less than the minimum fixed by an applicable state or local law, or by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties pursuant to Section 203.”

Industrial Welfare Commission Order No. 5-2001 § 4(B) states “[e]very employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period.”

Ms. Guevara and the aggrieved employees were entitled to be paid the minimum wage for all time worked. By failing to pay for all work performed, including time spent subject to PSM’s control, PSM’s compensation to Ms. Guevara and the aggrieved employees fell below the applicable minimum wage.

Ms. Guevara and the aggrieved employees have suffered, and continue to suffer, substantial unpaid wages, and lost interest on such wages, and expenses.

These claims are for Ms. Guevara and all similarly situated non-exempt hourly servers, cooks, line cooks, hostesses, hosts, bartenders, busboys, dishwashers, and/or any similar job designations and titles, and all other similarly situated non-exempt aggrieved employees who work and/or worked for PSM in California.

Ms. Guevara—as a representative of the people of the State of California—will seek any and all penalties otherwise capable of being collected by the Labor Commission and/or the Department of Labor Standards Enforcement (DLSE) for violations of Cal. Lab. Code §§ 1197.1, 1199, and Industrial Welfare Commission Order No. 5-2001 § 4(B).

III. PSM Failed to Pay Overtime

It is fundamental that an employer must pay its employees for all time worked. *California Labor Code* section 510 states that eight hours of labor constitutes a day’s work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee.

California Labor Code section 510 dictates that any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

PSM failed to pay overtime when Ms. Guevara and the aggrieved employees worked over eight (8) hours per day and when employees worked over forty (40) hours per week. PSM failed to pay Ms. Guevara and the aggrieved employees for all hours worked, including hours worked over eight (8) hours in a day and forty (40) hours in a week.

Ms. Guevara and the aggrieved employees worked over eight (8) hours per day and worked over forty (40) hours per week, but were not paid overtime for this work. Specifically, PSM would have

Ms. Guevara and the aggrieved employees clock out before they reached eight (8) hours recorded in their shift and pay Ms. Guevara and the aggrieved employees their regular hourly rate in cash for additional work performed off the clock, denying Ms. Guevara and the aggrieved employees the overtime premiums owed to them under California law.

Ms. Guevara and the aggrieved employees have suffered, and continue to suffer, substantial unpaid wages, and lost interest on such wages, and expenses.

These claims are for Ms. Guevara and all similarly situated non-exempt hourly servers, cooks, line cooks, hostesses, hosts, bartenders, busboys, dishwashers, and/or any similar job designations and titles, and all other similarly situated non-exempt aggrieved employees who work and/or worked for PSM in California.

Ms. Guevara, as a representative of the people of the State of California, will seek any and all penalties otherwise capable of being collected by the Labor Commission and/or the Department of Labor Standards Enforcement (DLSE) for violations of *California Labor Code* section 510.

IV. PSM Failed to Provide Meal Periods

Under *California Labor Code* section 512 no employer shall employ any person for a work period of more than five (5) hours without providing a meal period of not less than thirty (30) minutes. If an employee's complete day's working period is not more than six (6) hours, the meal period may be waived by *mutual* consent of the employer and employee. During this meal period of not less than thirty (30) minutes, the employee is to be completely free of the employer's control and must not perform any work for the employer. If the employee does perform work for the employer during the thirty (30) minute meal period, the employee has not been provided a meal period in accordance with the law. Also, the employee is to be compensated for any work performed during the thirty (30) minute meal period.

In addition, an employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with another meal period of not less than thirty (30) minutes.

PSM has a consistent policy and/or practice of automatically deducting thirty (30) minutes for meal periods and/or otherwise records a meal period for Ms. Guevara and the aggrieved employees, even though Ms. Guevara and the aggrieved employees have to perform work duties during their meal periods, are not relieved of all duties during meal periods, are not able to leave the work location during meal periods, and/or are subject to being called back to work at any time.

Likewise, Ms. Guevara and the aggrieved employees are informed and believe and thereon allege that PSM breached the legal duty to provide lawful meal periods to Ms. Guevara and the aggrieved employees. Specifically, Ms. Guevara and the aggrieved employees worked through their meal periods to satisfy their demanding work duties imposed by PSM, thereby denying them the right to be completely free from employer control under California law.

Additionally, PSM instituted a consistent policy/practice of not providing second meal periods to

Ms. Guevara and all aggrieved employees and/or providing compensation in lieu thereof.

By failing to provide statutory first and/or second meal periods, and by failing to provide compensation for unprovided meal periods, as alleged above, PSM willfully violated the provisions of *Labor Code* sections 226.7 and 512.

These claims are for Ms. Guevara and all similarly situated non-exempt hourly servers, cooks, line cooks, hostesses, hosts, bartenders, busboys, dishwashers, and/or any similar job designations and titles, and all other similarly situated non-exempt aggrieved employees who work and/or worked for PSM in California.

Ms. Guevara, as a non-exempt employee who unlawfully was deprived of first and second meal periods, is an aggrieved employee with standing to bring an action under the PAGA. Ms. Guevara has satisfied all prerequisites to serve as a representative of the general public to enforce California's labor laws, and the penalty provisions identified in *Labor Code* section 2699.5 for violations of *Labor Code* sections 226.7 and 512.

V. PSM Failed to Provide Rest Periods

PSM has had a consistent policy and/or practice of not providing duty free paid ten (10) minute paid rest periods for every four (4) hours worked, or a major fraction thereof, to Ms. Guevara and the aggrieved employees.

Industrial Welfare Commission Order No. 4-2001 section 12(A) states "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work week 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 hours or major fraction thereof."

PSM has had a consistent policy and/or practice of not providing paid rest periods to Ms. Guevara and all aggrieved employees and/or providing compensation in lieu thereof. Specifically, Ms. Guevara and the aggrieved employees are required to work shifts over three and a half (3.5) hours, six (6) hours, and ten (10) but never received first, second, or third rest breaks.

Further, PSM fails to provide Ms. Guevara and the aggrieved employees with lawful rest periods, as Ms. Guevara and the aggrieved employees have to perform work duties during their rest periods, are not relieved of all duties during rest periods, are not able to leave the work location during rest periods, and/or are subject to being called back to work at any time.

Likewise, Ms. Guevara and the aggrieved employees are informed and believe and thereon allege that PSM breached the legal duty to provide lawful rest periods to Ms. Guevara and the aggrieved employees. Specifically, Ms. Guevara and the aggrieved employees worked through their rest periods to satisfy their demanding work duties imposed by PSM, thereby denying them the right to be completely free from employer control under California law.

By failing to provide net 10 minute rest periods for every four (4) hours or major fraction thereof worked per day by non-exempt employees, and by failing to provide compensation for these

unprovided rest periods, as alleged above, PSM willfully violated the provisions of *Labor Code* section 226.7 and Industrial Welfare Commission Order No. 4-2001 section 12(A).

These claims are for Ms. Guevara and all similarly situated non-exempt hourly servers, cooks, line cooks, hostesses, hosts, bartenders, busboys, dishwashers, and/or any similar job designations and titles, and all other similarly situated non-exempt aggrieved employees who work and/or worked for PSM in California.

Ms. Guevara, as a non-exempt employee who was unlawfully deprived of paid ten (10) minute rest periods, is an aggrieved employee with standing to bring an action under the PAGA. Ms. Guevara has satisfied all prerequisites to serve as a representative of the general public to enforce California's labor laws, and the penalty provisions identified in *Labor Code* section 2699.5 and Industrial Welfare Commission Order No. 4-2001 section 20 for violations of *Labor Code* section 226.7 and Industrial Welfare Commission Order No. 5-2001 section 12(A).

VI. PSM's Knowing and Intentional Failure to Comply with Itemized Employee Wage Statement Provisions

Section 226(a) of the *California Labor Code* requires PSM to itemize in wage statements all deductions from payment of wages and to accurately report total hours worked by Ms. Guevara and the aggrieved employees.

California Labor Code section 226 subdivision (a) requires that PSM, at the time of each payment of wages, "furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee... (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than the social security number, (8) the name and address of the legal entity that is the employer...(9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate and the corresponding number of hours worked at each hourly rate by the employee..."

Labor Code section 226, subdivision (a) also requires that "deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California" to itemize in wage statements and to accurately report the total hours worked and total wages earned.

In addition, *Labor Code* section 204(b) requires that "all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period." An employer complies with section 226(a) "if hours worked in excess of the normal work period

during the current pay period are itemized as corrections on the paystub for the next regular pay period. Any corrections set out in the subsequently issue paystub shall state the inclusive dates of the pay period for which the employer is correcting its initial report of hours worked.”

PSM has knowingly and intentionally failed to comply with *Labor Code* section 226(a) on each and every wage statement provided to Ms. Guevara and the other aggrieved employees.

In every pay period during the period of the relevant statute of limitations, PSM knowingly and intentionally did not itemize gross wages earned, total hours worked, net wages earned, the inclusive dates of the pay period, the name and address of the legal entity that is the employer, or all applicable hourly rates in effect on wage statements provided to Ms. Guevara and the aggrieved employees as *Labor Code* section 226, subsection (a), requires.

PSM had a uniform policy of deducting thirty (30) minutes each workday from Ms. Guevara's and the aggrieved employees' wages for meal periods, despite the fact that Ms. Guevara and the aggrieved employees were working during and throughout the time period of the deduction without being offered and authorized to use their meal periods. PSM violated the *Labor Code* section 226, subdivision (a) requirement of itemizing all deductions from wages. As PSM knew or had reason to know that Ms. Guevara and the aggrieved employees were working during meal periods, PSM knowingly and intentionally failed to comply with *Labor Code* Section 226, subdivision (a).

Throughout the statutory period, as a result of the knowing and intentional failure by PSM to comply with itemized employee wage statement provisions, Ms. Guevara and the aggrieved employees have been able to reconstruct only a reasonable estimate of the hours worked and have, therefore, not received full compensation.

These claims are for Ms. Guevara and all similarly situated non-exempt hourly servers, cooks, line cooks, hostesses, hosts, bartenders, busboys, dishwashers, and/or any similar job designations and titles, and all other similarly situated non-exempt aggrieved employees who work and/or worked for PSM in California.

Ms. Guevara, as a non-exempt employee who PSM failed to provide accurate and itemized wage statements, is an aggrieved employee with standing to bring an action under the PAGA. Ms. Guevara has satisfied all prerequisites to serve as a representative of the general public to enforce California's labor laws, and the penalty provisions identified in *Labor Code* section 2699.5 for violations of *Labor Code* section 226 and 226.3.

VII. PSM Failed to Pay Wages Due at Termination and During Employment

PSM willfully failed to pay, in a timely manner, wages owed to the aggrieved employees who left PSM's employ or who were terminated.

The aggrieved employees who ended their employment with PSM during the last year were entitled to be promptly paid all lawful compensation, and other premiums, as required by *Labor Code* sections 201 through 203.

At all relevant times, *California Labor Code* sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and if an employee quits his or her employment, his or her wages shall become due and payable no later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours' notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

During the relevant time period, PSM intentionally and willfully failed to pay the aggrieved employees who are no longer employed by PSM their wages, that were earned and unpaid, within seventy-two (72) hours of their leaving PSM's employ. PSM failed to pay all straight time wages, overtime wages, and meal and rest period premiums as alleged herein within seventy-two (72) hours of the aggrieved employees' separation from PSM's employ. PSM failed to ever pay all wages as alleged herein, thereby triggering the maximum penalties allowable under Labor Code section 203.

PSM's failure to pay the aggrieved employees who are no longer employed by PSM their wages, that were earned and unpaid, within seventy-two (72) hours of their leaving PSM's employ, is in violation of *California Labor Code* sections 201 and 202.

California Labor Code section 203 provides that when an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

These claims are for Ms. Guevara and all similarly situated non-exempt hourly servers, cooks, line cooks, hostesses, hosts, bartenders, busboys, dishwashers, and/or any similar job designations and titles, and all other similarly situated non-exempt aggrieved employees who work and/or worked for PSM in California.

Ms. Guevara, as a representative of the people of the State of California, will seek any and all penalties otherwise capable of being collected by the Labor Commission and/or the Department of Labor Standards Enforcement ("DLSE"). This includes each of the following, as set forth in *Labor Code* section 2699.5 for violations of sections 201 through 203.

VIII. PSM Failed to Pay Employees Twice Per Month

Section 204(a) of the *California Labor Code* required PSM to pay Ms. Guevara and the aggrieved employees twice during each calendar month.

Labor Code section 204 subdivision (a) provides "[a]ll wages . . . earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month shall be paid for between the 1st and 10th day of the following month." For pay periods other than the 1st through the 15th and the 16th through the final day of the month, wages

must be paid within seven (7) calendar days of the end of the payroll period in which the wages were earned. Cal. Lab. Code Section 204(d).

During the relevant time period, PSM intentionally and willfully failed to pay Ms. Guevara and the aggrieved employees all their wages, that were earned and unpaid, twice during each calendar month. Alternatively, PSM failed to pay wages earned within seven (7) calendar days of the end of the payroll period in which the wages were earned.

PSM's failure to pay Ms. Guevara and the aggrieved employees their wages, that were earned and unpaid, twice during each calendar month and/or within seven (7) calendar days of the end of the payroll period in which the wages were earned, is in violation of *California Labor Code* section 204.

These claims are for Ms. Guevara and all similarly situated non-exempt hourly servers, cooks, line cooks, hostesses, hosts, bartenders, busboys, dishwashers, and/or any similar job designations and titles, and all other similarly situated non-exempt aggrieved employees who work and/or worked for PSM in California.

Ms. Guevara, as a representative of the people of the State of California, will seek any and all penalties otherwise capable of being collected by the Labor Commission and/or the Department of Labor Standards Enforcement ("DLSE"). This includes each of the following, as set forth in *Labor Code* section 2699.5 for violations of section 204.

IX. PSM Failed to Adopt a Compliant Sick Pay/Paid Time Off Policy

Section 246(a)(1) of the Labor Code states: "An employee who, on or after July 1, 2015, works in California for the same employer for 30 or more days within a year from the commencement of employment is entitled to paid sick days as specified in this section." Section 246(c) of the Labor Code states: "An employee shall be entitled to use accrued paid sick days beginning on the 90th day of employment, after which day the employee may use paid sick days as they are accrued."

Section 233(c) of the Labor Code states: "An employer shall not deny an employee the right to use sick leave or discharge, threaten to discharge, demote, suspend, or in any manner discriminate against an employee for using, or attempting to exercise the right to use, sick leave to attend to an illness or the preventive care of a family member, or for any other reason specified in subdivision (a) of Section 246.5" Section 233(d) of the Labor Code provides relief for violations of this section, stating that "[a]ny employee aggrieved by a violation of this section shall be entitled to reinstatement and actual damages or one day's pay, whichever is greater, and to appropriate equitable relief."

Section 234 further forbids employers from adopting an "absence control policy that counts sick leave taken pursuant to Section 233 as an absence that may lead to or result in discipline, discharge, demotion, or suspension is a per se violation of Section 233. An employee working under this policy is entitled to appropriate legal and equitable relief pursuant to Section 233.

PSM operates under an absence control policy that counts sick leave taken pursuant to Section

233. Thus, PSM's sick pay policy punishes employees by way of suspension and/or termination for use of protected and appropriate sick leave.

Additionally, PSM's sick pay policy fails to pay sick pay for all appropriate and protected purposes enumerated in Labor Code section 233, 234, and 246.

Ms. Guevara and the aggrieved employees were entitled to actual damages or one day's pay pursuant to Labor Code Section 233(d). Ms. Guevara and aggrieved employees are entitled to under Labor Code section 2699., 2699.3, and 2699.5.

These claims are for Ms. Guevara and all similarly situated non-exempt hourly servers, cooks, line cooks, hostesses, hosts, bartenders, busboys, dishwashers, and/or any similar job designations and titles, and all other similarly situated non-exempt aggrieved employees who work and/or worked for PSM in California.

Ms. Guevara, as a representative of the people of the State of California, will seek all penalties otherwise capable of being collected by the Labor Commission and/or the Department of Labor Standards Enforcement ("DLSE"). This includes each of the following, as set forth in *Labor Code* section 2699.5 for violations of sections 233, and 234.

X. PSM Underpaid Employees Every Pay Period

Section 558(a) of the *California Labor Code* subjects any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty for every pay period for which the employee was underpaid, which includes the underpaid wages related to each violation.

Every pay period, PSM failed to pay employees the legal minimum wage in violation of *California Labor Code* section 1197.1, and employees are entitled to underpaid wages pursuant to Section 558(a).

PSM has had a continuous policy of not paying Ms. Guevara and similarly aggrieved employees for all hours worked, as outlined above.

Every pay period, PSM failed to pay overtime when employees worked over eight (8) hours per day and when employees worked over 40 hours per week in violation of *California Labor Code* section 510, and employees are entitled to underpaid overtime wages pursuant to Section 558(a).

Every pay period, PSM has had a consistent policy and/or practice of not providing meal periods to Ms. Guevara and all aggrieved employees and/or providing compensation in lieu thereof in violation of *California Labor Code* section 512, and employees are entitled to underpaid meal period premium wages pursuant to Section 558(a).

Every pay period, PSM has had a consistent policy and/or practice of not providing rest periods to Ms. Guevara and the aggrieved employees and/or providing compensation in lieu thereof, and

employees are entitled to underpaid rest period premium wages pursuant to Section 558(a).

Ms. Guevara and the aggrieved employees have suffered, and continue to suffer, substantial unpaid wages, and lost interest on such wages, and expenses.

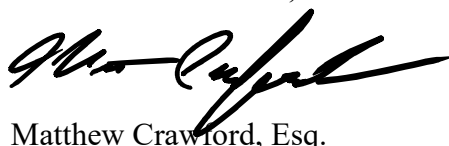
These claims are for Ms. Guevara and all of the security patrol officer, security vehicle patrol officers, security guards, private security guards, dispatchers, field officers, flex officers, guards, or similar job designations and titles, and all other similarly situated non-exempt, hourly employees of PSM in California.

Ms. Guevara, as a non-exempt employee who unlawfully was underpaid every pay period during his employment, is an aggrieved employee with standing to bring an action under the PAGA. Ms. Guevara has satisfied all prerequisites to serve as a representative of the general public to enforce California's labor laws, and the penalty provisions identified in *Labor Code* section 558(a) for violations of *Labor Code* sections 510 and 512 and California's labor laws.

XI. Conclusion

If after 65 days from the date of this letter, the LWDA does not take action or declines to intervene, Ms. Guevara will file a complaint alleging PAGA violations, as described above.

Respectfully submitted,
MARA LAW FIRM, PC



Matthew Crawford, Esq.

Attn: PAGA Administrator
California Labor and Workforce Development Agency
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102
Via Web Submission
Via Certified Mail

Attn: Carlos Aguila
Paseo San Miguel, LLC
1560 W. Martin Luther King Blvd.
Los Angeles, CA 90062
Agent for Service of Process
Via Certified Mail

Exhibit 3

David Mara
Grace Campbell
Taylor Hanks
Jill Vecchi
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July 6, 2022

Via Upload to the LWDA Website and U.S. Certified Mail

**AMENDED NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO
LABOR CODE SECTION 2699.3**

TO: California Labor and Workforce Development Agency; Paseo San Miguel, LLC;
AguilasMorales, Inc.;

*Gabriela Guevara, on behalf of herself, others similarly situated, and the general public v. Paseo
San Miguel, LLC; AguilasMorales, Inc.*

Factual Statement and Theories of Labor Code Violations

Gabriela Guevara was formerly employed by Paseo San Miguel, LLC and/or AguilasMorales, Inc. (collectively "PSM") as a non-exempt hourly restaurant employee in Los Angeles, California. Ms. Guevara's employment with PSM ended in October 2021.

Ms. Guevara gives notice of her intent to file a lawsuit for violations of the Private Attorneys General Act of 2004 ("PAGA") for PSM's failure to comply with California's wage and hour requirements on behalf of herself and similarly aggrieved employees.

These claims are for Ms. Guevara and all similarly situated non-exempt hourly servers, cooks, line cooks, hostesses, hosts, bartenders, busboys, dishwashers, and/or any similar job designations and titles, and all other similarly situated non-exempt aggrieved employees who work and/or worked for PSM in California.

I. PSM Fails to Pay All Straight Time Wages Owed

It is fundamental that an employer must pay its employees for all time worked. *California Labor Code* sections 218 and 218.5 provide a right of action for nonpayment of wages. *California Labor Code* section 222 prohibits the withholding of part of a wage. *California Labor Code* section 223 prohibits the payment of less than a statutory or contractual wage scale. *California Labor Code* section 1197 prohibits the payment of less than the minimum wage. *California Labor Code* section 1194 states that an employee receiving less than the legal minimum wage is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage. *California Labor Code* section 1194.2 states that an employee receiving less than the legal minimum wage is entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest

thereon. *California Labor Code* section 224 only permits deductions from wages when the employer is required or empowered to do so by state or federal law or when the deduction is expressly authorized in writing by the employee for specified purposes that do not have the effect of reducing the agreed upon wage.

PSM has a continuous policy of not compensating Ms. Guevara and similarly aggrieved employees for all hours worked. PSM has not paid Ms. Guevara and aggrieved employees for the time Ms. Guevara and similarly aggrieved employees worked throughout the day, including but not limited to, time before shifts start, after shifts end, and/or any other time in the day when the employees were performing work tasks, subject to the control of PSM and/or otherwise had work duties.

PSM also has a continuous policy of not paying Ms. Guevara and the aggrieved employees for all hours worked in that PSM automatically deducts thirty (30) minutes for meal periods and/or otherwise records a meal period for Ms. Guevara and the aggrieved employees, even though Ms. Guevara and the aggrieved employees have to perform work duties during their meal periods, are not relieved of all duties during meal periods, are not able to leave the work location during meal periods, and/or are subject to being called back to work at any time.

Likewise, Ms. Guevara and the aggrieved employees are informed and believe and thereon allege that PSM breached the legal duty to pay full wages to Ms. Guevara and the aggrieved employees by failing to pay for wages earned by Ms. Guevara and similarly aggrieved employees when they work through their meal periods, are not relieved of all work duties during their meal periods, and/or when PSM required Ms. Guevara and the aggrieved employees to record a meal period when no meal period was taken. Specifically, Ms. Guevara and the aggrieved employees worked through their meal periods to satisfy their demanding work duties imposed by PSM, thereby denying them the right to be completely free from employer control under California law and did not pay them for this time.

PSM committed the acts alleged herein knowingly and willfully, with the wrongful and deliberate intention of injuring Ms. Guevara and the aggrieved employees. PSM acted with malice or in conscious disregard of Ms. Guevara's and the aggrieved employees' rights.

These claims are for Ms. Guevara and all similarly situated non-exempt hourly servers, cooks, line cooks, hostesses, hosts, bartenders, busboys, dishwashers, and/or any similar job designations and titles, and all other similarly situated non-exempt aggrieved employees who work and/or worked for PSM in California.

Ms. Guevara, as a representative of the people of the State of California, will seek any and all penalties otherwise capable of being collected by the Labor Commission and/or the Department of Labor Standards Enforcement (DLSE). This includes each of the following, as set forth in *Labor Code* section 2699.5, which provides that section 2699.3(a) applies to any alleged violation of the following provisions: sections 510 and 1194.

II. PSM Failed to Pay Employees the Applicable Minimum Wage

Pursuant to Cal. Lab. Code § 1197.1, "[a]ny employer or other person acting individually as an

officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties pursuant to Section 203.”

Industrial Welfare Commission Order No. 5-2001 § 4(B) states “[e]very employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period.”

Ms. Guevara and the aggrieved employees were entitled to be paid the minimum wage for all time worked. By failing to pay for all work performed, including time spent subject to PSM’s control, PSM’s compensation to Ms. Guevara and the aggrieved employees fell below the applicable minimum wage.

Ms. Guevara and the aggrieved employees have suffered, and continue to suffer, substantial unpaid wages, and lost interest on such wages, and expenses.

These claims are for Ms. Guevara and all similarly situated non-exempt hourly servers, cooks, line cooks, hostesses, hosts, bartenders, busboys, dishwashers, and/or any similar job designations and titles, and all other similarly situated non-exempt aggrieved employees who work and/or worked for PSM in California.

Ms. Guevara—as a representative of the people of the State of California—will seek any and all penalties otherwise capable of being collected by the Labor Commission and/or the Department of Labor Standards Enforcement (DLSE) for violations of Cal. Lab. Code §§ 1197.1, 1199, and Industrial Welfare Commission Order No. 5-2001 § 4(B).

III. PSM Failed to Pay Overtime

It is fundamental that an employer must pay its employees for all time worked. *California Labor Code* section 510 states that eight hours of labor constitutes a day’s work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee.

California Labor Code section 510 dictates that any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

PSM failed to pay overtime when Ms. Guevara and the aggrieved employees worked over eight (8) hours per day and when employees worked over forty (40) hours per week. PSM failed to pay Ms. Guevara and the aggrieved employees for all hours worked, including hours worked over eight (8) hours in a day and forty (40) hours in a week.

Ms. Guevara and the aggrieved employees worked over eight (8) hours per day and worked over

forty (40) hours per week, but were not paid overtime for this work. Specifically, PSM would have Ms. Guevara and the aggrieved employees clock out before they reached eight (8) hours recorded in their shift and pay Ms. Guevara and the aggrieved employees their regular hourly rate in cash for additional work performed off the clock, denying Ms. Guevara and the aggrieved employees the overtime premiums owed to them under California law.

Ms. Guevara and the aggrieved employees have suffered, and continue to suffer, substantial unpaid wages, and lost interest on such wages, and expenses.

These claims are for Ms. Guevara and all similarly situated non-exempt hourly servers, cooks, line cooks, hostesses, hosts, bartenders, busboys, dishwashers, and/or any similar job designations and titles, and all other similarly situated non-exempt aggrieved employees who work and/or worked for PSM in California.

Ms. Guevara, as a representative of the people of the State of California, will seek any and all penalties otherwise capable of being collected by the Labor Commission and/or the Department of Labor Standards Enforcement (DLSE) for violations of *California Labor Code* section 510.

IV. PSM Failed to Provide Meal Periods

Under *California Labor Code* section 512 no employer shall employ any person for a work period of more than five (5) hours without providing a meal period of not less than thirty (30) minutes. If an employee's complete day's working period is not more than six (6) hours, the meal period may be waived by *mutual* consent of the employer and employee. During this meal period of not less than thirty (30) minutes, the employee is to be completely free of the employer's control and must not perform any work for the employer. If the employee does perform work for the employer during the thirty (30) minute meal period, the employee has not been provided a meal period in accordance with the law. Also, the employee is to be compensated for any work performed during the thirty (30) minute meal period.

In addition, an employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with another meal period of not less than thirty (30) minutes.

PSM has a consistent policy and/or practice of automatically deducting thirty (30) minutes for meal periods and/or otherwise records a meal period for Ms. Guevara and the aggrieved employees, even though Ms. Guevara and the aggrieved employees have to perform work duties during their meal periods, are not relieved of all duties during meal periods, are not able to leave the work location during meal periods, and/or are subject to being called back to work at any time.

Likewise, Ms. Guevara and the aggrieved employees are informed and believe and thereon allege that PSM breached the legal duty to provide lawful meal periods to Ms. Guevara and the aggrieved employees. Specifically, Ms. Guevara and the aggrieved employees worked through their meal periods to satisfy their demanding work duties imposed by PSM, thereby denying them the right to be completely free from employer control under California law.

Additionally, PSM instituted a consistent policy/practice of not providing second meal periods to Ms. Guevara and all aggrieved employees and/or providing compensation in lieu thereof.

By failing to provide statutory first and/or second meal periods, and by failing to provide compensation for unprovided meal periods, as alleged above, PSM willfully violated the provisions of *Labor Code* sections 226.7 and 512.

These claims are for Ms. Guevara and all similarly situated non-exempt hourly servers, cooks, line cooks, hostesses, hosts, bartenders, busboys, dishwashers, and/or any similar job designations and titles, and all other similarly situated non-exempt aggrieved employees who work and/or worked for PSM in California.

Ms. Guevara, as a non-exempt employee who unlawfully was deprived of first and second meal periods, is an aggrieved employee with standing to bring an action under the PAGA. Ms. Guevara has satisfied all prerequisites to serve as a representative of the general public to enforce California's labor laws, and the penalty provisions identified in *Labor Code* section 2699.5 for violations of *Labor Code* sections 226.7 and 512.

V. PSM Failed to Provide Rest Periods

PSM has had a consistent policy and/or practice of not providing duty free paid ten (10) minute paid rest periods for every four (4) hours worked, or a major fraction thereof, to Ms. Guevara and the aggrieved employees.

Industrial Welfare Commission Order No. 4-2001 section 12(A) states “[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work week 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 hours or major fraction thereof.”

PSM has had a consistent policy and/or practice of not providing paid rest periods to Ms. Guevara and all aggrieved employees and/or providing compensation in lieu thereof. Specifically, Ms. Guevara and the aggrieved employees are required to work shifts over three and a half (3.5) hours, six (6) hours, and ten (10) but never received first, second, or third rest breaks.

Further, PSM fails to provide Ms. Guevara and the aggrieved employees with lawful rest periods, as Ms. Guevara and the aggrieved employees have to perform work duties during their rest periods, are not relieved of all duties during rest periods, are not able to leave the work location during rest periods, and/or are subject to being called back to work at any time.

Likewise, Ms. Guevara and the aggrieved employees are informed and believe and thereon allege that PSM breached the legal duty to provide lawful rest periods to Ms. Guevara and the aggrieved employees. Specifically, Ms. Guevara and the aggrieved employees worked through their rest periods to satisfy their demanding work duties imposed by PSM, thereby denying them the right to be completely free from employer control under California law.

By failing to provide net 10 minute rest periods for every four (4) hours or major fraction thereof

worked per day by non-exempt employees, and by failing to provide compensation for these unprovided rest periods, as alleged above, PSM willfully violated the provisions of *Labor Code* section 226.7 and Industrial Welfare Commission Order No. 4-2001 section 12(A).

These claims are for Ms. Guevara and all similarly situated non-exempt hourly servers, cooks, line cooks, hostesses, hosts, bartenders, busboys, dishwashers, and/or any similar job designations and titles, and all other similarly situated non-exempt aggrieved employees who work and/or worked for PSM in California.

Ms. Guevara, as a non-exempt employee who was unlawfully deprived of paid ten (10) minute rest periods, is an aggrieved employee with standing to bring an action under the PAGA. Ms. Guevara has satisfied all prerequisites to serve as a representative of the general public to enforce California's labor laws, and the penalty provisions identified in *Labor Code* section 2699.5 and Industrial Welfare Commission Order No. 4-2001 section 20 for violations of *Labor Code* section 226.7 and Industrial Welfare Commission Order No. 5-2001 section 12(A).

VI. PSM's Knowing and Intentional Failure to Comply with Itemized Employee Wage Statement Provisions

Section 226(a) of the *California Labor Code* requires PSM to itemize in wage statements all deductions from payment of wages and to accurately report total hours worked by Ms. Guevara and the aggrieved employees.

California Labor Code section 226 subdivision (a) requires that PSM, at the time of each payment of wages, "furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee... (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than the social security number, (8) the name and address of the legal entity that is the employer...(9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate and the corresponding number of hours worked at each hourly rate by the employee..."

Labor Code section 226, subdivision (a) also requires that "deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California" to itemize in wage statements and to accurately report the total hours worked and total wages earned.

In addition, *Labor Code* section 204(b) requires that "all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period." An

employer complies with section 226(a) “if hours worked in excess of the normal work period during the current pay period are itemized as corrections on the paystub for the next regular pay period. Any corrections set out in the subsequently issue paystub shall state the inclusive dates of the pay period for which the employer is correcting its initial report of hours worked.”

PSM has knowingly and intentionally failed to comply with *Labor Code* section 226(a) on each and every wage statement provided to Ms. Guevara and the other aggrieved employees.

In every pay period during the period of the relevant statute of limitations, PSM knowingly and intentionally did not itemize gross wages earned, total hours worked, net wages earned, the inclusive dates of the pay period, the name and address of the legal entity that is the employer, or all applicable hourly rates in effect on wage statements provided to Ms. Guevara and the aggrieved employees as *Labor Code* section 226, subsection (a), requires.

PSM had a uniform policy of deducting thirty (30) minutes each workday from Ms. Guevara's and the aggrieved employees' wages for meal periods, despite the fact that Ms. Guevara and the aggrieved employees were working during and throughout the time period of the deduction without being offered and authorized to use their meal periods. PSM violated the *Labor Code* section 226, subdivision (a) requirement of itemizing all deductions from wages. As PSM knew or had reason to know that Ms. Guevara and the aggrieved employees were working during meal periods, PSM knowingly and intentionally failed to comply with *Labor Code* Section 226, subdivision (a).

Throughout the statutory period, as a result of the knowing and intentional failure by PSM to comply with itemized employee wage statement provisions, Ms. Guevara and the aggrieved employees have been able to reconstruct only a reasonable estimate of the hours worked and have, therefore, not received full compensation.

These claims are for Ms. Guevara and all similarly situated non-exempt hourly servers, cooks, line cooks, hostesses, hosts, bartenders, busboys, dishwashers, and/or any similar job designations and titles, and all other similarly situated non-exempt aggrieved employees who work and/or worked for PSM in California.

Ms. Guevara, as a non-exempt employee who PSM failed to provide accurate and itemized wage statements, is an aggrieved employee with standing to bring an action under the PAGA. Ms. Guevara has satisfied all prerequisites to serve as a representative of the general public to enforce California's labor laws, and the penalty provisions identified in *Labor Code* section 2699.5 for violations of *Labor Code* section 226 and 226.3.

VII. PSM Failed to Pay Wages Due at Termination and During Employment

PSM willfully failed to pay, in a timely manner, wages owed to the aggrieved employees who left PSM's employ or who were terminated.

The aggrieved employees who ended their employment with PSM during the last year were entitled to be promptly paid all lawful compensation, and other premiums, as required by *Labor Code* sections 201 through 203.

At all relevant times, *California Labor Code* sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and if an employee quits his or her employment, his or her wages shall become due and payable no later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours' notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

During the relevant time period, PSM intentionally and willfully failed to pay the aggrieved employees who are no longer employed by PSM their wages, that were earned and unpaid, within seventy-two (72) hours of their leaving PSM's employ. PSM failed to pay all straight time wages, overtime wages, and meal and rest period premiums as alleged herein within seventy-two (72) hours of the aggrieved employees' separation from PSM's employ. PSM failed to ever pay all wages as alleged herein, thereby triggering the maximum penalties allowable under Labor Code section 203.

PSM's failure to pay the aggrieved employees who are no longer employed by PSM their wages, that were earned and unpaid, within seventy-two (72) hours of their leaving PSM's employ, is in violation of *California Labor Code* sections 201 and 202.

California Labor Code section 203 provides that when an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

These claims are for Ms. Guevara and all similarly situated non-exempt hourly servers, cooks, line cooks, hostesses, hosts, bartenders, busboys, dishwashers, and/or any similar job designations and titles, and all other similarly situated non-exempt aggrieved employees who work and/or worked for PSM in California.

Ms. Guevara, as a representative of the people of the State of California, will seek any and all penalties otherwise capable of being collected by the Labor Commission and/or the Department of Labor Standards Enforcement ("DLSE"). This includes each of the following, as set forth in *Labor Code* section 2699.5 for violations of sections 201 through 203.

VIII. PSM Failed to Pay Employees Twice Per Month

Section 204(a) of the *California Labor Code* required PSM to pay Ms. Guevara and the aggrieved employees twice during each calendar month.

Labor Code section 204 subdivision (a) provides "[a]ll wages . . . earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month shall be paid for between the 1st and 10th day of the following month." For pay

periods other than the 1st through the 15th and the 16th through the final day of the month, wages must be paid within seven (7) calendar days of the end of the payroll period in which the wages were earned. Cal. Lab. Code Section 204(d).

During the relevant time period, PSM intentionally and willfully failed to pay Ms. Guevara and the aggrieved employees all their wages, that were earned and unpaid, twice during each calendar month. Alternatively, PSM failed to pay wages earned within seven (7) calendar days of the end of the payroll period in which the wages were earned.

PSM's failure to pay Ms. Guevara and the aggrieved employees their wages, that were earned and unpaid, twice during each calendar month and/or within seven (7) calendar days of the end of the payroll period in which the wages were earned, is in violation of *California Labor Code* section 204.

These claims are for Ms. Guevara and all similarly situated non-exempt hourly servers, cooks, line cooks, hostesses, hosts, bartenders, busboys, dishwashers, and/or any similar job designations and titles, and all other similarly situated non-exempt aggrieved employees who work and/or worked for PSM in California.

Ms. Guevara, as a representative of the people of the State of California, will seek any and all penalties otherwise capable of being collected by the Labor Commission and/or the Department of Labor Standards Enforcement ("DLSE"). This includes each of the following, as set forth in *Labor Code* section 2699.5 for violations of section 204.

IX. PSM Failed to Adopt a Compliant Sick Pay/Paid Time Off Policy

Section 246(a)(1) of the Labor Code states: "An employee who, on or after July 1, 2015, works in California for the same employer for 30 or more days within a year from the commencement of employment is entitled to paid sick days as specified in this section." Section 246(c) of the Labor Code states: "An employee shall be entitled to use accrued paid sick days beginning on the 90th day of employment, after which day the employee may use paid sick days as they are accrued."

Section 233(c) of the Labor Code states: "An employer shall not deny an employee the right to use sick leave or discharge, threaten to discharge, demote, suspend, or in any manner discriminate against an employee for using, or attempting to exercise the right to use, sick leave to attend to an illness or the preventive care of a family member, or for any other reason specified in subdivision (a) of Section 246.5" Section 233(d) of the Labor Code provides relief for violations of this section, stating that "[a]ny employee aggrieved by a violation of this section shall be entitled to reinstatement and actual damages or one day's pay, whichever is greater, and to appropriate equitable relief."

Section 234 further forbids employers from adopting an "absence control policy that counts sick leave taken pursuant to Section 233 as an absence that may lead to or result in discipline, discharge, demotion, or suspension is a per se violation of Section 233. An employee working under this policy is entitled to appropriate legal and equitable relief pursuant to Section 233.

PSM operates under an absence control policy that counts sick leave taken pursuant to Section 233. Thus, PSM's sick pay policy punishes employees by way of suspension and/or termination for use of protected and appropriate sick leave.

Additionally, PSM's sick pay policy fails to pay sick pay for all appropriate and protected purposes enumerated in Labor Code section 233, 234, and 246.

Ms. Guevara and the aggrieved employees were entitled to actual damages or one day's pay pursuant to Labor Code Section 233(d). Ms. Guevara and aggrieved employees are entitled to under Labor Code section 2699., 2699.3, and 2699.5.

These claims are for Ms. Guevara and all similarly situated non-exempt hourly servers, cooks, line cooks, hostesses, hosts, bartenders, busboys, dishwashers, and/or any similar job designations and titles, and all other similarly situated non-exempt aggrieved employees who work and/or worked for PSM in California.

Ms. Guevara, as a representative of the people of the State of California, will seek all penalties otherwise capable of being collected by the Labor Commission and/or the Department of Labor Standards Enforcement ("DLSE"). This includes each of the following, as set forth in *Labor Code* section 2699.5 for violations of sections 233, and 234.

X. PSM Underpaid Employees Every Pay Period

Section 558(a) of the *California Labor Code* subjects any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty for every pay period for which the employee was underpaid, which includes the underpaid wages related to each violation.

Every pay period, PSM failed to pay employees the legal minimum wage in violation of *California Labor Code* section 1197.1, and employees are entitled to underpaid wages pursuant to Section 558(a).

PSM has had a continuous policy of not paying Ms. Guevara and similarly aggrieved employees for all hours worked, as outlined above.

Every pay period, PSM failed to pay overtime when employees worked over eight (8) hours per day and when employees worked over 40 hours per week in violation of *California Labor Code* section 510, and employees are entitled to underpaid overtime wages pursuant to Section 558(a).

Every pay period, PSM has had a consistent policy and/or practice of not providing meal periods to Ms. Guevara and all aggrieved employees and/or providing compensation in lieu thereof in violation of *California Labor Code* section 512, and employees are entitled to underpaid meal period premium wages pursuant to Section 558(a).

Every pay period, PSM has had a consistent policy and/or practice of not providing rest periods to

Ms. Guevara and the aggrieved employees and/or providing compensation in lieu thereof, and employees are entitled to underpaid rest period premium wages pursuant to Section 558(a).

Ms. Guevara and the aggrieved employees have suffered, and continue to suffer, substantial unpaid wages, and lost interest on such wages, and expenses.

These claims are for Ms. Guevara and all of the security patrol officer, security vehicle patrol officers, security guards, private security guards, dispatchers, field officers, flex officers, guards, or similar job designations and titles, and all other similarly situated non-exempt, hourly employees of PSM in California.

Ms. Guevara, as a non-exempt employee who unlawfully was underpaid every pay period during his employment, is an aggrieved employee withstanding to bring an action under the PAGA. Ms. Guevara has satisfied all prerequisites to serve as a representative of the general public to enforce California's labor laws, and the penalty provisions identified in *Labor Code* section 558(a) for violations of *Labor Code* sections 510 and 512 and California's labor laws.

XI. Conclusion

If after 65 days from the date of this letter, the LWDA does not take action or declines to intervene, Ms. Guevara will file a complaint alleging PAGA violations, as described above.

Respectfully submitted


MARA LAW FIRM, PC
Matthew Crawford, Esq.

Attn: PAGA Administrator
**California Labor and Workforce
Development Agency**
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102
Via Web Submission
Via Certified Mail

Attn: Carlos Aguila
AguilasMorales, Inc.
1592 W. 35th Street
Los Angeles, CA 90018
Agent for Service of Process
Via Certified Mail

Attn: Carlos Aguila
Paseo San Miguel, LLC
1560 W. Martin Luther King Blvd.
Los Angeles, CA 90062
Agent for Service of Process
Via Certified Mail

Exhibit 6

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF LOS ANGELES

GABRIELA GUEVARA, on behalf of
herself and all others similarly situated, and
on behalf of the general public,

Plaintiffs,

v.

AGUILASMORALES, INC.; and DOES 2-
100,

Defendants.

Case No. 21STCV47592

[Related to Case No. 22STCV08424]

**[PROPOSED] ORDER GRANTING
PLAINTIFF GABRIELA GUEVARA’S
MOTION FOR FINAL APPROVAL OF
CLASS ACTION SETTLEMENT,
ATTORNEYS’ FEES, COSTS, CLASS
REPRESENTATIVE ENHANCEMENT
PAYMENT, AND ENTERING OF FINAL
JUDGMENT**

Date: April 30, 2024
Time: 10:30 a.m.

1 **I. RECITALS**

2 This action is currently pending before this Court as a putative class action and
3 representative action (the “Action”). Plaintiff Gabriela Guevara has applied to this Court for an
4 order finally approving the settlement of the Action in accordance with the Joint Stipulation and
5 Settlement Agreement (the “Agreement”), which together with the exhibit annexed thereto, sets
6 forth the terms and conditions for a proposed settlement and entry of judgment upon the terms and
7 conditions set forth therein. The Court has read and considered the Memorandum of Points and
8 Authorities in Support of Plaintiff’s Motion for Final Approval of Class Action Settlement,
9 Attorneys’ Fees, Costs, Class Representative Payment, and Entering of Final Judgment, and the
10 declarations submitted therewith. For purposes of this Order, the Court adopts all defined terms as
11 set forth in the Agreement.

12 **II. FINDINGS**

13 After review and consideration of the Agreement and Plaintiff’s motion for final approval
14 and the papers in support thereof, the Court hereby finds and orders as follows:

15 1. The Court has jurisdiction over the claims of the Class Members asserted in this
16 proceeding and over all parties to the proceeding.

17 2. The “Class” or “Class Members” are defined to include: “All individuals who
18 worked for Defendant AguilasMorales, Inc. as non-exempt hourly employees in California at any
19 time during the Class Period.” The Class Period is December 30, 2017 through September 19,
20 2023.

21 3. The “Aggrieved Employees” are defined to include: “All individuals who worked
22 for Defendant AguilasMorales, Inc. as non-exempt hourly employees in California during the
23 PAGA Period.” The PAGA Period is December 28, 2020 through September 19, 2023.

24 4. The Court Approved Notice of Class Action Settlement and Hearing Date for Final
25 Court Approval (“Class Notice”) was mailed by first-class U.S. mail to all Class Members in
26 English and Spanish. The Class Notice informed the Class of the material terms of the settlement,
27 of their right to receive a *pro rata* portion of the Net Settlement Amount, of their right to request
28 exclusion from the settlement, of their right to comment upon or object to the settlement and to

1 appear in person or through counsel at the Final Approval Hearing and of the date set for the Final
2 Approval Hearing. Adequate periods of time were provided by each of these procedures.

3 5. In response to the Class Notice, no member of the Class submitted a written
4 objection to the settlement or stated an intention to appear at the Final Approval Hearing. No
5 members of the Class requested to be excluded from the settlement. No member of the Class
6 submitted a dispute regarding the number of workweeks credited to him or her.

7 **III. ORDER**

8 The Court having considered the papers submitted in support of the motion for preliminary
9 approval, HEREBY ORDERS THE FOLLOWING:

10 1. The Court finds that the applicable requirements of California Code of Civil
11 Procedure section 382 and California Rule of Court 3.769, *et seq.* have been satisfied with respect
12 to the Class and the settlement. The Court hereby makes final its earlier provisional certification
13 of the Class for settlement purposes, as set forth in the Preliminary Approval Order.

14 2. The Court finds and determines that this notice procedure afforded adequate
15 protections to Class Members and provides the basis for the Court to make an informed decision
16 regarding approval of the settlement based on the Class Members' response. The Court finds and
17 determines that the Class Notice was the best notice practicable under the circumstances, and
18 satisfied the requirements of law and due process.

19 3. The Court further finds and determines that the terms of the settlement are fair,
20 reasonable and adequate to the Class and to each Class Member.

21 4. Pursuant to California law, the Court hereby grants final approval of the settlement.
22 The Court finds that it appears that the settlement was reached as a result of informed and non-
23 collusive arm's-length negotiations facilitated by a neutral mediator. The Court further finds that
24 it appears that the Parties conducted extensive investigation, research, and discovery and that their
25 attorneys were able to reasonably evaluate their respective positions. The Court also finds that
26 settlement will enable the Parties to avoid additional and potentially substantial litigation costs,
27 as well as delay and risks if the Parties were to continue to litigate the case. The Court has
28 considered the absence of objections to and requests for exclusion from the settlement, reviewed

1 the monetary recovery provided as part of the settlement, and recognizes the significant value
2 accorded to the Class. Accordingly, the Court hereby approves the terms set forth in the
3 Settlement Agreement and finds that the settlement is, in all respects, fair, adequate, and
4 reasonable, and directs the Parties to effectuate the settlement according to its terms.

5 5. A full opportunity has been afforded to the Class Members to participate in the
6 Final Approval Hearing, and all Class Members and other persons wishing to be heard have been
7 heard. The Class Members also have had a full and fair opportunity to exclude themselves from
8 the settlement. Accordingly, the Court determines that all Class Members who did not submit a
9 valid and timely Request for Exclusion from the Settlement (“Participating Class Members”) are
10 bound by this Order.

11 6. In exchange for a portion of the Net Settlement Amount, all Participating Class
12 Members will be bound by the following release: “Class Members who do not opt out of the
13 settlement will release any and all claims, debts, liabilities, demands, obligations, penalties,
14 guarantees, costs, expenses, attorney’s fees, damages, action or causes of action of whatever kind
15 or nature, whether known or unknown, contingent or accrued, that are alleged or could have been
16 alleged during the Class Period based upon a reasonable interpretation of the facts alleged in the
17 Class Action against Defendant. The release as to these claims will be deemed effective when
18 Defendant funds the settlement.”

19 7. In exchange for a portion of the PAGA Payment, all Aggrieved Employees will be
20 bound by the following release: “Aggrieved Employees, regardless of whether they requested
21 exclusion from/opted-out of the Class Settlement, will release any and all claims for civil penalties
22 under the California Labor Code and the Private Attorneys General Act predicated upon the Labor
23 Code violations asserted, as well as any potential penalties, interest or attorneys’ fees associated
24 with those violations under California law, to the extent such claims are predicated on claims
25 made or that could have been made during the PAGA Period based on the facts and circumstances
26 alleged in the PAGA Action and Plaintiff’s notice to the LWDA against Defendant. Aggrieved
27 Employees will release the Released PAGA Claims even if they opted-out/requested exclusion
28 from the Class Settlement. The release as to these claims will be deemed effective when

1 Defendant funds the settlement.”

2 8. The Court hereby confirms David Mara and Matthew Crawford of Mara Law Firm,
3 PC, as Class Counsel in this action.

4 9. The Court hereby confirms Plaintiff Gabriela Guevara as the Class Representative
5 in this action.

6 10. The Court finds and determines that the individual settlement payments provided
7 for by the terms of the Settlement Agreement to be paid to the Participating Class Members are
8 fair and reasonable. The Court hereby gives final approval to and orders the payment of those
9 amounts be made to the Participating Class Members in accordance with the terms of the
10 Settlement Agreement.

11 11. The Court finds and determines the Class Representative Enhancement Payment in
12 the sum of \$7,500 to Plaintiff Gabriela Guevara is fair and reasonable. The Court hereby orders
13 the Settlement Administrator to make the payment to the Plaintiff/Class Representative Gabriela
14 Guevara in the amount of \$7,500 for the Service Award Payment in accordance with the terms of
15 the Settlement Agreement.

16 12. The Court finds and determines that the payment to the Settlement Administrator,
17 Apex Class Action LLC, in the sum of \$INSERT for its fee and expenses incurred and to be
18 incurred for the notice and settlement administration process is fair and reasonable. The Court
19 hereby orders the Settlement Administrator to make payment to itself in the amount of \$INSERT
20 for Administration Costs in accordance with the terms of the Settlement Agreement.

21 13. Pursuant to the terms of the settlement, and the authorities, evidence and argument
22 submitted by Class Counsel, the Court hereby approves of an attorneys’ fee award in the sum of
23 \$116,666.66 and a Cost Award of \$INSERT to Class Counsel. The Court finds such amounts to
24 be fair and reasonable. The Court hereby orders the Settlement Administrator to make payment
25 to Class Counsel in the amount of \$116,666.66 for attorneys’ fees and \$INSERT for litigation
26 expenses in accordance with the terms of the Settlement Agreement.

27 14. The Court finds and determines that the payment to the Labor and Workforce
28 Development Agency (“PAGA Payment”), in the sum of \$15,000 (which is 75% of \$20,000

1 allocated to claims under the Private Attorneys General Act of 2004, is fair and reasonable. The
2 Court hereby orders the Settlement Administrator to make the payment to the LWDA in the
3 amount of \$15,000 for the PAGA payment in accordance with the terms of the Settlement
4 Agreement. The Court further orders that the remaining amount of \$5,000 be distributed to
5 Aggrieved Employees in accordance with the terms of the Settlement Agreement.

6 15. Neither Defendant nor any related persons or entities shall have any further liability
7 for costs, expenses, interest, attorneys' fees, or for any other charge, expense, or liability, except
8 as provided for by the Settlement Agreement.

9 16. The Court finds and determines that the release contained in the Settlement
10 Agreement is appropriate and shall bind all Participating Class Members.

11 17. Nothing in this Final Approval Order and Judgment shall preclude any action to
12 enforce the Parties' obligations pursuant to the Settlement Agreement or pursuant to this Final
13 Approval Order and Judgment, including the requirement that Defendant make payments to
14 Participating Class Members in accordance with the Settlement Agreement.

15 18. The Court finds and determines that nothing in the Settlement Agreement or this
16 Final Approval Order and Judgment (1) is intended or will be construed as an admission of
17 liability or wrongdoing by Defendant or (2) may be offered in evidence against Defendant (other
18 than solely in connection with this settlement).

19 19. The Court hereby enters final judgment in this action in accordance with the terms
20 of the Settlement Agreement, Preliminary Approval Order, and this Final Approval Order and
21 Judgment.

22 20. The Court sets a Non-Appeal Case Review Re: Final Accounting for
23 _____ in Department 1 at the Spring Street
24 Courthouse. This is to confirm that distribution efforts are fully completed, including the
25 distribution of uncashed Participating Class Member checks to State Controller's Office
26 Unclaimed Property Fund in the names of the applicable payees, that the Administrator's work is
27 complete, and that the Court's file thus may be closed. All supporting papers must be filed at least
28 10 days before the Non-Appeal Case Review.

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21. The Parties shall bear their own costs and attorneys’ fees except as otherwise provided for by the Settlement Agreement and this Final Approval Order and Judgment.

22. Without affecting the finality of this Final Approval Order and Judgment in any way, the Court retains jurisdiction of all matters relating to the interpretation, administration, implementation, effectuation and enforcement of this order and the Settlement.

IT IS SO ORDERED.

Dated: _____, 2024

By _____
Honorable Stuart M. Rice
Los Angeles Superior Court Judge

Exhibit 7

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF LOS ANGELES

GABRIELA GUEVARA, on behalf of
herself and all others similarly situated, and
on behalf of the general public,

Plaintiffs,

v.

AGUILASMORALES, INC.; and DOES 2-
100,

Defendants.

Case No. 21STCV47592

[Related to Case No. 22STCV08424]

[PROPOSED] JUDGMENT

Date: April 30, 2024
Time: 10:30 a.m.

TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

The Court, having granted final approval of the Class Action and PAGA Settlement Agreement and Class Notice (the “Agreement” or “Settlement Agreement”), as set forth in the Court’s **INSERT**, Order Granting Plaintiff Gabriela Guevara’s Motion for Final Approval of Class Action Settlement, Attorneys’ Fees, Costs, Class Representative Payment, and Entering of Final Judgment (the “Final Approval Order”),

HEREBY ORDERS, ADJUDGES AND DECREES that this document shall constitute a Judgment for purposes of Code of Civil Procedure sections 577, 904.1(a), and Rules 3.769(h), and 8.104 California Rules of Court. Judgment in this matter is entered in accordance with the findings made in the Final Approval Order and the Settlement Agreement, which are incorporated herein by this reference as though set forth in full. Unless otherwise provided herein, all capitalized terms used herein shall have the same meaning as defined in the Settlement Agreement. The Court further directs as follows:

1. Unless otherwise defined differently in this Order, all capitalized terms used in this Order have the same meaning as they are specifically defined in the Settlement Agreement.
2. Plaintiff/Class Representative and all Class Members shall take nothing from Defendant except as expressly set forth in the Settlement Agreement filed on November 16, 2023, in conjunction with Plaintiff’s Motion for Preliminary Approval of the Class Action Settlement.
3. Within sixty (60) calendar days of the Effective Final Settlement Date¹, Defendant AguilasMorales, Inc. (“Defendant”) is ordered to deliver to the Settlement Administrator the First Installment, which shall be comprised \$150,000, plus the applicable Employer Taxes and shall be deposited by the Settlement Administrator into the account established by the Settlement Administrator for administration of

¹ The effective date of this Settlement will be when the final approval of the settlement can no longer be appealed, or, if there are no objectors and no plaintiffs in intervention at the time the court grants final approval of the settlement, the date the court enters judgment granting final approval of the settlement.

the Settlement Agreement.

4. Within ten (10) calendar days after receiving the First Installment, the Settlement Administrator shall disburse: (1) 42.85% of the Net Settlement Amount to Participating Class Members; (2) 42.85% of the Attorneys Fee Award and Cost Award to Class Counsel; (3) 42.85% of the Class Representative Enhancement Payment to the Class Representative; (4) 42.85% of the Administration Costs to itself; and (5) 42.85% of the PAGA Payment to the LWDA and PAGA Aggrieved Employees.

5. Within ten (10) months after the First Installment was funded, Defendant is ordered to deliver to the Settlement Administrator the First Installment, which shall be comprised \$200,000, plus the applicable Employer Taxes and shall be deposited by the Settlement Administrator into the account established by the Settlement Administrator for administration of the Settlement Agreement.

6. Within ten (10) calendar days after receiving the Second Installment, the Settlement Administrator shall disburse: (1) 57.15% of the Net Settlement Amount to Participating Class Members; (2) 57.15% of the Attorneys Fee Award and Cost Award to Class Counsel; (3) 57.15% of the Class Representative Enhancement Payment to the Class Representative; (4) 57.15% of the Administration Costs to itself; and (5) 57.15% of the PAGA Payment to the LWDA and PAGA Aggrieved Employees.

7. Attorneys' fees in the amount of \$116,666.66 are to be paid to Mara Law Firm, PC ("Class Counsel") from the Gross Settlement Amount for the work done and to be done until the completion of this matter.

8. Attorneys' litigation costs in the amount of \$INSERT are to be paid to Class Counsel from the Gross Settlement Amount for actual and necessary costs incurred.

9. The Settlement Administrator, Apex Class Action LLC, shall issue itself a payment of \$INSERT, from the Gross Settlement Amount for its work done and

1 to be done until the completion of its administration of the Settlement Agreement.

2 10. Plaintiff is hereby approved as the Class Representative and shall receive an
3 Enhancement Payment in the sum of \$7,500.

4 11. The employer-side payroll taxes associated with the portion of the settlement
5 attributed to wages shall be paid by Defendant separate and apart from the Gross
6 Settlement Amount.

7 12. The remaining Net Settlement Amount shall be distributed by the Settlement
8 Administrator to the Participating Class Members in the manner specified in the
9 Settlement Agreement.

10 13. This Judgment is final and binding on Participating Class Members.

11 14. By operation of this Judgment, Participating Class Members on behalf of
12 themselves and their respective former and present representatives, agents,
13 attorneys, heirs, administrators, successors and assigns, release the Released
14 Parties will from any and all claims, debts, liabilities, demands, obligations,
15 penalties, guarantees, costs, expenses, attorney's fees, damages, action or causes
16 of action of whatever kind or nature, whether known or unknown, contingent or
17 accrued, that are alleged or could have been alleged during the Class Period based
18 upon a reasonable interpretation of the facts alleged in the Class Action against
19 Defendant. The release as to these claims will be deemed effective when
20 Defendant funds the settlement.

21 15. This Judgment is final and binding on Aggrieved Employees.

22 16. By operation of this Judgment, Aggrieved Employees are deemed to release, on
23 behalf of themselves and their respective former and present representatives,
24 agents, attorneys, heirs, administrators, successors and assigns, the Released
25 Parties from any and all claims for civil penalties under the California Labor Code
26 and the Private Attorneys General Act predicated upon the Labor Code violations
27 asserted, as well as any potential penalties, interest or attorneys' fees associated
28 with those violations under California law, to the extent such claims are predicated

on claims made or that could have been made during the PAGA Period based on the facts and circumstances alleged in the PAGA Action and Plaintiff's notice to the LWDA against Defendant. Aggrieved Employees will release the Released PAGA Claims even if they opted-out/requested exclusion from the Class Settlement. The release as to these claims will be deemed effective when Defendant funds the settlement.

17. The Court hereby approves and orders that the checks for individual settlement payments mailed to Participating Class Members will remain negotiable for 180 days. If an envelope mailed to a Settlement Class Member is returned with no forwarding address or the checks are not cashed within 180 days of mailing, then the funds represented by checks returned as undeliverable and those checks remaining un-cashed for more than 180 days after issuance will be sent to the State Controller's Office Unclaimed Property Fund in the names of the applicable payees.

18. The Parties will comply with CRC Rule 3.771(b), by posting a copy of this Order and Judgment on the settlement website.

19. The Court, pursuant to California Rule of Court 3.769(h), retains continuing jurisdiction as to all matters relating to the administration and consummation of the settlement as provided in the Settlement Agreement and all other matters covered in this Judgment.

IT IS SO ORDERED.

Dated: _____, 2024

By _____
Honorable Stuart M. Rice
Los Angeles Superior Court Judge