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Attorneys for Plaintiff BUA WARNER,
On behalf of the general public as private attorney general

Additional Counsel Listed On Next Page

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

BUA WARNER, on behalf of the general
public as private attorney general,

Plaintiff,

v.

KING'S SEAFOOD COMPANY, LLC, a
Delaware Limited Liability Company dba
KING'S FISH HOUSE; and DOES 1-50,
inclusive

Defendants.

Case No.: 22STCV10155

Assigned to the Hon. David Sotelo, Dept. 40

**STIPULATION AND [PROPOSED] ORDER
APPROVING SETTLEMENT OF PRIVATE
ATTORNEYS GENERAL ACT CLAIMS,
DISMISSING ACTION WITH PREJUDICE,
AND ENTERING JUDGMENT THEREON**

Action Filed: March 23, 2022

Trial Date: None Set

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7 KING'S SEAFOOD COMPANY, LLC
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STIPULATION

IT IS HEREBY STIPULATED BY AND BETWEEN THE PARTIES AS FOLLOWS:

1. Plaintiff Bua Warner ("Plaintiff") and Defendant King's Seafood Company, LLC ("Defendant") (collectively the "Parties"), through their respective undersigned counsel, hereby submit the following Joint Stipulation and Order Approving Settlement of Private Attorneys General Act Claims.

2. The Parties incorporate by reference any terms which are not specifically defined in this stipulation but are defined in the PAGA Settlement Agreement which was fully executed as of August 18, 2023 ("Settlement" or "Settlement Agreement"). See Declaration of James Hawkins ("Hawkins Decl.") at ¶ 2, Exhibit ("Exh.") A.

3. On January 12, 2022, Plaintiff transmitted a letter to the California Labor & Workforce Development Agency ("LWDA") and Defendant in compliance with the exhaustion requirements of the California Labor Code Private Attorneys General Act ("PAGA"), articulating claims related to the failure to (a) failure to pay wages including overtime; (b) failure to provide meal periods for every work period exceeding more than five (5) and ten (10) hours per day and failure to pay an additional hour of pay or accurately pay an additional hour of pay in lieu of providing a meal period; (c) failure to provide rest breaks for every four hours or major fraction thereof worked and failure to pay an additional hour of pay or accurately pay an additional hour of pay in lieu of providing a rest period; (d) failing to pay all wages earned and owed upon separation from Defendant's employ; (e) failing to provide accurate, itemized wage statements; and (f) failure to accurately pay gratuities. Hawkins Decl. at ¶ 3, Exh. B.

4. On February 23, 2022, Plaintiff filed a Representative Action Complaint in the Superior Court of the State of California for the County of Los Angeles, entitled *Bua Warner v. King's Seafood Company, LLC dba King's Fish House*, case number 22STCV10155. Plaintiff filed her Complaint on behalf of the State of California and other aggrieved employees as a PAGA action based on violations of Labor Code 201-203, 351, 510, 512, 558, 226, 226.3, 226.7, 1174, 1174.5, 1175, 1194, 1197, 1197.1, 1198, and 2698. Hawkins Decl. at ¶ 4.

1 5. Defendant disputes and denies the allegations and claims asserted in this action. It was also
2 Defendant's position that Plaintiff could not maintain this PAGA action because there is no
3 evidence of a common policy or practice that makes a trial manageable. Hawkins Decl. at ¶ 8.

4 6. During the course of the litigation, Plaintiff engaged in informal discovery and fully shared
5 the information necessary for all sides to conduct a legitimate investigation into the allegations of
6 the action and potential defenses thereto. The Parties have reached this settlement only after
7 discovery and investigation were performed. Hawkins Decl. at ¶ 5.

8 7. On May 12, 2023, the Parties participated in a day-long mediation with mediator Jeffrey
9 Krivis, a well-respected wage and hour class and PAGA representative action mediator. In
10 preparation for the mediation, Plaintiff's counsel requested, and Defendant's counsel provided,
11 sample time and payroll data for the purported Aggrieved Employees, as well as personnel and
12 employment documents. With Mr. Krivis's assistance, the Parties agreed to fully and finally
13 resolve the Action and the PAGA Released Claims as to Plaintiff, the State of California, the
14 LWDA, and the Aggrieved Employees.

15 8. Being fully apprised of the value and strength of Plaintiff's claims, counsel for Plaintiff and
16 Defendant successfully negotiated a settlement of Plaintiff's claims asserted in the action through
17 arm's-length negotiations. The terms and conditions of the settlement are set forth in the Settlement
18 Agreement. Hawkins Decl. at ¶ 2, Exhibit A. The Settlement Agreement resolves all claims
19 asserted in the Complaint and contemplates that the Complaint will be dismissed with prejudice in
20 exchange for the consideration set out in the Settlement Agreement.

21 10. Counsel for Plaintiff and Defendant also considered the fact that the existence of
22 numerous disputes of fact in this case make the outcome uncertain. In the estimation of counsel for
23 the Parties, the delay, inconvenience, distraction, and uncertainty imposed by the litigation demands
24 would far outweigh the potential benefits of additional litigation. Hawkins Decl. at ¶ 9,

25 11. Based on the information and documents obtained through discovery, Plaintiff's
26 counsel assessed the maximum value of the limited PAGA claims to be released by the settlement
27 to be approximately \$3,000,000 (at the reasonable rate of a \$25.00 penalty for approximately
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1 120,000 pay periods at issue for approximately 4,600 Aggrieved Employees). Hawkins Decl. at ¶
2 10.

3 12. Plaintiff's Counsel also took into account that even if Plaintiff prevailed on the
4 merits of the PAGA claim, Defendant could persuasively argue that the Court should exercise its
5 discretion, under Labor Code § 2699(e), to reduce the amount of civil penalties assessed. A court
6 in a PAGA action has the same discretion "to assess a civil penalty" that the Labor Commissioner
7 would have, as well as complete discretion to "award a lesser amount than the maximum civil
8 penalty amount specified [by PAGA] if, based on the facts and circumstances of the particular case,
9 to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory."
10 And indeed, it is common for courts to reduce the penalties. *See e.g., Ghrdilyan v. RJ Financial,*
11 *et al.*, Los Angeles Superior Court, Case No. BC430633 (94% reduction); *Parr v. Golden State*
12 *Overnight Delivery Service, Inc.*, Alameda County Superior Court, Case No. RG12-618103 (94%
13 reduction); *Fleming v. Covidien, Inc.*, 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. Aug. 12, 2011)
14 (82% reduction); *Gola v. University of San Francisco*, Case No. CGC-18-565018 (Sup. Ct.
15 Decision dates July 21, 2020) (85% reduction of PAGA penalties).

16 13. As set forth in the Settlement Agreement, the amount of the Settlement Sum is
17 \$595,000.00 or approximately 20% of the reasonable maximum assessed recoverable penalties, and
18 includes an apportionment of attorneys' fees and costs, payment to the settlement administrator,
19 and a general release payment/enhancement award to each Plaintiff. Hawkins Decl. at ¶ 28.

20 14. Based on Plaintiff's counsel's extensive experience litigating over 200
21 representative actions, counsel for Plaintiff believes the settlement here is fair and reasonable and
22 warrants approval by the Court. Hawkins Decl. at ¶ 29;

23 15. The Parties agree that upon entry of the Order approving this settlement, Plaintiff
24 and all Aggrieved Employees, as defined in the Settlement Agreement, will be forever barred from
25 pursuing against Defendant, and any of the Released Parties, as defined in the Settlement
26 Agreement, all claims for penalties under PAGA that were alleged, or that reasonably could have
27 been alleged, based on the facts and legal theories in the Complaint or the PAGA Notice, including
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1 but not limited to: (1) failure to pay minimum, straight time, overtime, or double time wages, and
2 failure to pay other wages of any kind during employment; (2) failure to timely pay wages due
3 during employment; (3) failure to timely pay final wages due at separation; (4) failure to authorize
4 and permit rest periods and failure to pay all rest period premium pay; (5) failure to provide meal
5 periods and failure to pay all meal period premium pay; (6) failure to issue to Plaintiff and
6 Aggrieved Employees accurate wage statements; (7) failure to maintain accurate records for
7 Plaintiff and Aggrieved Employees; (9) failure to pay Plaintiff and Aggrieved Employees all
8 gratuities and/or service charges; (10) failure to reimburse or indemnify Plaintiff and Aggrieved
9 Employees for all business expenses ("Released Claims") from the beginning of May 5, 2021, up
10 to the earlier date of either approval of the settlement by the Court or 90 days from May 12, 2023
11 ("PAGA Period"). (Settlement Agreement §§ 1.19, 5.2)

12 16. The Parties agree that this stipulation should be sufficient for purposes of approving
13 the PAGA Settlement of the Complaints as set out in the Settlement Agreement pursuant to the
14 requirements set out in Labor Code section 2699(1)(2).

15 17. The Parties request that the Court enter the accompanying order, approving the
16 Settlement (attached to the Hawkins Declaration as Exhibit "A") as permitted by Labor Code §
17 2699(1), and entering Judgment in accordance with the terms and conditions of the Settlement
18 Agreement.

19 **IT IS SO STIPULATED.**

20 Dated: September 18, 2023

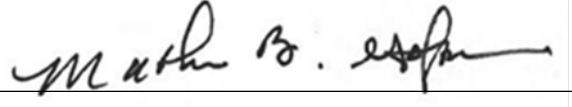
JAMES HAWKINS APLC

21
22 By: 

JAMES R. HAWKINS

23
24 Dated: September 18, 2023

BALLARD ROSENBERG GOLPER & SAVITT, LLP

25
26 By: 

MATTHEW GOLPER

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2
3 **PROOF OF SERVICE, COUNTY OF ORANGE**

4 I am a resident of the State of California, County of Orange. I am over the age of
5 eighteen years and not a party to the within action. My business address is 9880
6 Research Drive., Suite 200, Irvine, California 92618.

7 On September 19, 2023, I served on the interested parties in this action the following
8 document(s) entitled:

9 **STIPULATION AND [PROPOSED] ORDER APPROVING SETTLEMENT OF PRIVATE**
10 **ATTORNEYS GENERAL ACT CLAIMS, DISMISSING ACTION WITH PREJUDICE, AND**
11 **ENTERING JUDGMENT THEREON**

12 **DECLARATION OF JAMES HAWKINS IN SUPPORT OF STIPULATION AND**
13 **[PROPOSED] ORDER APPROVING SETTLEMENT OF PRIVATE ATTORNEYS**
14 **GENERAL ACT CLAIMS, DISMISSING ACTION WITH PREJUDICE**

15 **[PROPOSED] ORDER APPROVING SETTLEMENT OF PRIVATE ATTORNEYS**
16 **GENERAL ACT CLAIMS, DISMISSING ACTION WITH PREJUDICE**

17 [XX] BY ELECTRONIC SERVICE: Based on a court Order or an agreement by the parties to
18 accept service by e-mail or electronic transmission, I caused the document(s) to be sent from the
19 email address Alma@jameshawkinsaplc.com to the persons at the e-mail addresses listed in the
20 Service List below. I did not receive, within a reasonable time after the transmission, any electronic
21 message or other indication that the transmission was unsuccessful.

22 **SERVICE LIST**

23 (See Service List Attached)

24 [XX] **STATE:** I declare under penalty of perjury, under the laws of the State of
25 California, that the above is true and correct.

26 Executed on September 19, 2023, at Irvine, California

27 *Alma Chavarin*
28 Alma Chavarin

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9
10 Attorneys for Defendant
11 KING'S SEAFOD COMPANY, LLC
12
13

14 **Via LWDA Website Only**
15 Labor and Workforce Development Agency
16 Attn: PAGA Administrator
17 1515 Clay Street, Ste 801
18 Oakland, CA 94612
19 <http://www.dir.ca.gov/Private-Attorneys-General-Act>
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