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Attorneys for Plaintiff BUA WARNER,

On behalf of the general public as private attorney general

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
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*

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

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1 based on violations of Labor Code 201-203, 351, 510, 512, 558, 226, 226.3, 226.7, 1174, 1174.5,
2 1175, 1194, 1197, 1197.1, 1198, and 2698.

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

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

14 7. Being fully apprised of the value and strength of Plaintiff's claims, counsel for
15 Plaintiff and Defendant successfully negotiated a settlement of Plaintiff's claims asserted in the
16 action through arm's-length negotiations. The terms and conditions of the settlement are set forth in
17 the PAGA Settlement Agreement ("Settlement" or "Settlement Agreement"). The Settlement
18 Agreement resolves all claims asserted in the Complaints and contemplates that both Complaints
19 will be dismissed with prejudice in exchange for the consideration set out in the Settlement
20 Agreement.

21 8. Defendant disputes and denies the allegations and claims asserted in the operative
22 Complaint and the January 12, 2022 notice to the LWDA. It was also Defendant's position that
23 Plaintiff could not maintain the PAGA Complaints because there is no evidence of a common policy
24 or practice that makes a trial manageable.

25 9. Counsel for Plaintiff and Defendant also considered the fact that the existence of
26 numerous disputes of fact in this case make the outcome uncertain. In the estimation of counsel for
27 the Parties, the delay, inconvenience, distraction, and uncertainty imposed by the litigation demands
28 would far outweigh the potential benefits of additional litigation.

1 10. Based on the information and documents obtained through both formal and
2 informal discovery, Plaintiff assessed the maximum value of the limited PAGA claims to be released
3 by the settlement to be approximately \$3,000,000 (at the rate of a \$25.00 penalty for approximately
4 120,000 pay periods at issue for approximately 4,600 Aggrieved Employees). This works out to
5 approximately \$129 per aggrieved employee and the state before deductions for fees and costs. Of
6 course this number assumes a violation in every pay period for every employee, which based on the
7 review of records and policies is unlikely to be proven at trial and thus a much lower assessed value
8 would be available for the aggrieved employees.

9 11. This Aggrieved Employees' recovery compares favorably to the estimated
10 amount of PAGA penalties given the evidence provided and the risks of liability and then penalty
11 awards at trial. As discussed further herein, California Labor Code Section 2699(e)(1) permits a
12 Court to award a lesser amount than the maximum civil penalty if based on the facts and
13 circumstances to do otherwise would result in an award that is "unjust, arbitrary and oppressive or
14 confiscatory."

15 12. Plaintiff and Plaintiff's Counsel believe that the Settlement is a fair, adequate,
16 and reasonable resolution of this matter. Plaintiff and his counsel recognize the expense and length
17 of continued proceedings necessary to litigate the matter through trial and any possible appeals and
18 have also considered the uncertainty and risk of the outcome of further litigation, and the difficulties
19 and delays inherent in such litigation based upon the burdens of proof. Plaintiff and his counsel are
20 also aware of the burdens of proof necessary to establish liability, both generally and in response to
21 Defendant's defenses thereto, and the difficulties in establishing Defendant's liability for, and the
22 right to recover, penalties on behalf of Plaintiff, the State of California, and the other purported
23 aggrieved employees.

24 13. The settlement is a compromise of highly disputed claims and to recover any
25 PAGA penalties, Plaintiff would be required at trial to prove each of the underlying Labor Code
26 violations. *See Cardenas v. McLane Foodservice, Inc.*, No. SACV 10-473 DOC (FFMx), 2011 U.S.
27 Dist. LEXIS 13126, *10 (C.D. Cal. 2011) ("Given the statutory language [of PAGA], a plaintiff
28 cannot recover on behalf of individuals whom the plaintiff has not proven suffered a violation of the

1 Labor Code by the defendant.”). Here, Plaintiff would need to prove each Aggrieved Employee
2 suffered a violation for each period the employee worked in relation to (a) failure to pay wages
3 including overtime; (b) failure to provide meal periods for every work period exceeding more than five
4 (5) and ten (10) hours per day and failure to pay an additional hour’s of pay or accurately pay an
5 additional hour’s of pay in lieu of providing a meal period; (c) failure to provide rest breaks for every
6 four hours or major fraction thereof worked and failure to pay an additional hour’s of pay or accurately
7 pay an additional hour’s of pay in lieu of providing a rest period; (d) failing to pay all wages earned and
8 owed upon separation from Defendant’s employ; (e) failing to provide accurate itemized wage
9 statements; (f) failure to accurately pay gratuities.

10 14. The result achieved in this case, and the monetary recovery provided by this
11 Settlement, are well-within the range of an acceptable settlement under the circumstances, especially
12 when compared to the settlement of PAGA claims in other cases. *See, e.g., DCH Auto Wage and*
13 *Hour Cases*, Los Angeles Superior Court, Case No. JCCP4833 (May 2017) (approving the amount
14 of \$15,000 out of \$4 million toward settlement of PAGA claims); *Flores v. Dart Container Corp.*,
15 No. 2:19-cv-00083 WBS JDP, 2021 U.S. Dist. LEXIS 6897, at *3 (E.D. Cal. Jan. 12, 2021)
16 (approving the amount of \$15,000 out of \$411,000 towards settlement of PAGA claims); *Dawson*
17 *v. Hitco Carbon Composites, Inc.*, No. CV 16-07337 PSG (FFMx), 2019 U.S. Dist. LEXIS 226687,
18 at *6-7 (C.D. Cal. Nov. 25, 2019) (approving the amount of \$10,000 of \$1.1 million toward
19 settlement of PAGA claims); *Brown v. CVS Pharmacy, Inc.*, No. CV15-7631 PSG (PJWx), 2017
20 U.S. Dist. LEXIS 182309, at *3 (C.D. Cal. Apr. 24, 2017) (approving the amount of \$20,000 of \$3
21 million gross settlement towards settlement of PAGA claims); *Nordstrom Commissions Case*, 186
22 Cal.App.4th 576, 589 (2010) (finding no abuse of discretion by the trial court in approving a
23 settlement that allocates \$0 toward the settlement of PAGA claims that were at issue in the lawsuit);
24 *Alcala v. Meyer Logistics, Inc.*, No. CV 17-7211 PSG (AGRx), 2019 U.S. Dist. LEXIS 166879, at
25 *26 (C.D. Cal. June 17, 2019) (finding that courts approve PAGA settlements that fall within zero
26 to two percent of gross settlement recovery). Here, the value obtained for settlement of the PAGA
27 claims is very significant, and it will be distributed in accordance with and in fulfillment of the
28 objectives of the PAGA statute.

1 15. A crucial factor in evaluating the value of a PAGA-only case is that all PAGA
2 awards are discretionary and can be reduced by the Court.¹ California Labor Code Section
3 2699(e)(1) permits a Court to award a lesser amount than the maximum civil penalty if, based on
4 the facts and circumstances, to do otherwise would result in an award that is “unjust, arbitrary and
5 oppressive or confiscatory.” For example, in *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504
6 (2018), the Court of Appeal affirmed a judgment after trial that only provided for a PAGA penalty
7 of \$5 per pay period. Given this precedent, there is a risk at trial that any PAGA penalties awarded
8 could be significantly less than Plaintiff’s calculation even where Plaintiff prevailed on the PAGA
9 claim. If the amount of \$5 per pay period from *Carrington v. Starbucks* is used, the potential
10 recovery of civil penalties would be only \$229,000.

11 16. The settlement is also supported by other PAGA settlement previously approved
12 by other courts. *See, e.g., DCH Auto Wage and Hour Cases*, Los Angeles Superior Court, Case No.
13 JCCP4833 (May 2017) (approving the amount of \$15,000 out of \$4 million toward settlement of
14 PAGA claims); *Flores v. Dart Container Corp.*, No. 2:19-cv-00083 WBS JDP, 2021 U.S. Dist.
15 LEXIS 6897, at *3 (E.D. Cal. Jan. 12, 2021) (approving the amount of \$15,000 out of \$411,000
16 towards settlement of PAGA claims); *Dawson v. Hitco Carbon Composites, Inc.*, No. CV 16-07337
17 PSG (FFMx), 2019 U.S. Dist. LEXIS 226687, at *6-7 (C.D. Cal. Nov. 25, 2019) (approving the
18 amount of \$10,000 of \$1.1 million toward settlement of PAGA claims); *Brown v. CVS Pharmacy,*
19 *Inc.*, No. CV15-7631 PSG (PJWx), 2017 U.S. Dist. LEXIS 182309, at *3 (C.D. Cal. Apr. 24, 2017)
20 (approving the amount of \$20,000 of \$3 million gross settlement towards settlement of PAGA
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22 ¹ Under PAGA, courts have considerable discretion to reduce the penalty award. In *Thurman v.*
23 *Bayshore Transit Management, Inc.*, 203 Cal.App.4th 1112, 1135-1136 (2012), the court found no
24 abuse of discretion when the trial court reduced the penalty by 30 percent based on the facts of the
25 case, ruling that “[t]o do otherwise under the particular facts and circumstances of this case would
26 be unjust, arbitrary, oppressive, and confiscatory.” Some trial courts have actually awarded no civil
27 penalties, even when Labor Code violations are established. *See Makabi v. Gedalia*, 2016 Cal. App.
28 Unpub. 1489, *5-7 (2nd Dist. Ct. of App. Mar. 6, 2016) (no PAGA penalties were awarded by the
Los Angeles County Superior Court) (unpublished decision); *In re Taco Bell Wage & Hour Actions*,
No. 1:07-cv-01314-SAB, 2016 U.S. Dist. LEXIS 48557, *40-43 (E.D. Cal. Apr. 6, 2016) (PAGA
penalties denied after trial).

1 claims); *Nordstrom Commissions Case*, 186 Cal.App.4th 576, 589 (2010) (finding no abuse of
2 discretion by the trial court in approving a settlement that allocates \$0 toward the settlement of
3 PAGA claims that were at issue in the lawsuit); *Alcala v. Meyer Logistics, Inc.*, No. CV 17-7211
4 PSG (AGRx), 2019 U.S. Dist. LEXIS 166879, at *26 (C.D. Cal. June 17, 2019) (finding that courts
5 approve PAGA settlements that fall within zero to two percent of gross settlement recovery). Here,
6 the value obtained for settlement of the PAGA claims is reasonable, and it will be distributed in
7 accordance with and in fulfillment of the objectives of the PAGA statute.

8 17. Had the case not settled, the Parties would have been required to conduct extensive
9 formal written discovery, and multiple depositions of party and percipient witnesses all over the
10 State of California, to prepare the case for trial. From the inception of this litigation, Defendant
11 indicated that it would aggressively litigate this case. Even if Defendant failed to succeed on its
12 defenses, litigating a complex PAGA action is inherently expensive, and the litigation could
13 continue beyond entry of judgment if either party were to appeal adverse rulings. Additionally, there
14 is a real possibility that Plaintiff would recover nothing, either for himself or on behalf of the State
15 of California or other Aggrieved Employees, after years of costly and labor-intensive litigation.
16 Avoiding these risks and the likelihood of future contentious litigation, which would involve
17 significant costs, favors settlement.

18 18. Defendant argued that no penalties prior to the PAGA notification should be
19 awarded because the violations were not intentional. Defendant could also argue that the
20 subsequent violations under PAGA only start to accrue after employers receive notice through a
21 citation from the Labor Commissioner, which would have significantly decreased Defendants's
22 exposure. *See Amaral v. Cintas Corp. No. 2*, 163 Cal. App. 4th 1157, 1209 (2008) (holding "[u]ntil
23 the employer has been notified that it is violating a Labor Code provision ... the employer cannot be
24 presumed to be aware that its continuing underpayment of employees is a 'violation' subject to
25 penalties."). *See also Amalgamated Transit Union Local 1309, AFL-CIO v. Laidlaw Transit Servs.,*
26 *Inc.*, 2009 WL 2448430 *1, *9 (S.D. Cal. 2009) ("For the purposes of subsequent violation penalties,
27 the issue is not whether [defendant] willfully violated the Labor Code, but rather whether a court or
28 commissioner had notified it of any violation."); *Robinson v. Open Top Sightseeing San Francisco,*

1 LLC, No. 14-CV-00852-PJH, 2018 WL 895572, at *20 (N.D. Cal. Feb. 14, 2018) (applying “initial”
2 penalty to each violation of § 226 and § 2699(f)(2) because there was no evidence showing
3 defendant was previously notified its practice violated § 226); *Willis v. Xerox Bus. Servs., LLC*, 2013
4 WL 605383, at *1, *6 (E.D. Cal. 2013) (“for a plaintiff to recover for a ‘subsequent violation,’ an
5 employer must have notice that it has violated the Labor Code”). As such, Defendant contends that
6 Plaintiff’s calculation are inflated not only because the “stack” penalties for a single person during
7 a single pay period, but because the penalties Plaintiff would award in each instances are at an
8 inapplicable (doubled) rate.

9 19. These defenses present a risk to the PAGA claim and the potential that some or all
10 of the PAGA penalties sought may not be awarded. While Plaintiff maintains that the PAGA claim
11 has merit, in reaching the Settlement, Plaintiff and his counsel took into account the strengths and
12 weaknesses of each side’s position and the uncertainty associated with continued litigation, trial,
13 and/or appeals.

14 20. Defendant disputes that the penalties assessed by Plaintiff and Plaintiff’s expert
15 would have been awarded. Further, it is Defendant’s contention that PAGA penalties cannot be
16 stacked, and that at most just one PAGA penalty can be awarded to an aggrieved employee in any
17 one pay period. See Labor Code section 2699 (f)(2) (authorizing awardable PAGA penalties to be
18 measure by “each “each aggrieved employee per pay period”); *Smith v. Lux Retail North America,*
19 *Inc.*, 2013 WL 2932243, at *1, *4 (N.D. Cal. 2013) (rejecting a pleading that sought the “stacking
20 of penalties”; “[f]or the single mistake of failing to include commissions in the overtime base,
21 plaintiff has asserted *five* (count them, five) separate labor code violations that could lead to
22 statutory penalties;” “is it plausible that we would really pile one penalty on another for a single
23 substantive wrong?”; noting that “no actual holding in any judicial decision has ever blessed such
24 stacking”). As such, and for this initial reason, Defendant contends that the maximum potential
25 recovery in this action is significantly lower than as stated by Plaintiff.

26 21. Defendant further argues that Plaintiff would still face significant practical
27 problems in aggregating any material exposure, as each violation would need to be proven as to
28 each person and for each period for which recovery is sought. Defendant argues that it is unlikely

1 that any significant number of current and former employees would travel to the venue of a trial,
2 stay at a hotel, prepare for and deliver testimony, all in exchange for – at most – 25% of \$50 or
3 \$100 (i.e. \$12.50 or \$25) for each pay period in which there was a violation. (“wage statement
4 penalties”). For purposes of section 226, “a good faith dispute presents when there is (1)
5 uncertainty in the law; (2) representations by an authority that compliance was not required; or (3)
6 an employer’s good faith mistaken belief grounded in a good faith dispute.” *Magadia v. Wal-Mart*
7 *Assocs., Inc.*, 384 F. Supp. 3d 1058 (N.D. Cal. 2019). “Mere recklessness” is not a basis for
8 liability. *Pedroza*, 2012 WL 9506073, *5.

9 22. Plaintiff’s Counsel also took into account that even if Plaintiff prevailed on the
10 merits of the PAGA claim, Defendant could persuasively argue that the Court should exercise its
11 discretion, under Labor Code § 2699(e), to reduce the amount of civil penalties assessed. A court
12 in a PAGA action has the same discretion “to assess a civil penalty” that the Labor Commissioner
13 would have, as well as complete discretion to “award a lesser amount than the maximum civil
14 penalty amount specified [by PAGA] if, based on the facts and circumstances of the particular case,
15 to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.”
16 And indeed, it is common for courts to reduce the penalties. *See e.g., Ghrdilyan v. RJ Financial, et*
17 *al.*, Los Angeles Superior Court, Case No. BC430633 (94% reduction); *Parr v. Golden State*
18 *Overnight Delivery Service, Inc.*, Alameda County Superior Court, Case No. RG12-618103 (94%
19 reduction); *Fleming v. Covidien, Inc.*, 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. Aug. 12, 2011)
20 (82% reduction); *Gola v. University of San Francisco*, Case No. CGC-18-565018 (Sup. Ct. Decision
21 dates July 21, 2020) (85% reduction of PAGA penalties).

22 23. Defendant contends that Plaintiff and the Aggrieved Employees were properly
23 compensated, and that they did not violate the Labor Code as to any of them. Defendant asserted
24 additional defenses to the PAGA claim as discussed above. These defenses present a risk to the
25 PAGA claim and the potential that some or all of the PAGA penalties sought may not be awarded

26 24. The underlying Labor Code section 203 claim was uncertain given the defenses
27 asserted for the underlying claims as well as the lack of evidence of the “willfulness” prong
28 necessary for a Labor Code §203 claim. Plaintiff’s counsel also recognized a risk of an adverse

1 finding given Defendant's apparently compliant policies and procedures at the time of mediation.
2 The labor code section 226 claim was dependent on the underlying claims for failure to pay wages.

3 **Individual Settlement**

4 25. The Settlement provides for an enhancement to be paid to Plaintiff in the amount of
5 \$7,500.00 in exchange for a general release of all known and unknown claims. Unlike Aggrieved
6 Employees, who are only releasing claims for civil penalties under PAGA, Plaintiff is releasing
7 individual claims. In exchange for a release of these claims, the Parties agreed to an Individual
8 Settlement Payment of \$7,500. In addition, Plaintiff contributed considerable time and effort to the
9 litigation of this case in order to enforce the California Labor Code on behalf of the State of
10 California and for the benefit of other Aggrieved Employees. Plaintiff gathered and produced
11 relevant documents and information, provided the facts and evidence necessary to attempt to prove
12 the allegations, and discussed her employment with her counsel. Plaintiff assisted counsel in
13 developing the theories and evidence to prepare for mediation. Plaintiff was available whenever his
14 counsel needed him and tried to obtain documents and information that would aid in the litigation
15 of the PAGA claims and pursuit of recovery on behalf of the State of California and the Covered
16 Employees.

17 26. Plaintiff as a PAGA Representative has provided extensive supporting documents
18 and assisted Counsel in developing information necessary to litigate and settle this case. Plaintiff
19 also conducted record review and consultation with counsel in preparation for discovery and
20 eventual mediation, and to assist in evaluating and proving the claims.

21 27. The Settlement is intended to fully and finally resolve the PAGA claims asserted
22 by Plaintiff on behalf of the State of California and aggrieved employees. This is only a settlement
23 of the PAGA claims for civil penalties, and is not a class settlement and does not release the
24 individual claims, if any, of the Aggrieved Employees. After deducting the Attorneys' Fees of
25 33.33% (\$198,333.31) and Costs of \$13,965.91. Settlement Administration Expenses not to exceed
26 (\$23,000.00) APEX Class Action Administration (the Settlement Administrator), and Plaintiff's
27 separate PAGA Representative Service Payment (\$7,500.00), the remaining Net Settlement Amount
28 is estimated to be \$351,000.00 and will be distributed to the LWDA and Aggrieved Employees. An

1 estimated \$87,624.99 (25% of the NSA) will be distributed to the Aggrieved Employees on a pro
2 rata basis, amounting to an average of \$19.43 per Aggrieved Employee. The remaining \$263,375.00
3 (75% of the NSA) is to be distributed to the LWDA.

4 28. As set forth in the Settlement Agreement, the amount of the Settlement Sum is
5 seven-hundred seventy-five thousand dollars (\$595,000.00) or approximately 20% of the maximum
6 discretionary assessed recoverable penalties, and includes an apportionment of attorneys' fees and
7 costs, payment to the settlement administrator, and a general release payment/enhancement award
8 to Plaintiff.

9 29. Based on their extensive experience litigating over 200 representative actions,
10 counsel for Plaintiff believes the settlement here is fair and reasonable and warrants approval by the
11 Court.

12 30. I and my firm have a great deal of experience in wage and hour class action litigation.
13 I have been certified and approved as class counsel in many other wage/hour class actions, and I am
14 currently litigating numerous others before federal and state courts. I have been working at James
15 Hawkins, APLC, formerly of Hawkins & Sofonio, since the commencement of my practice of law
16 in 2002. Since then, I have been committed solely to representing Plaintiffs in both individual
17 employment litigation and complex wage and hour class actions.

18 31. In approximately 2003 to 2004, I began to focus almost exclusively in class action
19 litigation. In my practice as a class action Plaintiffs' attorney, I have been involved in litigating,
20 mediating and settling numerous wage and hour class actions dealing with class sizes ranging from
21 several hundred to several thousand class members resulting in settlements ranging from six
22 figures to multimillion-dollar settlements.

23 31. The following is a non-exhaustive list of other class action cases that I also
24 litigated: Cole, et. al. v. CRST Van Expedited, et. al.; USDC, CENTRAL DISTRICT,
25 EASTERN DIVISION- Case No.: EDCV 08-1570, Wage and Hour Class Action seeking past
26 minimum wages and meal and rest break violations for drivers of Defendant in the State of
27 California; Coordination Proceeding Special Title [Rule 1550(b)] Wackenhut Wage and Hour
28 Cases, Los Angeles Superior Court, Case No. JCCP 4545, Wage and Hour Class Action seeking

1 past wages for overtime, meal and rest period violations for security guards employed by
2 defendant in the State of California; Coordination Proceeding Special Title [Rule 1550(b)]
3 California Logistics Wage and Hour Cases, Los Angeles Superior Court, Case No. JCCP 4622,
4 Wage and Hour Class Action seeking past wages for overtime, meal and rest period violations for
5 misclassified drivers employed by defendant in the State of California. Gonzalez v. Robertson's
6 Ready Mix, Ltd., Riverside County Superior Court, Case No. RIC 110770, Wage and Hour Class
7 Action seeking past wages.

8 32. The following is a non-exhaustive list of class action cases in which I was either
9 counsel or co-lead counsel in which final approval and attorneys' fees were granted along with my
10 corresponding hourly rates approved by the various courts throughout my class action career:
11 Walker v. Surf City Hospitality, aka Sharkeez, et al. OCSC, No. 05CC00293, hourly rate approved
12 in 2006 at \$350.00 per hour; Padron v. Universal Protection Service, OCSC No. 05CC00013 and
13 JCCP 4480, hourly rate approved in 2008 at \$400.00 per hour; Davila v. Beckman Coulter, Inc.,
14 OCSC No. 07CC01347, hourly rate approved in 2009 at \$500.00 per hour; Perez v. Naked Juice
15 Company of Glendora, Inc., et. al., LASC No. BC387088, hourly rate approved in 2009 at
16 \$500.00 per hour; Gonzalez v. Superior Industries International, Inc., et al., LASC No. BC
17 357912, approved fees of 33.3% of total settlement amount; Wilson v. MCP Foods, Inc. aka
18 Firmenich, OCSC No. 30-2008-00065584-CU-OE-CXC, hourly rate approved in 2010 at \$500.00
19 per hour; Garcia v. Quiksilver, Inc., OCSC Case No. 30-2008-00083896-CU-OE-CXC, hourly
20 rate approved in 2011 at \$500 per hour; Gutierrez, et. al. v. Hilton Hotels Corp., OCSC No. 30-
21 2009-00282002-CU-OE-CXC, hourly rate approved in 2011 at \$550.00 per hour; Sanchez v.
22 HVM LQ Management, LLC, USDC Central District No. SA CV11-00123 JAK (PJWx), hourly
23 rate approved in 2012 at \$560.00 per hour; Esquivel v. Fairmont Hotels and Resorts, U.S., Inc.,
24 Case No. 30-2010-00418849-CU-OE-CXC, hourly rate approved in 2012 at \$600.00 per hour;
25 Galvez v. Walt Disney Parks and Resorts U.S., Inc., OCSC NO. 30-2011-00473272-CU-OE-CXC,
26 hourly rate approved in 2013 at \$600.00 per hour; Fernando v. GCS Service, Inc., OCSC No. 30-
27 2011-00473162-CU-OE-CXC, hourly rate approved in 2013 at \$600.00 per hour; Navarro v. QS
28 Wholesale, Inc., OCSC Case No. 30-2011-00462143-CU-OE-CXC, hourly rate approved in 2013

1 at \$600.00 per hour; LoCascio, et. al. v. Hertz Local Edition, SDSC Case No. 37-2015-00020830,
2 hourly rate approved in 2017 at \$750 per hour; Terrado v. Accredited Debt Relief, et. al., SDSC
3 Case No: 37-2018-00014181-CU-OE-CTL, hourly rate approved in 2018 at \$750 per hour; Singer,
4 et. al. v. M.A.C. Cosmetics, SDSC Case No. 37-2019-00033695-CU-OE-CTL, hourly rate of
5 approved in 2020 at \$850 per hour.

6 33. Our firm served as class counsel in a number of significant wage and hour
7 settlements. Of particular note, in 2019, our firm was co-lead counsel in securing the largest
8 wage and hour class action settlement in California history at \$130,000,000. During this case,
9 Plaintiffs appealed a decertification order. This case involved several appeals. The appellate record
10 amassed an extensive appellate record comprising a 23-volume joint appendix, a three-volume
11 reporters transcript, five briefs, four letter briefs, two motions for judicial notice, a motion to
12 augment the record, and several additional letters informing the appellate court of new legal
13 authority issued after *Dukes*. The matter was argued to and submitted by the Court of Appeal on
14 September 15, 2016, and on November 21, 2016, the decertification order was reversed and the
15 case was remanded for further proceedings. (*Lubin v. The Wackenhut Corporation* (“*Lubin*”), 5
16 Cal. App. 5th 960 (2016)). Wackenhut filed a petition for review of the Court of Appeal decision
17 to the California Supreme Court. The Supreme Court denied Wackenhut’s petition for review of
18 *Lubin*. The Court of Appeal issued remittitur on April 10, 2017. Eventually through more
19 litigation, the parties were able to secure the 130 million settlement that was approved on October
20 21, 2019 by Judge Highberger in the Los Angeles Superior Court.

21 34. First, the requested fees are justified by the result achieved. Plaintiff’s Counsel
22 negotiated a recovery of \$595,000.00 and this result justifies the requested fees equal to 33.33%
23 of this recovery (\$198,333.31). This percentage is within the standard contingent recovery
24 percentage of one-third, and this percentage is what was expressly approved by the Supreme Court
25 in *Laffitte v. Robert Half Int’l Inc.*, 1 Cal.5th 480, 504, (2016). Second, the requested fees are
26 justified by the work performed.

27 35. A review of our firm’s detailed billing system reveals that to date, our firm as
28

1 Counsel, on behalf of Plaintiff and the Settlement Aggrieved Employees, invested numerous
2 hours litigating this matter through the date of this declaration and have invested attorney time at a
3 rate of more than double the requested fees. The rates charged by my firm are in line with the
4 prevailing rates of attorneys in the local legal community for similar work and, if this were a
5 commercial matter, these are the charges that would be made and presented to the client. These
6 hourly rates have been approved by Court's throughout California, including the Courts in the
7 Superior Court of California. The requested fees are reasonable.

8 36. Finally the award of litigation expenses is based upon the actual expenses incurred
9 by Plaintiff and Plaintiff's Counsel, and were all reasonably necessary to the litigation, and are
10 detailed in **Exhibit C** attached hereto. Under the Agreement, Plaintiffs' Counsel will be
11 recovering litigation expenses in the total amount of \$15,000.

12 37. Attached hereto as **Exhibit D** is a true and correct copy of the Proposed Settlement
13 Administrator's quote to administer the terms of the settlement.

14 38. Attached hereto as **Exhibit E** is a true and correct copy of the Proposed Notice of
15 PAGA Settlement.

16 39. Notice of the settlement and settlement agreement have been provided to the
17 LWDA.

18 40. The Parties request that the Court enter the accompanying proposed order,
19 approving the Settlement as permitted by Labor Code § 2699(1), in accordance with the terms and
20 conditions of the Settlement Agreement.

21 I declare under penalty of perjury under the laws of the State of California that the
22 foregoing is true and correct. Executed on September 19, 2023 at Irvine, California.

23
24 
25 James R. Hawkins
26
27
28

EXHIBIT A

PAGA SETTLEMENT AGREEMENT

This PAGA Settlement Agreement (“Agreement”) is made by and between plaintiff **Bua Warner** (“Plaintiff”), individually and on behalf of all Aggrieved Employees (as hereinafter defined) and the Labor and Workforce Development Agency (“LWDA”) pursuant to the Private Attorneys General Act (“PAGA”) on the one hand, and defendant **King’s Seafood Company, LLC** (“KSC”), on the other hand. The Agreement refers to Plaintiff and KSC collectively as “Parties,” or individually as “Party.”

1. DEFINITIONS.

- 1.1. “Action” means the Plaintiff’s PAGA lawsuit alleging wage and hour violations against King’s Seafood Company LLC captioned as *Bua Warner, on behalf of the general public as private attorney general v. King’s Seafood Company, LLC, a Delaware Limited Liability Company dba King’s Fish House*, initiated on January 12, 2022 via the filing of Plaintiff’s PAGA Notice, and then filed as a PAGA Representative Complaint Pursuant to the Private Attorneys General Act (Labor Code §§ 2698 et seq.) on March 23, 2022 and pending in Superior Court of the State of California, County of Los Angeles.
- 1.2. “Administrator” means Apex Class Action LLC, the neutral entity the Parties have agreed to appoint to administer the Settlement.
- 1.3. “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with approval of this Settlement.
- 1.4. “Aggrieved Employee” means all non-exempt employees employed by KSC in California during the PAGA Period. Defendant represents there are approximately 4,600 Aggrieved Employees through the mediation.
- 1.5. “Aggrieved Employee Data” means Aggrieved Employee identifying information in KSC’s possession including the Aggrieved Employee’s name, last-known mailing address, Social Security number, and number of PAGA Pay Periods.
- 1.6. “Aggrieved Employee Address Search” means the Administrator’s investigation and search for current Aggrieved Employee mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Aggrieved Employees.
- 1.7. “Court” means the Superior Court of California, County of Los Angeles.
- 1.8. “Defense Counsel” means Matthew B. Golper and Janet Soultanian of Ballard Rosenberg Golper & Savitt LLP.

- 1.9. "Effective Date" means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Approving the PAGA Settlement and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) the day the Court enters Judgment.
- 1.10. "Gross Settlement Amount" means \$595,000.00, which is the total amount KSC agrees to pay under the Settlement except as provided in Paragraph 8 below. The Gross Settlement Amount will be used to pay the Individual PAGA Payments the LWDA PAGA Payment, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, Plaintiff's PAGA Representative Service Payment, and the Administrator's Expenses Payment.
- 1.11. "Individual PAGA Payment" means the Aggrieved Employee's pro rata share of 25% of the PAGA Penalties calculated according to the number of Pay Periods the Aggrieved Employee worked during the PAGA Period.
- 1.12. "Judgment" means the judgment entered by the Court based upon the Final Approval.
- 1.13. "LWDA" means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).
- 1.14. "LWDA PAGA Payment" means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).
- 1.15. "Net Settlement Amount" means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, Plaintiff's PAGA Representative Service Payment, and the Administration Expenses Payment. The remainder is to be paid to Aggrieved Employees as Individual PAGA Payments.
- 1.16. "PAGA Counsel" means James R. Hawkins and Gregory Mauro of James Hawkins APLC, the attorneys representing the Plaintiff and Aggrieved Employees in the Action.
- 1.17. "PAGA Counsel Fees Payment" and "PAGA Counsel Litigation Expenses Payment" mean the amounts allocated to PAGA Counsel for reimbursement of reasonable attorneys' fees and expenses, respectively, incurred to prosecute the Action.
- 1.18. "PAGA Pay Period" means any Pay Period during which an Aggrieved Employee worked for KSC for at least one day during the PAGA Period.
- 1.19. "PAGA Period" means the period from beginning May 5, 2021, up to the earlier date of either approval of the settlement by the Court or 90 days from May 12, 2023.
- 1.20. "PAGA" means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).

- 1.21. "PAGA Notice" means Plaintiff's January 12, 2022, letter to KSC and the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).
- 1.22. "PAGA Representative Service Payment and General Release Payment" means payment to Plaintiff for initiating the Action and providing support in support of the Action and in exchange for a release of her individual claims.
- 1.23. "PAGA Penalties" means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees (\$87,624.99) and the 75% to LWDA (\$263,375.00) in settlement of PAGA claims.
- 1.24. "Plaintiff" means Bua Warner, the named plaintiff in the Action.
- 1.25. "Approval Order" means the proposed Court Order Granting Approval of PAGA Settlement.
- 1.26. "Released PAGA Claims" means the claims being released by the Plaintiff and PAGA Counsel and as described in Paragraph 5 below.
- 1.27. "Released Parties" means: KSC and each of its former and present directors, officers, shareholders, owners, members, attorneys, employees, insurers, predecessors, successors, assigns, and all related or affiliated entities.
- 1.28. "Settlement" means the disposition of the Action effected by this Agreement and the Judgment.
- 1.29. "KSC" means named Defendant King's Seafood Company, LLC.

2. RECITALS.

- 2.1. On March 23, 2022, Plaintiff commenced this Action by filing a Complaint alleging a single cause of action against KSC for alleged violations of the California Labor Code under PAGA. The Complaint is the operative complaint in the Action (the "Operative Complaint."). On October 14, 2022, KSC's motion to compel arbitration of the individual component of Plaintiff's claims was granted, and the representative component of the claims stayed pending the outcome of the California Supreme Court's decision in *Adolph v. Uber Technologies, Inc.*
- 2.2. Pursuant to Labor Code section 2699.3, subd. (a), Plaintiff gave timely written notice to KSC and the LWDA on January 12, 2022 by sending the PAGA Notice.
- 2.3. On May 12, 2023 the Parties participated in an all-day mediation presided over by Jeffrey Krivis, Esq. which led to this Agreement to settle the Action. At the conclusion of the mediation, the Parties reached an agreement to settle the matter. KSC denies the allegations in the Operative Complaint, denies any failure to comply with the laws

identified in in the Operative Complaint and denies any and all liability for the causes of action alleged. Plaintiff and PAGA Counsel believe this settlement is in the best interests of Aggrieved Employees based on all known facts and circumstances, including the risks of significant delay, the defenses asserted by Defendant, and potential appellate issues.

- 2.4. Prior to mediation, Plaintiff obtained, through informal discovery, a sample of 25% of the Aggrieved Employees' time and pay records and relevant policies, which were analyzed prior to mediation.
- 2.5. The Parties, PAGA Counsel and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

3. MONETARY TERMS.

- 3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 8 below, KSC promises to pay **\$595,000.00** and no more as the Gross Settlement Amount. KSC has no obligation to pay the Gross Settlement Amount prior to the deadline stated in Paragraph 6.1 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to KSC.
- 3.2. Payments from the Gross Settlement Amount. The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval:
 - 3.2.1. To PAGA Counsel: A PAGA Counsel Fees Payment of not more than 33.33% of the Gross Settlement Fund, which is currently estimated to be \$198,333.31, and PAGA Counsel Litigation Expenses Payment of not more than \$15,000.00. KSC will not oppose requests for Court approval of these payments provided that they do not exceed these amounts. Plaintiff and/or PAGA Counsel will file an application or motion for PAGA Counsel Fees Payment and PAGA Litigation Expenses Payment. If the Court approves a PAGA Counsel Fees Payment and/or a PAGA Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to PAGA Counsel or any other Plaintiff's Counsel arising from any claim to any portion any PAGA Counsel Fee Payment and/or PAGA Counsel Litigation Expenses Payment. The Administrator will pay the PAGA Counsel Fees Payment and PAGA Counsel Expenses Payment using one or more IRS 1099 Forms. PAGA Counsel assumes full responsibility and liability for taxes owed on the PAGA Counsel Fees Payment and the PAGA Counsel Litigation Expenses Payment and holds KSC harmless, and indemnifies KSC, from any dispute or controversy regarding any division or sharing of any of these Payments.

3.2.2. To the Administrator: An Administrator Expenses Payment not to exceed \$23,000 except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less, or the Court approves payment less than \$23,000, the Administrator will retain the remainder in the Net Settlement Amount.

3.2.3. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount \$351,000.00 to be paid from the Gross Settlement Amount, with 75% (\$263,375.00) allocated to the LWDA PAGA Payment and 25% (\$87,624.99) allocated to the Individual PAGA Payments.

3.2.3.1. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$87,624.99) by the total number of PAGA Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

3.2.4. To Plaintiff: Plaintiff's PAGA Representative Service Payment to Plaintiff of not more than \$7,500.00 (in addition to any Individual PAGA Payment Plaintiff is entitled to receive). KSC will not oppose Plaintiff's request for a PAGA Representative Service Payment that does not exceed this amount. If the Court approves a PAGA Representative Service Payment less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay the PAGA Representative Service Payment using IRS Form 1099. Plaintiff assumes full responsibility and liability for employee taxes owed on the PAGA Representative Service Payment.

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

4. SETTLEMENT FUNDING AND PAYMENTS.

4.1. Aggrieved Employee Data. Within 30 days of the Effective Date, KSC will simultaneously deliver the Aggrieved Employee Data to the Administrator in the form of a Microsoft Excel spreadsheet. To protect Aggrieved Employee' privacy rights, the Administrator must maintain the Aggrieved Employee Data in confidence, use the Aggrieved Employee Data only for purposes of this Settlement and for no other purpose, and restrict access to the Aggrieved Employee Data to Administrator employees who need access to the Aggrieved Employee Data to effect and perform under this Agreement. KSC has a continuing duty to immediately notify PAGA Counsel if it discovers that the Aggrieved Employee Data omitted employee identifying information and to provide corrected or updated Aggrieved Employee Data as soon as reasonably

feasible. Without any extension of the deadline by which KSC must send the Aggrieved Employee Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Aggrieved Employee Data.

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

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

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

4.3.2. The Administrator must conduct an Aggrieved Employee Address Search for all Aggrieved Employees whose checks are returned undelivered without USPS forwarding address. Within seven (7) days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Aggrieved Employee Address Search. The Administrator need not take further steps to deliver checks to Aggrieved Employees whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Aggrieved Employee whose original check was lost or misplaced, requested by the Aggrieved Employee prior to the void date.

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

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

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

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

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

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

5.2 **Release by Aggrieved Employees:** All Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for penalties under PAGA that were alleged, or reasonably could have been alleged, based on the facts and legal theories alleged in in the Operative Complaint and the PAGA Notice, including but not limited to, (1) failure to pay minimum, straight time, overtime, or double time wages, and failure to pay other wages of any kind during employment; (2) failure to timely pay wages due during employment; (3) failure to timely pay final wages due at separation; (4) failure to authorize and permit rest periods and failure to pay all rest period premium pay; (5) failure to provide meal periods and failure to pay all meal period premium pay; (6) failure to issue to Plaintiff and Aggrieved Employees accurate wage statements; (7) failure to maintain accurate records for Plaintiff and Aggrieved Employees; (9)

failure to pay Plaintiff and Aggrieved Employees all gratuities and/or service charges; (10) failure to reimburse or indemnify Plaintiff and Aggrieved Employees for all business expenses ("Released Claims").

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

6 MOTION OR APPLICATION FOR APPROVAL OF SETTLEMENT. The Parties agree to jointly prepare and file an application or motion for approval of this Settlement.

- 6.1 Plaintiff's Responsibilities. Plaintiff will prepare and deliver to Defense Counsel all documents necessary for obtaining approval of this Settlement under Labor Code Section 2699, subd. (f)(2)) including (i) a draft proposed Order Granting Approval of PAGA Settlement; and (ii) a bid from the Administrator with its "not to exceed" bid for administering the Settlement.
- 6.2 Responsibilities of PAGA Counsel. PAGA Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the stipulation or motion for approval of this Settlement no later than 45 days after the full execution of this Agreement and, if necessary, obtaining a prompt hearing date for the motion or stipulation and appearing in Court to advocate in favor of the motion or stipulation. PAGA Counsel is responsible for delivering the Court's Order to the Administrator.
- 6.3 Duty to Cooperate. If the Parties disagree on any aspect of the proposed stipulation or motion for approval of this Settlement and/or the supporting declarations and documents, PAGA Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant the motion for approval of this Settlement or conditions its approval on any material change to this Agreement, PAGA Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court's concerns.

7 SETTLEMENT ADMINISTRATION.

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

- 7.2 Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports state and federal tax authorities.
- 7.3 Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation section 468B-1.
- 7.4 Administrator Duties. The Administrator has a duty to perform or observe all tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

8 AGGRIEVED EMPLOYEE SIZE ESTIMATES AND ESCALATOR CLAUSE. The Gross Settlement Amount was calculated with, and is premised on, the understanding that, as of November 15, 2022, the Aggrieved Employees had worked approximately 119,218 Pay Periods during the PAGA Period. If the actual number of Pay Periods worked by Aggrieved Employees as of November 15, 2022, is greater than 10% of this estimate, then Defendant has the option to either: (1) agree to increase the Gross Settlement Fund on a proportional basis above 10% (i.e., if there is a 11% increase in the number of workweeks during the PAGA Period as of November 15, 2022, Defendant would agree to increase the Gross Settlement Fund by 1%); or (2) elect to end the PAGA Period on an earlier date at the Defendant's discretion in order to limit the covered Pay Periods to 10% more than the estimate provided as of November 15, 2022, in lieu of paying an increase to the Gross Settlement.

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

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

10 ADDITIONAL PROVISIONS.

- 10.1 No Admission of Liability or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims.

Nothing in this Agreement is intended or should be construed as an admission by KSC that any of the allegations in the Operative Complaint have merit or that KSC has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that KSC's defenses in the Action have merit. The Parties agree that representative treatment is for purposes of this Settlement only. If, for any reason the Court does not approve this Settlement, KSC reserves all available defenses to the claims in the Action, and Plaintiff reserves the right to contest KSC's defenses. The Settlement, this Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

- 10.2 Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.
- 10.3 Attorney Authorization. PAGA Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiff and KSC, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.
- 10.4 Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.
- 10.5 No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.
- 10.6 No Tax Advice. Neither Plaintiff, PAGA Counsel, KSC nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise
- 10.7 Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.

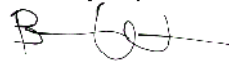
- 10.8 Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
- 10.9 Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.
- 10.10 Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
- 10.11 Confidentiality. To the extent permitted by law, all agreements made, and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.
- 10.12 Use and Return of Aggrieved Employee Data. Information provided to PAGA Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the PAGA Data provided to PAGA Counsel by KSC in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than 90 days after the Administrator discharges its obligation to pay out of all Settlement funds, Plaintiff shall destroy all paper and electronic versions of Aggrieved Employee Data received from KSC unless, prior to the Administrator's payment of all Settlement Funds, KSC makes a written request to PAGA Counsel for the return, rather than the destructions, of Aggrieved Employee Data.

- 10.13 Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
- 10.14 Calendar Days. Unless otherwise noted, all reference to “days” in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.
- 10.15 Notice. All notices, demands or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:
- To Plaintiff:
- James Hawkins
Gregory Mauro
James Hawkins APLC
9880 Research Drive, Suite 200
Irvine, CA 92618
- To KSC:
- Matthew B. Golper
Ballard Rosenberg Golper & Savitt
15760 Ventura Blvd., 18th Floor
Encino, CA 91436
- 10.16 Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e., DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.
- 10.17 Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.

[SIGNATURES ON NEXT PAGE]

Dated: 8/15/2023, 2023

PLAINTIFF

DocuSigned by:

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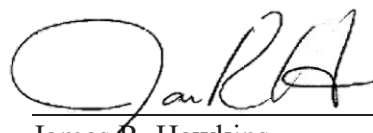
Bua Warner, Plaintiff

Dated: August 15, 2023

CLASS COUNSEL

JAMES HAWKINS APLC

By:


James R. Hawkins
Gregory Mauro

Attorneys for Plaintiff and the Aggrieved
Employees

Dated: _____, 2023

KING'S SEAFOOD COMPANY, LLC

By:

Kelly Ellerman for Defendant

Dated: _____, 2023

DEFENDANT'S COUNSEL

BALLARD ROSENBERG GOLPER & SAVITT LLP

By:

Matthew B. Golper

Attorneys for Defendant King's Seafood
Company, LLC

Dated: _____, 2023

PLAINTIFF

Bua Warner, Plaintiff

Dated: _____, 2023

CLASS COUNSEL
JAMES HAWKINS APLC

By: _____

James R. Hawkins
Gregory Mauro

Attorneys for Plaintiff and the Aggrieved
Employees

Dated: Aug 17, 2023

KING'S SEAFOOD COMPANY, LLC

By: _____

Kelly Ellerman
Kelly Ellerman for Defendant

Dated: August 18, 2023

DEFENDANT'S COUNSEL
BALLARD ROSENBERG GOLPER & SAVITT LLP

By: _____

Matthew B. Golper
Matthew B. Golper

Attorneys for Defendant King's Seafood
Company, LLC

EXHIBIT B

JAMES *JH* HAWKINS

A PROFESSIONAL LAW CORPORATION

9880 RESEARCH DRIVE, SUITE 200, IRVINE, CALIFORNIA 92618

TELEPHONE (949) 387-7200; FACSIMILE (949) 387-6676

January 12, 2022

Via LWDA Website

Labor and Workforce Development Agency

Attn: PAGA Administrator

1515 Clay Street, Suite 801

Oakland, CA 94612

<http://www.dir.ca.gov/Private-Attorneys-General-Act>

Via Certified Mail

KING'S SEAFOOD COMPANY, LLC, a Delaware Limited Liability Company dba

KING'S FISH HOUSE

Agent for Service of Process: Kelly Ellerman

3185 Airway Avenue, Suite J

Costa Mesa, CA 92626

Receipt No. 7021 0950 0000 7376 6795

Re: NOTICE PURSUANT TO LABOR CODE SECTIONS 2698, *et seq.*

To Whom It May Concern:

PLEASE TAKE NOTICE that plaintiff Bua Warner individually and on behalf of all similarly situated representative aggrieved employees, gives NOTICE to commence and/or amend a civil action pursuant to California Labor Code Sections 2698, *et seq.* Plaintiff hereby gives written notice by certified mail to the Labor and Workforce Development Agency, and KING'S SEAFOOD COMPANY, LLC, a Delaware Limited Liability Company dba KING'S FISH HOUSE, through its Agent for Service of Process.

Plaintiff hereby attaches a copy of the Proposed PAGA Representative Action Complaint to be filed in the Los Angeles County Superior Court, as though fully set forth herewith setting out the specific provisions of the Labor Code Plaintiff alleges have been violated, including the facts and theories. All labor provisions in the Proposed PAGA Representative Action Complaint alleged to have been violated pertain to all entities and individuals named in the Complaints, even if not expressly specified.

Please advise within sixty (60) days of the post mark on this letter if the LWDA intends to investigate these claims. Thank you, and if you have any questions, please do not hesitate to contact me.

Very Truly Yours,

A handwritten signature in black ink, appearing to read 'Gregory Mauro', with a stylized, cursive script.

Gregory Mauro

Enclosure: Proposed PAGA Representative Action Complaint

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

**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.

ASSIGNED FOR ALL PURPOSES TO:

JUDGE:

DEPT:

**PAGA REPRESENTATIVE ACTION
COMPLAINT PURSUANT TO THE
PRIVATE ATTORNEYS GENERAL ACT
(Labor Code §§ 2698 *et seq*).**

COMES NOW Plaintiff BUA WARNER (“Plaintiff”), on behalf the general public and all non-exempt aggrieved employees, acting on behalf of the California Attorney General as private attorney general, and asserts claims against Defendants KING’S SEAFOOD COMPANY, LLC, a Delaware Limited Liability Company dba KING’S FISH HOUSE; and DOES 1-50, inclusive (collectively “Defendants”) as follows:

I. INTRODUCTION

1. This is a representative action for recovery of penalties under the Private Attorneys General Act of 2004 (“PAGA”), Cal. Lab. Code sections 2698 *et seq.* PAGA permits “aggrieved employees” to bring a lawsuit as a representative action on behalf of the general public as private attorney general and all other current and former aggrieved employees, to recover civil penalties and address an employer’s violations of the California Labor Code.

2. In this case, Defendants violated various provisions of the California Labor Code. As set forth below, Defendants implemented policies and practices which led to Defendant’s: (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’s of pay or accurately pay an additional hour’s 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’s of pay or accurately pay an additional hour’s 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; (f) failure to accurately pay gratuities. As a result Plaintiff seeks penalties under Labor Code 2698, *et seq.* on behalf of the general public as private attorney general and all other aggrieved employees.

II. JURISDICTION AND VENUE

3. The California Superior Court has jurisdiction over this action pursuant to California Constitution Article VI, Section 10, which grants the Superior Court “original jurisdiction in all cases except those given by statute to other trial courts.” The statutes under which this action is brought do not give jurisdiction to any other court.

4. This Court has jurisdiction over Defendants because, upon information and belief,

1 each Defendant either has sufficient minimum contacts in California, or otherwise intentionally
2 avails itself of the California market so as to render the exercise of jurisdiction over it by the
3 California Courts consistent with traditional notions of fair play and substantial justice.

4 5. Venue as to each Defendant is proper in this judicial district pursuant to Code of
5 Civil Procedure section 395. Defendants are doing business throughout California, including but
6 not limited to Los Angeles County, and each Defendant is within the jurisdiction of this Court for
7 service of process purposes. The unlawful acts alleged herein have a direct effect on Plaintiff and
8 all other aggrieved employees within the State of California. Defendants employ numerous
9 aggrieved employees in in the State of California.

10 6. On information and belief, Defendants have conducted business within the State of
11 California during the purported liability period and continue to conduct business throughout the
12 State of California. The unlawful acts alleged herein have had a direct effect on Plaintiff, and the
13 similarly situated non-exempt aggrieved employees within California.

14 7. The California Superior Court also has jurisdiction in this matter because on
15 information and belief there are no federal questions at issue, as the issues herein are based solely
16 on California statutes and law, including the California Labor Code, the IWC Wage Orders, the
17 California Code of Civil Procedure, the California Civil Code, and the California Business and
18 Professions Code.

19 8. On information and belief, during the statutory liability period and continuing to
20 the present ("liability period"), Defendant consistently maintained and enforced against
21 Defendant's Non-Exempt Aggrieved Employees, among others, the following unlawful practices
22 and policies, in violation of California state wage and hour laws: (a) failure to pay wages including
23 overtime; (b) failure to provide meal periods for every work period exceeding more than five (5)
24 and ten (10) hours per day and failure to pay an additional hour's of pay or accurately pay an
25 additional hour's of pay in lieu of providing a meal period; (c) failure to provide rest breaks for
26 every four hours or major fraction thereof worked and failure to pay an additional hour's of pay or
27 accurately pay an additional hour's of pay in lieu of providing a rest period; (d) failing to pay all
28 wages earned and owed upon separation from Defendant's employ; (e) failing to provide accurate

1 itemized wage statements; (f) failure to accurately pay gratuities.

2 9. Plaintiff on behalf of the general public as private attorney general and all other
3 aggrieved employees bring this action pursuant to Labor Code 2698, et seq. for violations
4 enumerated under 2699.5 as follows: sections 201-203, 351, 510, 512, 558, 226, 226.3, 226.7,
5 1174, 1174.5, 1175, 1194, 1197, 1197.1, 1198, and seeking penalties, interest, attorneys' fees and
6 costs.

7 **III. PARTIES**

8 **A. Plaintiff**

9 10. Plaintiff, BUA WARNER, was at all times relevant to this action, a resident of
10 California. Plaintiff was employed by Defendants in approximately April 2021 as a Non-Exempt
11 Employee with the title of Server and worked during the liability period for Defendants until
12 Plaintiff's separation from Defendants' employ in approximately June 2021. Plaintiff's duties
13 included but were not limited to taking order, serving food, cleaning up and customer service.

14 11. As Defendants' employee, Plaintiff, and all other aggrieved employees were
15 regularly required to and subsequently suffered:

- 16 a) perform work subject to the control of the employer without being compensated all
17 wages including overtime, all in violation of California labor laws, regulations, and the
18 Industrial Welfare Commission Wage Order ("IWC");
- 19 b) work without being permitted or authorized a minimum ten-minute rest period for every
20 four hours or major fraction thereof worked and not compensated one (1) hour of pay at
21 his regular rate of compensation for each workday that a rest period was not provided, all
22 in violation of California labor laws, regulations, and the Industrial Welfare Commission
23 Wage Orders ("IWC");
- 24 c) work in excess of five and ten hours per day without being provided meal periods and
25 not compensated one (1) hour of pay at the regular rate of compensation for each
26 workday that a meal period was not provided, all in violation of California labor laws,
27 regulations, and the Industrial Welfare Commission Wage Orders ("IWC");
- 28 d) not accurately paid gratuities;

- e) not timely paid all wages; and
- f) not provided accurate itemized wage statements.

12. On information and belief, Defendants willfully failed to pay all earned wages in the form regular wages and overtime wages, and meal and rest period premium wages, to its Non-Exempt Employees and members of the Representative Group; nor have Defendants returned to Plaintiff or members of the Representative Group, upon or after separation from employment with Defendants, all wages earned and owing. Plaintiff seeks penalties under Labor Code 2698, *et seq.* on behalf of the general public as private attorney general and all other aggrieved employees.

B. Defendants

13. Defendants KING'S SEAFOOD COMPANY, LLC, a Delaware Limited Liability Company dba KING'S FISH HOUSE operates as a restaurant. Plaintiff estimates there are in excess of 100 Non-Exempt Employees who work or have worked for Defendants over the last year.

14. Other than identified herein, Plaintiff is unaware of the true names, capacities, relationships and extent of participation in the conduct alleged herein, of the defendants sued as DOES 1 through 50, but is informed and believes and thereon alleges that said defendants are legally responsible for the wrongful conduct alleged herein and therefore sues these defendants by such fictitious names. Plaintiff will amend this complaint when their true names and capacities are ascertained.

15. Plaintiff is informed and believes and thereon alleges that each Defendant, directly or indirectly, or through agents or other persons, employed Plaintiff and other members of the Representative Group, and exercised control over their wages, hours, and working conditions. Plaintiff is informed and believes and thereon alleges that each defendant acted in all respects pertinent to this action as the agent of the other defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each defendant are legally attributable to the other defendants.

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1 **IV. GENERAL ALLEGATIONS**

2 16. At all times set forth herein, Defendants employed Plaintiff and other persons in
3 the capacity of non-exempt positions, however titled, throughout the state of California.

4 17. Plaintiff is informed and believes Aggrieved Employees have at all times pertinent
5 hereto been Non-Exempt within the meaning of the California Labor Code and the implementing
6 rules and regulations of the IWC California Wage Orders.

7 18. Defendants continue to employ Non-Exempt Employees, however titled, in
8 California and implement a uniform set of policies and practices to all non-exempt employees, as
9 they were all engaged in the generic job duties related to Defendant's restaurant business.

10 19. Plaintiff is informed and believes, and thereon alleges, that Defendants are and were
11 advised by skilled lawyers and other professionals, employees, and advisors with knowledge of
12 the requirements of California's wage and employment laws.

13 20. On information and belief, during the relevant time frame, Plaintiff and Aggrieved
14 Employees frequently worked well over eight (8) hours in a day and forty (40) hours in a work
15 week.

16 21. During the relevant time frame, Defendants compensated Plaintiff and Aggrieved
17 Employees based upon an hourly rate.

18 22. On information and belief, during the relevant time frame, Plaintiff and Aggrieved
19 Employees typically worked five (5) days a week.

20 23. Plaintiff is informed and believes that the Aggrieved Employees were required to
21 keep similar schedules.

22 24. In addition, the Aggrieved Employees frequently worked in excess of eight (8)
23 hours a day and/or over forty (40) hours in a workweek, but were not properly paid for such time
24 at the employee's correct rate of pay per hour for overtime.

25 25. On information and belief, Defendants also required Plaintiff and Aggrieved
26 Employees to perform work-related tasks off-the-clock. For instance, before Plaintiff and
27 Aggrieved Employees were allowed to clock in they were required to engage in a health screening
28 that involved finding a manager to take their temperature and answer a symptom questionnaire on

1 the Defendant's Aloha system. This would often take up to 15 minutes each time, all while Plaintiff
2 and, on information and belief, Aggrieved Employees were off-the-clock. In addition, there was
3 often a line of employees waiting to clock in at the Aloha station. The system would not allow
4 Plaintiff or Aggrieved Employees to clock in more than one minute before or after a shift start
5 time. As such, when there was a line, Plaintiff and Aggrieved Employees would have to find a
6 manager to clock the employee in, which would take up to 10 minutes, all while Plaintiff and
7 Aggrieved Employees were off-the-clock. Also, due to Defendants' work schedule and duty
8 requirements, Plaintiff and Aggrieved Employees would have to continue working and performing
9 work-related tasks after clocking out, for approximately 30 minutes each time. Also, Plaintiff and
10 Aggrieved Employees were required to participate in an orientation when hired and this orientation
11 was conducted off-the-clock and, upon information and belief, Plaintiff and Aggrieved Employees
12 were not compensated for this off-the-clock work-related orientation. This resulted in an
13 underpayment of minimum and overtime wages.

14 26. Defendants also failed to properly calculate Plaintiff's and the Aggrieved
15 Employees' regular rate of pay including but not limited to by failing to include all forms of
16 compensation/remuneration in the regular rate including but not limited to bonuses, incentives,
17 commissions, and other compensation for overtime calculation purposes.

18 27. On information and belief, Defendant routinely adds a service charge of 18% to the
19 total cost of food and beverages served to a party of 8 or more that would dine at its restaurant.
20 The service charges are in the form of automatic surcharges that appear as a line item on the
21 customer's bill, which customers are required to pay, and which reasonably appear to be gratuities
22 for the service staff as they were described as "service" charges.

23 28. It is a custom in the industry to treat sums designated as "service charges" as
24 gratuities for the food service worker employees. However, Defendant does not remit the proceeds
25 of the service charges to Plaintiff and Aggrieved Employees who serve the food and beverages.
26 Instead, Defendant has a policy and practice of retaining those service charges for itself. As a
27 result, Plaintiff and Aggrieved Employees do not receive the proceeds of the services charges as
28 gratuities, to which they are entitled under California law.

1 29. Upon information and belief, Defendant accepted tips from its customers. In
2 addition, each night Plaintiff and Aggrieved Employees were required to give a portion of their
3 personal tips received to Defendant as a part of a “tip pooling” scheme. Plaintiff and Aggrieved
4 Employees were not advised of the amount of tips they had received, nor the percentage of those
5 tips that Plaintiff and Aggrieved Employees were to turn over as a part of the “tip pooling” scheme.
6 Instead, upon information and belief, the tip amounts turned over to Defendants were calculated
7 by the Defendant’s Aloha system. Plaintiff and the Aggrieved Employees were regularly required
8 to work shifts in excess of five hours without being provided a lawful meal period and over ten
9 hours in a day without being provided a second lawful meal period as required by law.

10 30. During the relevant time, as a consequence of Defendants’ staffing and scheduling
11 practices, work demands, and Defendants’ policies and practices, Defendants frequently failed to
12 provide Plaintiff and the Aggrieved Employees timely, legally complaint uninterrupted 30-minute
13 meal periods on shifts over five hours as required by law.

14 31. Similarly, as a consequence of Defendants’ staffing and scheduling practices, work
15 demands, and Defendants’ policies and practices, Defendants frequently failed to provide Plaintiff
16 and the Aggrieved Employees legally compliant second meal periods on shifts over ten hours as
17 required by law.

18 32. On information and belief, Plaintiff and Aggrieved Employees did not waive their
19 rights to meal periods under the law.

20 33. Plaintiff and the Aggrieved Employees were not provided with valid lawful on-duty
21 meal periods.

22 34. Despite the above-mentioned meal period violations, Defendants failed to
23 compensate Plaintiff, and on information and belief, failed to compensate Aggrieved Employees,
24 one additional hour of pay at their regular rate as required by California law when meal periods
25 were not timely or lawfully provided in a compliant manner.

26 35. Plaintiff is informed and believes, and thereon alleges, that Defendants know,
27 should know, knew, and/or should have known that Plaintiff and the other Aggrieved Employees
28 were entitled to receive premium wages based on their regular rate of pay under Labor Code §226.7

1 but were not receiving such compensation.

2 36. In addition, during the relevant time frame, Plaintiff and the Non-Exempt
3 Employees were systematically not authorized and permitted to take one net ten-minute paid, rest
4 period for every four hours worked or major fraction thereof, which is a violation of the Labor
5 Code and IWC wage order.

6 37. Defendants maintained and enforced scheduling practices, policies, and imposed
7 work demands that frequently required Plaintiff and Aggrieved Employees to forego their lawful,
8 paid rest periods of a net ten minutes for every four hours worked or major fraction thereof. Such
9 requisite rest periods were not timely authorized and permitted as a result of Defendants' failure
10 to provide relief for Plaintiff and Aggrieved Employees to take their lawfully required breaks.

11 38. Despite the above-mentioned rest period violations, Defendants did not compensate
12 Plaintiff, and on information and belief, did not pay Aggrieved Employees one additional hour of
13 pay at their regular rate as required by California law, including Labor Code section 226.7 and the
14 applicable IWC wage order, for each day on which lawful rest periods were not authorized and
15 permitted.

16 39. Defendants also failed to provide accurate, lawful itemized wage statements to
17 Plaintiff and the Aggrieved Employees in part because of the above specified violations. In
18 addition, upon information and belief, Defendants omitted an accurate itemization of total hours
19 worked, including premiums due and owing for meal and rest period violations, gross pay and net
20 pay figures from Plaintiff and the Aggrieved Employees' wage statements.

21 40. Plaintiff is informed and believes, and thereon alleges, that at all times herein
22 mentioned, Defendants knew that at the time of termination of employment (or within 72 hours
23 thereof for resignations without prior notice as the case may be) they had a duty to accurately
24 compensate Plaintiff and Aggrieved Employees for all wages owed including minimum wages,
25 meal and rest period premiums, and that Defendants had the financial ability to pay such
26 compensation, but willfully, knowingly, recklessly, and/or intentionally failed to do so in part
27 because of the above-specified violations.

28 41. Upon information and belief, Defendants knew and or should have known that it is

improper to implement policies and commit unlawful acts such as:

(a) requiring employees to work four (4) hours or a major fraction thereof without being provided a minimum ten (10) minute rest period and without compensating the employees with one (1) hour of pay at the employees' regular rate of compensation for each workday that a rest period was not provided;

(b) requiring employees to work in excess of five (5) hours or ten (10) hours per day without being provided an uninterrupted thirty minute meal period and/or a second meal period, and without compensating employees with one (1) hour of pay at the regular rate of compensation for each workday that such a meal period was not provided;

(c) failing to provide accurate itemized wage statements;

(d) failing to timely pay Plaintiff and Aggrieved Employees ;

(e) failure to accurately pay gratuities;

(f) failing to pay wages, including overtime.

42. In addition to the violations above, and on information and belief, Defendants knew they had a duty to compensate Plaintiff and aggrieved employees for the allegations asserted herein, and that Defendants had the financial ability to pay such compensation, but willfully, knowingly, recklessly, and/or intentionally failed to do so.

V. REPRESENTATIVE CLAIMS

THE PRIVATE ATTORNEYS GENERAL ACT- LABOR CODE §§ 2698 et seq.

43. Plaintiff incorporates by reference and re-alleges each and every allegation contained above, as though fully set forth herein.

44. On or about January 12, 2022, Plaintiff complied with notice requirements pursuant to Labor Code section 2699.3. A copy of the letter sent to the LWDA is attached hereto as **Exhibit A**, indicating that the LWDA and Defendants were put on notice of the claims alleged here and that the notice requirement has been satisfied. Sixty-five days have passed and the LWDA has not indicated intent to investigate the claims. Therefore, Plaintiff may proceed with this action in a representative capacity. The substance and violations set forth in this Complaint of which the LWDA was provided timely notice, Plaintiff has also sent a copy of this PAGA Representative

1 Action Complaint to the LWDA.

2 45. Plaintiff is an aggrieved employee as defined in Labor Code Section 2699(a).
3 Plaintiff brings this cause of action on behalf of all current and former California Non-Exempt
4 Employees of Defendants.

5 46. Pursuant to Labor Code section 2699(a) Plaintiff seek to recover civil penalties for
6 which Defendants are liable due to numerous Labor Code violations as set forth in this Complaint,
7 including without limitation Labor Code section 201-203, 351, 510, 512, 558, 226, 226.3, 226.7,
8 1174, 1174.5, 1175, 1194, 1197, 1197.1, 1198, and 2698 *et seq.*, applicable IWC Wage Orders and
9 California Code of Regulations, Title 8, section 11000 *et seq.*

10 47. At all times relevant, Plaintiff and all other aggrieved employees regularly
11 performed non-exempt work in excess of 50% of the time, and thus, were subject to the meal and
12 rest break requirements of the applicable IWC wage order and the Labor Code.

13 48. Defendants violated Labor Code section 200, 558, 1194, 1197, by failing to
14 accurately pay at least minimum wages due as a result of Defendants' requirement that Plaintiff
15 and Aggrieved Employees perform work-related tasks off-the-clock.

16 49. Defendants violated Labor Code section 510, and 1194 by failing to accurately pay
17 overtime wages owed as discussed above due to Defendants' failure to incorporate bonuses and
18 other forms of remuneration as described above into the regular rate of pay for overtime calculation
19 purposes. Defendants further failed to accurately pay overtime wages due to as a result of
20 Defendants' requirement that Plaintiff and Aggrieved Employees perform work-related tasks off-
21 the-clock. Therefore, Defendants violated section 510, and 1194 by not compensating its Non-
22 Exempt Employees for work performed in excess of eight hours (8) in a day or forty hours in a
23 work week (40). Section 510 of the Labor Code codifies the right to overtime compensation at the
24 rate of one and one-half times the regular rate of pay for all hours worked in excess of eight (8)
25 hours in a day or forty (40) hours in a work week and to overtime compensation twice the regular
26 rate of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours
27 in a day on the seventh day of work in a particular work week.

28 50. Defendants violated Labor Code section 351 by failing to accurately pay gratuities

1 owed as discussed above due to Defendants' "tip pooling" scheme and "service charge" scheme
2 described above under which Defendant collected, took, or received gratuity that was paid, given
3 to, or left for Plaintiff and Aggrieved Employees by a patron. As a proximate result of the
4 aforementioned violations, Plaintiff and all other aggrieved employees have been damaged in an
5 amount according to proof at time of trial.

6 51. Defendants failed to provide Plaintiff and all other aggrieved employees
7 uninterrupted duty free meal periods of not less than thirty (30) minutes. Defendants implemented
8 and enforced policies of on duty meal period practices which required employees to work during
9 their meal periods, to forego their meal periods, and/or to return to work from meal periods prior
10 to thirty (30) uninterrupted minutes. As a proximate result of the aforementioned violations,
11 Plaintiff and all other aggrieved employees have been damaged in an amount according to proof
12 at time of trial.

13 52. Plaintiff, and on information and belief, all aggrieved employees, were
14 systematically not permitted or authorized to take ten minute rest periods for every four hours
15 worked or major fraction thereof, which is a violation of the Labor Code and IWC wage order.
16 Plaintiff and on information and belief, aggrieved employees, were not compensated with one hour
17 of wages for every day in which a rest period was missed or untimely as a result of Defendants'
18 policies, practices, or work demands. By failing to authorize and permit a ten-minute rest period
19 for every four hours or major fraction thereof worked per day by its Non-Exempt Employees, and
20 by failing to provide compensation for such non-provided or shortened rest periods, as alleged
21 above, Defendants willfully violated the provisions of Labor Code sections 226.7, 512 and the
22 applicable IWC Wage Order.

23 53. Defendants also willfully violated Labor Code sections 201-203 by failing to
24 provide all owed wages at separation from employment. Labor Code sections 201 and 202 require
25 Defendants to pay their employees all wages due either at time of firing, or within seventy-two
26 (72) hours of voluntary separation, if not sooner. Section 203 of the Labor Code provides that if
27 an employer willfully fails to timely pay such wages the employer must, as a penalty, continue to
28 pay the subject employee's wages until the back wages are paid in full or an action is commenced.

1 The penalty cannot exceed 30 days of wages.

2 54. Plaintiff and all other aggrieved employees who were separated from employment
3 are entitled to compensation for all forms of wages earned, including but not limited to
4 compensation regular and overtime wages, and for non-provided meal and rest periods, but to date
5 have not received such compensation, therefore entitling them to penalties under PAGA for
6 violations of Labor Code sections 201-203.

7 55. On information and belief, Defendants willfully failed to pay all wages due and
8 owing upon separation from employment. These wages include regular and overtime wages, and
9 meal and rest period premiums.

10 56. On information and belief, Defendants failed to provide accurate itemized wage
11 statements which failed to include the rate of pay and total hours worked per pay period, failed to
12 account for all hours worked, including overtime, and lastly the accurate accounting of, the lawful
13 meal and rest period premiums due and owing to Plaintiff and the aggrieved employees, pursuant
14 to Labor Code section 226(a).

15 57. Defendants have failed to provide Plaintiff and Aggrieved Employees rates of pay
16 and the hours for which they worked for any given pay period.

17 58. Defendants have failed to accurately record all time worked.

18 59. Defendants have also failed to accurately record the meal and rest period premiums
19 owed and all wages owed per pay period.

20 60. Plaintiff and Aggrieved Employees have been injured as they were unable to
21 determine whether they had been paid correctly for all hours worked per pay period among other
22 things

23 61. Pursuant to Labor Code section 226.3, any employer who violates subdivision (a)
24 of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)
25 per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee
26 for each violation in a subsequent citation, for which the employer fails to provide the employee a
27 wage deduction statement or fails to keep the records required in subdivision (a) of Section 226.

28 62. Additionally, Defendants have no accurate records relating to aggrieved

1 employees' work periods, meal periods, total daily hours worked, total hours worked per payroll
2 period and applicable pay rates, in violation of Wage Order. Similarly, Defendants failed to
3 maintain accurate records relating to hours worked daily in violation of Labor Code sections
4 1174(d), 1174.5.

5 63. As a result of Defendants' unlawful conduct, Plaintiff and Aggrieved employees
6 are entitled to penalties to the extent they were not paid at the prevailing wage rate for all hours
7 worked.

8 64. Plaintiff and the Representative Aggrieved Employees are entitled to recover
9 Penalties and attorneys' fees and costs under Labor Code section 2698, et seq.

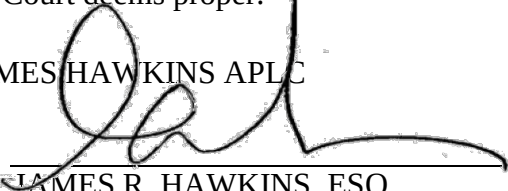
10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiff prays for judgment against Defendants, as follows:

- 12 1. For penalties according to proof, pursuant to Labor Code §§ 2698 et seq.;
- 13 2. For reasonable attorneys' fees and costs; and
- 14 3. For such other and further relief as the Court deems proper.

15 Dated: January 12, 2022

JAMES HAWKINS APLC

16 By: 

17 JAMES R. HAWKINS, ESQ.
18 GREGORY MAURO, ESQ.
19 MICHAEL CALVO, ESQ.
20 JEANNE SARMIENTO, ESQ.
Attorneys for Plaintiff BUA WARNER and
on behalf of the general public as private
attorney general

EXHIBIT C

Matter Billing Detail

Report Date: 9/18/2023
Report Time: 2:16PM
Page: 1 of 2
User ID: L. Whitson

JAMES HAWKINS APLC

Date Range: 01/01/1900 to 09/13/2023

Client: KINGFISH - Bua Warner

Matter: KINGSSEAFOOD - King's Seafood Company LLC dba King's Fish House PAGA - Bua Warner

Date	Expense Code	Description	Debit	Credit	Billing Status	On Hold	Invoice Number	Check Number	Payee
		Balance Forward:	\$0.00						
01/12/2022	FIL	Filing Fee - LWDA PAGA Letter Filing Fee	\$75.00		Unbilled				
01/12/2022	POS	Postage for LWDA Letter to Agent (certified mail)	\$8.36		Unbilled				
03/21/2022	FST	First Legal Network - E-Filing, complaint, summons, civil case cover (2), civil case cover sheet IN#30192286	\$587.40		Unbilled				
04/13/2022	FST	First Legal Network - E-Filing - NAR , Plaintiff's Notice of Case Management Statement IN#30195930	\$75.40		Unbilled				
07/06/2022	FST	First Legal Network- E-Filing, CM Statement IN#30205948	\$37.70		Unbilled				
09/29/2022	FST	First Legal Network -- E-Filing: Request for Judicial Ntc IN#30212421	\$37.70		Unbilled				
09/29/2022	FST	First Legal Network - E-Filing: CM Statement IN#30212421	\$37.70		Unbilled				
09/29/2022	FST	First Legal Network - E-Filing: Plf's Limited Opposition IN#30212421	\$37.70		Unbilled				
01/20/2023	MED	Mediation Services- IN#24712 paid via ECheck	\$10,000.00		Unbilled				
02/10/2023	FST	First Legal Network - E-Filing - Of Case Reassignment and Order for IN# 30227367	\$39.95		Unbilled				
05/11/2023	CRT	Court Documents - Dec of Pouya Chami	\$19.00		Unbilled				
05/24/2023	EXA	Expert Analysis - IN# 8726 Check # 10863	\$3,010.00		Unbilled				
		Total:	<u>\$13,965.91</u>	<u>\$0.00</u>					
		Balance:	<u>\$13,965.91</u>						

Matter Billing Detail

JAMES HAWKINS APLC

Date	Expense Code	Description	Debit	Credit	Billing Status	On Hold	Invoice Number	Check Number	Payee
Total Fees Billed- - - - -			\$0.00						
Total Fees Unbilled : - - - - -			\$0.00						
Total Fees Received : - - - - -			\$0.00						
Total Soft Cost Billed : - - - - -			\$0.00						
Total Soft Cost Unbilled : - - - - -			\$0.00						
Total Soft Cost Received : - - - - -			\$0.00						
Total Hard Cost Billed : - - - - -			\$0.00						
Total Hard Cost Unbilled : - - - - -			\$13,965.91						
Total Hard Cost Received : - - - - -			\$0.00						
Total Taxes Billed : - - - - -			\$0.00						
Total Taxes Unbilled : - - - - -			\$0.00						
Total Taxes Received : - - - - -			\$0.00						
Total Late Charges Billed : - - - - -			\$0.00						
Total Late Charges Unbilled: - - - - -			\$0.00						
Total Late Charges Received : - - - - -			\$0.00						
Trust Balance: - - - - -			\$0.00						

EXHIBIT D



Quotation Request:

Greg Mauro
James Hawkins ALPC
greg@jameshawkinsaplc.com
949.387.7200

Case Name: Warner vs King's Seafood

Date: Monday, July 31, 2023

RFP Number: 72000013

Prepared By:

Sean Hartranft
Apex Class Action LLC
Sean@apexclassaction.com
949.878.3676

Settlement Specifications	
Number of Aggrieved Employees	4,800
Certified Language Translation:	No
Static Settlement Website	No
Percentage of Undeliverable Mail	20%

Professional Services	Fee Calculation	Rate(s)	Quantity	Estimated Cost
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Data Analytics and Standardization				
Import and Standardize Data*	Per Hour	\$125.00	5	\$625.00
Data Analyst	Per Hour	\$150.00	5	\$750.00
*Data provided must be in a workable format. Apex can standardized provided data at an additional cost of \$150/hr.				
Sub Total:				\$1,375.00

Project Management				
Project Management	Per Hour	\$150.00	6	\$900.00
Project Coordinator	Per Hour	\$90.00	4	\$360.00
Data Analyst and Reporting	Per Hour	\$140.00	4	\$560.00
Sub Total:				\$1,820.00

Toll-Free Contact Center, Website, Reporting & Pre Distribution				
Form Set Up	Per Hour	\$120.00	1	\$120.00
Bilingual Toll-Free Contact Center	Static Rate	\$750.00	1	\$750.00
NCOA Address Update (USPS)	Static Rate	\$965.00	1	\$965.00
Settlement Status Reports	Static Rate	\$750.00	1	Waived
Sub Total:				\$1,835.00



Professional Services	Fee Calculation	Rate(s)	Quantity	Estimated Cost
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Distribution & Settlement Fund Management				
Settlement Calculations (Preliminary and Final)	Per Hour	\$120.00	8	\$960.00
Account Management and Reconciliation	Per Hour	\$140.00	8	\$1,120.00
Print & Mail Distribution Settlement Check (W-2/1099)	Per Piece	\$1.00	4,800	\$4,800.00
USPS First Class Postage	Per Piece	\$0.65	4,800	\$3,120.00
Remail Distribution to Updated Address (Skip Trace)	Per Piece	\$1.50	480	\$720.00
Individual Income Tax Preparation & Reporting	Per Hour	\$100.00	10	\$1,000.00
QSF Income Tax Reporting (per calendar year)	Per Year	\$1,250.00	1	\$1,250.00
			Sub Total:	\$12,970.00

Post Distribution Reconciliation				
Bank Account Reconciliation	Per Hour	\$135.00	6	\$810.00
Project Management Reconciliation	Per Hour	\$100.00	7	\$700.00
Declarations	Per Hour	\$120.00	4	\$480.00
			Sub Total:	\$1,990.00

TOTAL ESTIMATED ADMINISTRATION COST:				\$19,990.00
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Thank you for your business!



Terms & Conditions

The following Terms and Conditions govern the provision of all services to be provided by Apex Class Action and its affiliates ("Apex") to the Client. These terms and conditions are binding and shall apply to all services provided by Apex in relation to any related services or products.

1. **Services:** Apex commits to providing the Client with the administrative services detailed in the attached Proposal (the "Services").

2. **Payment Terms:** As compensation for the legal services to be provided, the Client agrees to pay Apex all fees detailed in the Proposal. The fees quoted in the Proposal (and any subsequent proposals for additional services) are estimates based on the information provided to Apex by the Client. Apex makes no representation that the estimated fees in the Proposal or any subsequent proposals for additional services shall equal the actual fees charged by Apex to the Client, which fees (including individual line items) may be greater or less than estimated. If additional services are requested on an hourly basis and are not specifically detailed in the Proposal, Apex will prepare estimates for such services subject to approval by the Client. In the performance of such additional services, Apex will charge standard hourly fees which shall apply.

3. **Incurred Expenses:** In relation to the provision of services outlined in this agreement, the Client agrees to reimburse Apex for all reasonable out-of-pocket expenses incurred. Such expenses may include, but are not limited to, costs associated with postage, media production or publication, banking fees, brokerage fees, messenger and delivery service expenses, travel expenses, filing fees, office supplies, meals, staff overtime expenses, and other related costs and expenses. If not otherwise specified in writing, fees for print notice and certain expenses, such as media publication and postage, must be paid immediately upon invoicing and, in certain cases, at least ten (10) days prior to the date on which such expenses will be incurred.

4. **Invoicing:** Apex shall present invoices for its fees and expenses on a monthly basis, except as provided in Section 3. The Client agrees to pay each invoice within 30 days of receipt. In case of non-payment within 90 days of the billing date, an additional service charge of 1.5% per month may apply. Apex reserves the right to increase its prices, charges, and rates annually, subject to reasonable adjustments. If any price increases exceed 10%, Apex shall give thirty (30) days' notice to the Client. In the event of any unpaid invoices beyond 120 days of the due date, Apex reserves the right to withhold services and reports until payment is received, subject to notice to the Client. It is important to note that Apex's failure to provide services and reports in such instances shall not constitute a default under this agreement.

5. **Case Duration:** The duration of these Terms and Conditions, except for the data storage obligations stated in Section 13, shall be in effect until 30 days following the completion of the Services as described in the Proposal. The parties may extend these Terms and Conditions in writing for a mutually agreed-upon period beyond this initial 30-day period.

6. **Termination of Services:** Either party may terminate the Services by providing thirty (30) days written notice to the other party. Alternatively, termination may occur immediately upon written notice for Cause, as defined below. Cause means (i) Apex's gross negligence or willful misconduct that causes serious and material harm to the Client; (ii) the Client's failure to pay Apex invoices for more than one hundred twenty (120) days from the date of the invoice; or (iii) the accrual of invoices or unpaid services where Apex reasonably believes it will not be paid. Termination of the Services shall not relieve the Client of its obligation to pay Apex for services rendered prior to the termination.

7. **Independent Contractor:** As an independent contractor, Apex will provide services under the terms of this agreement. It is agreed that neither Apex nor any of its employees will be considered an employee of the Client. Consequently, Apex and its employees will not be eligible for any benefits provided by the Client to its employees. The Client will not make any tax deductions from the payments due to Apex for state or federal tax purposes. Apex will be solely responsible for paying all taxes and other payments due on payments received from the Client under this agreement.

8. **Apex warrants that the Services outlined in the Proposal will be performed in accordance with the standards generally adhered to by professionals providing similar services. It is acknowledged that the Services may entail the likelihood of some human and machine errors, omissions, delays, and losses that may result in damage. However, Apex shall not be held liable for such errors, omissions, delays, or losses unless they are caused by its gross negligence or willful misconduct. In the event of any breach of this warranty by Apex, the Client's sole remedy will be limited to Apex's rerunning, at its expense, any inaccurate output provided that such inaccuracies occurred solely as a result of Apex's gross negligence or willful misconduct under this agreement.**

9. **Limitation of Liability:** The Client acknowledges that Apex shall not be held liable for any consequential, special, or incidental damages incurred by the Client in relation to the performance of Services, whether the claim is based on breach of warranty, contract, tort (including negligence), strict liability, or any other grounds. Under no circumstances shall Apex's liability to the Client, for any Losses (including court costs and reasonable attorney's fees), arising out of or in connection with these Terms and Conditions, exceed the total amount charged or chargeable to the Client for the specific service(s) that caused the Losses.

10. **Indemnification:** The Client agrees to indemnify and hold harmless Apex from any losses, suits, actions, judgments, fines, costs, liabilities, or claims arising from any action or proceeding relating to the Services provided by Apex, regardless of whether or not it results in liability (collectively referred to as "Indemnified Claims"). However, this indemnification provision shall not apply to the extent that such Indemnified Claims are caused by Apex's willful misconduct, gross negligence, or breach of these Terms and Conditions. This provision shall survive termination of the Services.

11. **Confidentiality:** Apex will uphold strict confidentiality between Apex and the Client and applies to all non-public records, documents, systems, procedures, processes, software, and other information received by either party in connection with the performance of services under these terms. Both Apex and the Client agree to keep confidential all such non-public information, including any material marked or identified as confidential or proprietary. Any such confidential information shall not be disclosed, provided, disseminated, or otherwise made available to any third party, except as required to fulfill the parties' obligations under these terms. The parties acknowledge that in the event of any request to disclose any confidential information in connection with a legal or administrative proceeding, or otherwise to comply with a legal requirement, prompt notice of such request must be given to the other party to enable that party to seek an appropriate protective order or other remedy or to waive compliance with the relevant provisions of these terms. If the Client seeks a protective order or another remedy, Apex, at the Client's expense, will cooperate with and assist the Client in such efforts. If the Client fails to obtain a protective order or waives compliance with the relevant provisions of these terms, Apex will disclose only that portion of the confidential information that it determines it is required to disclose. This confidentiality provision shall survive termination of the services provided. Both parties acknowledge and agree that any breach of these terms may cause irreparable harm to the non-breaching party and that injunctive relief may be necessary to prevent any actual or threatened breach. The terms set forth between the parties supersede all prior negotiations, understandings, and agreements between the parties concerning confidentiality. These terms may only be amended in writing and signed by both parties.

12. **Ownership of the programs, system data, and materials provided by Apex to the Client during the course of providing services herein shall solely belong to Apex. It is acknowledged that fees and expenses paid by the Client do not confer any rights in such property. It is also understood that the said property is made available to the Client solely for the purpose of using it during and in connection with the services provided by Apex.**

13. **Upon the completion of the administration and unless retention instructions are ordered by the court, Apex will notify the client that it will destroy and/or return all confidential information and property within 90 days upon the client's written request. Alternatively, the material may be stored for one year at a monthly fee of \$1.50 per storage box for paper documents and \$0.01 per image for electronic copies over a period of three years, which compensates Apex for its electronic and hard-copy storage costs. Apex will not be liable for any damages, liability, or expenses incurred in connection with any delay in delivery of, or damage to disks, magnetic tapes, or any input data provided by the client or its representatives unless Apex has agreed in writing to assume such responsibility.**

14. **COMPLETE AGREEMENT.** These Terms and Conditions, along with the attached Proposal, represent the complete agreement and understanding between the parties and override any prior agreements (whether written or oral) between Apex and the Client regarding the subject matter. Any modification to these Terms and Conditions may only be made in writing and must be signed by both Apex and the Client. The headings in this document are included for convenience only and do not alter or restrict any provisions in these Terms and Conditions. They may not be used in the interpretation of these Terms and Conditions.

15. **This provision outlines the requirements for providing notice or other communication under this agreement. All such communications must be in writing and can be delivered either by personal delivery or through U.S. Mail with prepaid postage or overnight courier. Once delivered personally or sent through the mail, the notice will be considered given after five (5) days from the deposit date in the U.S. Mail. Alternatively, if sent through an overnight courier, the notice will be considered given one business day after delivery to the such courier. It's important to note that the notice must be provided to a responsible officer or principal of the Client or Apex, depending on the case.**

16. **Force Majeure:** In the event of any failure or delay in performance due to circumstances beyond Apex's control, including but not limited to strikes, lockouts, fires, floods, acts of God or public enemy, riots, civil disorders, insurrections, war or war conditions, or interference by civil or military authorities, Apex shall not be held liable for any resulting loss or damage. The time for performance under this agreement shall be extended for a period equal to the duration of the disabling cause and a reasonable time thereafter. This provision shall constitute a force majeure clause and shall be construed accordingly.

17. **The applicable state and federal laws shall govern the interpretation and enforcement of these Terms and Conditions. No choice of law or conflict of laws provisions shall affect this governing law provision.**

18. **Severability:** This applies to all clauses and covenants contained within these Terms and Conditions. In the event that any clause or covenant is deemed invalid, illegal, or unenforceable, the remaining provisions shall remain valid and enforceable to the fullest extent permissible by law. The validity, legality, and enforceability of the remaining provisions shall in no way be affected or impaired by the invalidity, illegality, or unenforceability of any provision deemed so.

19. **Nonwaiver:** This applies to these Terms and Conditions. This means that any failure by one party to enforce a provision of these terms on one or more occasions shall not be construed as a waiver of that provision. In other words, any failure to enforce a provision does not give up the right to enforce it in the future. All provisions of these Terms and Conditions remain in full force and effect, regardless of any prior failure to enforce them.

EXHIBIT E

NOTICE OF PAGA SETTLEMENT AND RELEASE OF CLAIMS

Bua Warner v. King's Seafood Company, LLC dba King's Fish House

Los Angeles County Superior Court, Case No. 22STCV10155

<<Name>>

<<Address>>

<<City>>, <<State>> <<Zip Code>>

XX - XX - _ _ _ _

I. NOTICE OF PAGA SETTLEMENT

The Los Angeles County Superior Court (the “Court”) has approved of a settlement in the above-captioned action filed by Bua Warner (“Plaintiff”) on behalf of herself and all other Aggrieved Employees.

In this lawsuit, Plaintiff is seeking to recover civil penalties for violations of the California Labor Code on behalf of herself, the California Labor and Workforce Development Agency (“LWDA”), and other Aggrieved Employees pursuant to the California Private Attorneys General Act (“PAGA”). These civil penalties are based on Plaintiff’s allegations that Defendant King's Seafood Company, LLC (“Defendant”) failed to: pay wages including overtime; provide meal periods for every work period exceeding more than five and ten hours per day and pay an additional hour of pay or accurately pay an additional hour of pay in lieu of providing a meal period; provide rest breaks for every four hours or major fraction thereof worked and pay an additional hour of pay or accurately pay an additional hour of pay in lieu of providing a rest period; pay all wages earned and owed upon separation from Defendant’s employ; provide accurate, itemized wage statements; and accurately pay gratuities.

The Court has **not** made a determination about Plaintiff’s claims. This Notice is not to be understood as an expression of any opinion by the Court as to the merits of Plaintiff’s claims or Defendant’s legal and factual defenses to those claims.

Defendant denies Plaintiff’s allegations and denies any liability or wrongdoing of any kind. It maintains that its practices were lawful and at all times, it has complied with the California Labor Code, as applicable. Defendant enters into this Settlement with no admission of liability and solely for the purposes of compromising and settling the action to avoid the cost and operational burden of continued litigation.

You are receiving this Notice because you are in the group of employees referred to as “Aggrieved Employees,” which is defined as: “all non-exempt employees employed by Defendant in California during the PAGA Period.” The “PAGA Period” is defined as May 5, 2021 to the earlier date of either approval of the settlement by the Court or 90 days from May 12, 2023.

II. INDIVIDUAL PAGA PAYMENT

Each individual PAGA payment was calculated on a pro rata basis (i.e., proportional) based on the number of pay periods worked by each Aggrieved Employee during the PAGA Period. Your individual PAGA payment has been calculated as \$[**AMOUNT PAID TO THIS EMPLOYEE**]. Your payment is enclosed with this Notice.

III. RELEASE

The Court has approved of the Parties' Settlement Agreement ("Settlement"). By operation of the Settlement's terms, all Aggrieved Employees including you will release Defendant and each of its former and present directors, officers, shareholders, owners, members, attorneys, employees, insurers, predecessors, successors, assigns, and all related or affiliated entities ("Released Parties") from any and all claims for civil penalties under the PAGA with respect to the underlying Labor Code violations that were alleged or that could have been alleged based on the facts and legal theories alleged in the Complaint and in Plaintiff's January 12, 2022 letter to the LWDA, including but not limited to: (1) failure to pay minimum, straight time, overtime, or double time wages, and failure to pay other wages of any kind during employment; (2) failure to timely pay wages due during employment; (3) failure to timely pay final wages due at separation; (4) failure to authorize and permit rest periods and failure to pay all rest period premium pay; (5) failure to provide meal periods and failure to pay all meal period premium pay; (6) failure to issue to Plaintiff and Aggrieved Employees accurate wage statements; (7) failure to maintain accurate records for Plaintiff and Aggrieved Employees; (8) failure to pay Plaintiff and Aggrieved Employees all gratuities and/or service charges; and (9) failure to reimburse or indemnify Plaintiff and Aggrieved Employees for all business expenses, that arose during the PAGA Period. These allegations are described in the second paragraph of Section I on the previous page.

Upon entry of the Order approving the Settlement, any Aggrieved Employee covered by this Agreement (including you) will be barred from proceeding with any claim under the PAGA released by this Settlement.

IV. SETTLEMENT ADMINISTRATOR

PLEASE DO NOT CALL THE COURT ABOUT THIS NOTICE.

You may call the Settlement Administrator, _____, at [ADMINISTRATOR INFO] with any questions.

Settlement checks will be void 180 days after issuance if not deposited or cashed. In such event, the Settlement Administrator shall direct all unclaimed funds to the California State Controller's Office under the unclaimed property laws in the name of the Aggrieved Employee to whom the check was issued. If your check is lost or misplaced, you should contact the Settlement Administrator immediately to request a replacement.