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Attorneys for Plaintiff, Cesar Rodriguez Vinalay,
on behalf of himself and all others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF MONTEREY**

CESAR RODRIGUEZ VINALAY, on
behalf of himself and all others similarly
situated,

Plaintiff,

vs.

RESTAURANT PACIFIC GROUP, LLC,
a California Limited Liability company,
and DOES 1-50, inclusive,

Defendants.

Case No. 22CV000486

ASSIGNED FOR ALL PURPOSES TO:
JUDGE: Thomas W. Wills
DEPT: 15

**DECLARATION OF JAMES R. HAWKINS
IN SUPPORT OF PLAINTIFF'S MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION AND PAGA
SETTLEMENT.**

DECLARATION OF JAMES R. HAWKINS

I, James R. Hawkins, declare as follows:

1. I am an individual over the age of 18. I am a partner at the law firm of James Hawkins, APLC. I am one of the attorneys of record for Plaintiff Cesar Rodriguez Vinalay (hereinafter referred to as "Plaintiff" or "Class Representative"), who commenced this Class and PAGA action on behalf of the Class Members and Aggrieved Employees. I submit this declaration in support of the Motion for Preliminary Approval of Class Action and PAGA

1 Settlement, which Plaintiff filed concurrently herewith, along with the supporting Memorandum
2 of Points and Authorities. I have personal knowledge of the facts set forth below, and if called to
3 testify regarding them, I could and would do so competently.

4 2. On February 18, 2022, Plaintiff Cesar Rodriguez Vinalay filed his initial
5 Complaint in this Action in Monterey County on behalf of himself and all others similarly
6 situated. On the same date Plaintiff provided notice to the Labor and Workforce Development
7 Agency (“LWDA”) and the Defendant of his intent to seek civil penalties against Defendant for
8 alleged Labor Code violations, pursuant to Labor Code Section 2699 *et seq.* On April 26, 2022,
9 Plaintiff filed a First Amended Complaint (“FAC”), the current operative pleading which alleges
10 that Defendants: (1) failed to pay all lawful wages; (2) failed to provide lawful meal and rest
11 periods or compensation in lieu thereof; (3) failed to reimburse employee expenses; (4) failed to
12 timely pay all wages owed during employment and at the termination of employment; (5) failed
13 to comply with itemized wage statement provisions; (6) violated the UCL; and (6) violated the
14 Private Attorneys General Act (“PAGA”) (referred to herein as the “Litigation”). In his FAC
15 Plaintiff sought unpaid lawful wages, unpaid rest and meal period compensation, penalties and
16 other equitable relief, and reasonable attorneys’ fees and costs. (See Exhibit 2, LWDA Notice).

17 3. Plaintiff, on behalf of himself and all Class Members, brings this action pursuant
18 to Labor Code sections 201, 202, 203, 204, 210, 226, 226.7, 227.3, 510, 512, 558, 1194, 1198,
19 1199, 2802, Title 8, Section 11050, and any other applicable Industrial Welfare Commission
20 (“IWC”) Wage Orders, seeking unpaid lawful wages, unpaid rest and meal period compensation,
21 penalties and other equitable relief, and reasonable attorneys’ fees and costs..

22 4. Throughout this litigation, Defendants have denied Plaintiff’s allegations and
23 raised defenses to his claims, individually and on a class wide basis. Defendant maintains that its
24 policies and/or practices meet the requirements of the Labor Code and applicable Wage Orders.

25 5. To date, no class has been certified and the court has not made any findings that
26 Defendants engaged in any wrongdoing or are in violation of any state law, rule or regulation,
27 with respect to the issues presented in the litigation.

28 6. Through both formal and informal discovery, Plaintiff and Defendant have

1 exchanged extensive documents and information. Plaintiff propounded written discovery but, in
2 an effort, to focus on resolution, the Parties agreed on exchanging informal discovery. Defendant
3 responded to Plaintiff's informal requests for information and documentation related to the claims
4 asserted. The named Defendant produced timecard and payroll records, and reports related to
5 putative class members. The timekeeping and payroll data was submitted to an expert, Berger
6 Consulting Group, Inc, for extensive analysis.

7 7. Defendants provided to Plaintiff his complete personnel file, information regarding
8 the number of non-exempt employees during the relevant time period and corporate documents
9 reflecting Defendant's wage and hour policies and practices.

10 8. After conducting extensive formal and informal discovery, exchanging relevant
11 information, and engaging in numerous discussions regarding the claims alleged, on September
12 27, 2022, the parties participated in a private, all-day mediation with the Honorable Leo Wagner
13 (Ret.), an experienced wage and hour class action mediator. At the mediation, the parties
14 exchanged further information and documentation concerning Plaintiff's claims and Defendants'
15 defenses; the Parties were unable to reach a settlement. Over the next several months the Parties,
16 with the assistance of the mediator, continued discussions to resolve the matter which culminated
17 in a mediator's proposal. On February 13, 2023, the Parties accepted the mediator's proposal.

18 9. Thereafter, the parties continued negotiations regarding the specific terms of the
19 settlement and in the process exchanged additional information regarding the same. The parties
20 exchanged numerous drafts of the Settlement Agreement and the Notice of Class Action and
21 PAGA Settlement and engaged in discussions regarding proposed revisions thereto. The final
22 terms and provisions of the Joint Stipulation of Class Action Settlement ("Settlement" or
23 "Settlement Agreement") were approved by all the parties on May 22, 2023. The Parties now
24 seek the Court's preliminary approval of this Settlement Agreement (See Exhibit 1 Settlement
25 Agreement).

26 10. Based on their own respective independent investigations and evaluations and after
27 considering the sharply disputed factual and legal issues involved in this matter, the risks
28 attending further prosecution in light of certification issues faced due to the *Brinker Rest. Corp. v.*

1 *Super. Ct.*, (2012) 53 Cal. 4th 1004 (“*Brinker*”) decision, the discovery and investigation
2 conducted to date and the benefits received under the settlement, Plaintiff and his counsel are of
3 the opinion that settlement for the consideration and on the terms set forth in the Settlement
4 Agreement is fair, reasonable, and adequate and is in the best interests of the named Plaintiff and
5 the Class Members.

6 11. Over the past twenty plus years, attorneys at my firm and I have represented,
7 mediated, and settled many other class actions filed by employees alleging wage and hour
8 violations and have knowledge of the strengths and weaknesses of the claims pled and defenses
9 available in this case and the benefits of the proposed Settlement under the circumstances of the
10 case.

11 12. In analyzing the settlement, we took into consideration the potential liability in this
12 matter based on documents and information produced by Defendant in formal discovery and in
13 preparation for mediation, expert analysis of timekeeping records and payroll data, and the nature
14 of the claims and Defendant’s defenses thereto. We also considered the significant risks that class
15 certification could be denied on the central claim and/or that a merits decision on the central
16 claim would not favor the Class. We also considered the expense and length of continued
17 proceedings necessary to continue the Action against Defendant through trial and any possible
18 appeals. We are aware of the burdens of proof necessary to establish liability for the claims
19 asserted in the Action, Defendant’s defenses thereto, and the difficulties in establishing the
20 alleged damages.

21 13. The damage model used in calculating potential liability was largely based on the
22 number of class members, the number of pay periods, the average rate of pay and a random
23 sample of time records, wage statements and documents produced by Defendant in preparation
24 for mediation. Based on the information provided by Defendant, the estimated number of work
25 weeks is 12,756 during the Class Period and over 1,010 pay periods during the PAGA Period.
26 The average hourly rate of pay is approximately \$14.54. Plaintiff’s counsel estimated the
27 maximum potential liability as follows:

28 a. Failure to Pay Lawful Wages for All Hours Worked – Plaintiff’s claim for failure

1 to pay wages owed is based on allegations that he and Class Members worked “off the clock” to
2 complete certain tasks for which they did not receive compensation. For example, during the
3 liability period, Plaintiff contends that he and Class Members were required to park and walk
4 several minutes to the work site. They also were required to don appropriate uniforms and
5 clothing for their work shift after arriving and before clocking in as those uniforms were kept at
6 the Scales restaurant. To complete these pre-work requirements, Plaintiff and Class Members
7 arrived at work 15-20 minutes before their scheduled start time. The same activity was required
8 post shift as well; taking off the uniforms and clothing and walking back to their required parking
9 area. Plaintiff and Class Members were not allowed to clock in before they were ready to begin
10 work, nor was the walk from the required parking area accounted for. Upon being hired, Plaintiff
11 states he was informed by the human resources director, he needed to be at work at least 10
12 minutes before the start of his shift. Plaintiff contends that he and Class Members were not
13 compensated for this “off the clock” work (whether it be regular wages, overtime, or meal break
14 premiums) and thus not paid all lawful wages owed including overtime and/or minimum wage.
15 Due to Defendants’ policies and practices and “off the clock” work, Plaintiff and Class Members
16 would work more than eight (8) hours in a day or more than forty (40) hours in a workweek, and
17 they were not paid the proper 1 ½ times the regular rate of pay. Defendants’ clock in and clock
18 out policies do not account for the time it takes to comply with the actual practices, even if
19 Plaintiff and Class Members were allowed to clock in 5 minutes before their shift as stated in the
20 Defendants’ Employee Handbook. As a result of Defendants’ unlawful practices, Plaintiff and
21 Class Members were not paid all lawful wages earned during the liability period. Thus, Plaintiff
22 and Class Members were required to work more than eight (8) hours in a day or more than forty
23 (40) hours in a workweek without proper overtime compensation. Defendant also failed to pay
24 minimum wages for work performed “off the clock”. Defendant adamantly disputes the
25 allegations that employees were required to perform any work “off the clock” during meal breaks
26 and/or at the end of their shifts and claimed that Plaintiff lacked evidence of any “off the clock”
27 work, or that it maintained unlawful policies. Defendant also asserts that its policies not only
28 prohibit employees from working “off the clock” but also require employees to accurately record

1 their time and report inaccuracies. Further, Defendant asserts that this claim would be difficult to
2 certify given the predominance of the individualized inquiry as to whether, and to what extent,
3 each Class Member performed work “off the clock.” From the records provided, and based on
4 Defendant’s representation, Plaintiff understood the average hourly rate of pay for non-exempt
5 employees to be approximately \$14.54. During the Class Period, the Class Members worked a
6 collective total of approximately 12,756 workweeks. Plaintiff calculated the estimated, potential
7 maximum value for this claim at approximately \$200,000 based on 60 minutes of “off the clock”
8 work per week, with 15% calculated at the overtime rate, for 12,756 work weeks. Taking into
9 consideration the nature of the claim and Defendant’s defenses thereto including the inability to
10 establish the violation with respect to all of the Class Members, this claim was valued \$20,000
11 (10%) and \$10,000 (5%) for purposes of settlement.

12 b. Meal Period Claim – The meal break violation claim is based primarily on
13 Defendant’s alleged failure to provide Plaintiff and class members with compliant, timely duty-
14 free 30-minute meal periods in violation of California Labor Code §§ 226.7, 512 IWC Wage
15 Order 5-2001 and *Donohue v. AMN Services* (2021) 11 Cal.5th 58. If an employer fails to provide
16 an employee the required 30-minute meal periods in accordance with the applicable provisions of
17 the Wage Order, it must pay the employee one additional hour of pay at the employee’s regular
18 rate of compensation for each workday that the meal period is not provided. (IWC Wage Order 5-
19 2001(11)(D); Cal. Lab. Code § 226.7). Due to Defendant’s policies and practices and the work
20 schedule, Plaintiff and Class Members were only allowed to take meal breaks when authorized by
21 a supervisor. Typically, Plaintiff and Class Members had to work 6 to 7 hours before a meal break
22 was allowed. Usually, they would have to eat then get right back to work, without getting a full
23 30-minute meal break. When Plaintiff and Class Members worked more than ten (10) hours in a
24 day, they were not provided a second meal period. Defendants’ meal break practices do not
25 adhere to the policies set forth in the Defendants’ Employee Handbook. In sum, Defendant is
26 liable for failing to provide compliant meal periods for Plaintiff and Class Members and for
27 failing to pay one (1) hour of the employee’s regular rate of compensation in lieu thereof.
28 Defendant denies Plaintiff’s allegations and maintains that he and Class Members were provided

1 with the opportunity to take full, 30-minute meal periods to which they were entitled as per
2 compliant company policies. Further, Defendant adamantly disputes the propriety of certification
3 in this case. Defendant's position is that, under the holding in Brinker and other state and federal
4 decisions, Defendant fulfilled its legal obligations to non-exempt employees by providing them
5 with timely and proper meal periods. Based upon Plaintiff's review of the documents and
6 information provided in anticipation of mediation, including the random sample of time records,
7 the estimated maximum potential of the meal break claim was \$508,900. This was determined by
8 taking the estimated unique number of meal break violations, 35,000, and multiplying by the
9 average hourly rate of \$14.54 ($35,000 \times \$14.54 = \$508,900$). Taking into consideration the nature
10 of the claim, Defendant's defenses and issues faced due to Brinker, for purposes of settlement, the
11 meal break claim was valued between an estimated maximum of \$50,890 (10%) and \$25,445
12 (5%).

13 c. Rest Period Claims – The rest period violation claim is primarily based on
14 allegations that, as with the meal breaks, due to the workload, policies, and practices of
15 Defendant, Plaintiff and Class Members during the liability period, were required to work without
16 being permitted or authorized to take compliant rest breaks. Defendant disputes Plaintiff's rest
17 break claim and contends that Class Members were allowed to take ten-minute rest periods and
18 regularly took such breaks. Defendant also argues that this claim would be difficult to certify
19 given the predominance of individualized inquiries as to whether, and to what extent, each Class
20 Member was unable to take compliant rest break during their shifts. Based on documents
21 provided by Defendant, Plaintiff estimated the maximum potential liability at \$744,680. The
22 maximum estimated liability for this claim was based on a 100% violation rate. The maximum
23 potential liability was determined by taking all shifts over 3.5 hours, 51,216 and multiplying by
24 the average hourly rate of \$14.54 ($51,216 \text{ shifts} \times \$14.54 = \$744,680$). Taking into consideration
25 the nature of the claim, Defendant's defenses and certification issues faced due to Brinker, for
26 purposes of settlement, the rest break claim was valued between an estimated maximum of
27 \$37,234 (5%) and nominal value.

28 d. Failure to Reimburse Employee Expenses – Plaintiff's claim under Labor Code

1 §2802 is premised on the fact that RPG did not provide Plaintiff and Class Members with tools
2 which were required in the performance of their job duties. Plaintiff and Class Members had to
3 purchase and provide their own tools such as knives, peelers, tongs, pens, pencils, paper,
4 notepads, etc. Plaintiff had to provide his own knives and tools as a line cook at an approximate
5 cost of \$127. Plaintiff and Class Members were not reimbursed for their expense incurred in
6 purchasing these tools which were essential to the performance of their job duties in violation of
7 Labor Code §2802 and IWC Wage Order 5-2001. Defendant disputes this allegation and alleges
8 all tools were provided. For purposes of settlement, this claim had minimal value, due to the
9 individualized nature of each and every claim and the difficulty of obtaining class wide evidence
10 for damage calculations.

11 e. Failure to Timely Pay Wages During Employment – This claim is based on
12 allegations that Plaintiffs and Class Members did not receive payment of all wages owed,
13 including overtime and minimum wages and meal and rest period premiums, within the requisite
14 time under Labor Code section 204. That statute requires that all wages are due and payable twice
15 in each calendar month. For any initial violation under this statute, one hundred dollars (\$100) is
16 due for each failure to pay each employee. For each subsequent violation, or any willful or
17 intentional violation, two hundred dollars (\$200) is due for each failure to pay each employee,
18 plus 25 percent of the amount unlawfully withheld. As discussed herein, Defendant adamantly
19 disputes that it failed to pay any lawful wages owed and is therefore not liable for any penalties
20 under this statute. Defendant also contends that liability only applies when employers fail to pay
21 wages on a timely basis; not whether the correct amount of wages were paid. (*See's Candy Shops,*
22 *Inc. v. Superior Ct.* (2012) 210 Cal. App. 4th 889, 904-905. Here, employees can recover
23 penalties either Labor Code section 210 or PAGA but not both. For purposes of settlement,
24 Plaintiff is pursuing this claim under PAGA, which is discussed below.

25 f. Failure to Timely Pay Wages at Termination – This claim is derivative of the other
26 claims asserted. Pursuant to Labor Code sections 201, 202 and 203, each employee in the relevant
27 statutory period (i.e., three years before the filing of the initial Complaint) is entitled to 30 days'
28 worth of wages as a waiting time penalty for not being paid all wages upon the separation of

1 employment. Plaintiff alleges that penalties are owed under Labor Code section 203 due to, at a
2 minimum, Defendant's failure to pay wages for all hours worked and failure to pay premium
3 wages. With respect to Lab. Code §203 claim, there were an estimated total of 315 former
4 employees/Class Members to whom this claim applied. The estimated maximum potential
5 liability was determined to be \$851,898 using the formula ((# of terminated/former employees) x
6 (30 x average hourly rate x average number of hours worked per day)). (315) x (30 x \$14.54 x
7 6.2). Defendant once again defends that no unpaid wages are owed as Defendant did not fail to
8 pay the correct wages. Defendant further contends that its actions were not willful as required for
9 penalties to issue and that, thus, waiting time penalties cannot be awarded. For purposes of
10 settlement negotiations, said claim was valued between \$85,190 (10%) and \$42,595 (5%).

11 g. Lab. Cod § 226 Claim (Failure to Provide Accurate Itemized Wage Statements) –
12 Under Lab. Code § 226(e), an employee suffering “injury as a result of a knowing and intentional
13 failure by an employer” to provide accurate wage statements is entitled to \$50 for the initial
14 violation and \$100 for each subsequent violation up to \$4,000. This claim is derivative of the
15 other alleged Labor Code violations. Defendant denies that it provided inaccurate wage
16 statements. Further, Defendant argues that, if any wage statements were in fact inaccurate, they
17 did not “knowingly and intentionally” fail to provide accurate statements and that Plaintiff and
18 the class did not suffer any “injury” from such inaccurate wage statements. Per information
19 provided by Defendant, Plaintiff believes there were approximately 315 Class Members working
20 during the relevant time period for this claim. Thus, if a calculation is performed using the
21 maximum exposure permitted per Class Member under Labor Code section 226, this amounts to a
22 maximum exposure for Defendant of \$1,260,000 based on 315 Class Members x \$4,000.
23 However, some of the Class Members working during the relevant time period may have worked
24 for only one pay period during the relevant time period and some may have worked for tens of
25 pay periods. For purposes of settlement negotiations, said claim was valued between an
26 estimated maximum of \$126,000 (10%) and \$63,000 (5%).

27 h. Bus. & Prof. Code § 17200 et seq. (“UCL”) Claim – The only remedies available
28 under the unfair competition law (“UCL”) Business and Professions Code Section 17200 et seq.

1 are restitution and injunction, as opposed to damages *Clark v. Superior Court*, (2010) 50 Cal. 4th
2 605, 610. The UCL provides that “[t]he court may make such orders or judgments ... as may be
3 necessary to restore to any person in interest any money or property, real or personal, which may
4 have been acquired by means of such unfair competition.” (Bus. & Prof. Code, § 17203.)
5 Restitution under the UCL includes “earned wages.” *Cortez v. Purolator Air Filtration Prods.*
6 *Co.*, (2000) 23 Cal. 4th 163, 177-78. Restitution under the UCL is not available for all violations
7 of the Labor Code. See *Pineda v. Bank of Am., N.A.*, (2010) 50 Cal. 4th 1389, 1401-02. In *Pineda*,
8 the California Supreme Court held Labor Code § 203 is “not designed to compensate employees
9 for work performed [but] it is intended to encourage employers to pay final wages on time, and to
10 punish employers who fail to do so.” *Id.* Like Labor Code section 203, section 226 for wage
11 statement violations is also intended to “punish” the employer and is not an action brought to
12 recover wages. See *Gomez v. Jacobo Farm Labor Contractor, Inc.*, (2019) 334 FRD. 234, 267-
13 268. Here, Plaintiff’s UCL claim is solely premised on the failure to pay lawful wages and
14 premium wages claims discussed above. Class Counsel assigned a zero-dollar value to the UCL
15 claim because it does not provide any additional value in this Action other than to increase the
16 statute of limitations to four years for the underlying claims. Those claims are valued and
17 analyzed above based on the four-year statute of limitations provided by the UCL. However, the
18 UCL claim in and of itself does not provide any additional damages. Therefore, there is no
19 additional or separate monetary value that this statute provides based on the facts of this Action.

20 i. Labor Code §2699 (PAGA Claim) – Plaintiff’s claims under PAGA are primarily
21 predicated on or derivative of the rest and meal break claims. The estimated maximum PAGA
22 penalty was calculated as \$101,000. This figure attributes a \$100 penalty to each of the estimated
23 1,010 pay periods in scope during the PAGA period. The figure also assumes that there is a
24 100% violation rate during the PAGA period, such that every single pay period in question
25 involved at least one Labor Code violation, despite disputes regarding Defendant’s liability
26 (Hawkins Decl., ¶ 17(h).) However, PAGA claims under the facts and circumstance of this case
27 may result in no award or at best a very minimal award by the trial court. See specifically
28 §2699(e)(2) which states in its pertinent part: “... a court may award a lesser amount than the

1 maximum civil penalty amount specified by this part if, based on the facts and circumstances of
2 the particular case, to do otherwise would result in an award that is unjust, arbitrary and
3 oppressive, or confiscatory.” For instance, in *Fleming v. Covidien*, 2011 U.S. Dist. LEXIS
4 154590 (C.D. Cal. 2011), a federal court reduced PAGA penalties from \$2,800,000 to \$500,000,
5 a reduction of 82.2%, because the court found maximum penalties "unjust" because the
6 employees had suffered no injuries. Some trial courts have actually awarded no civil penalties,
7 even when Labor Code violations are established. See *Makabi v. Gedalia*, 2016 Cal. App.
8 Unpub. 1489, *5 7 (2nd Dist. Ct. of App. Mar. 6, 2016) (no PAGA penalties were awarded by the
9 Los Angeles County Superior Court) (unpublished decision); *In re Taco Bell Wage & Hour*
10 *Actions*, 2016 U.S. Dist. LEXIS 48557, *40 43 (E.D. Cal. Apr. 6, 2016) (PAGA penalties denied
11 after trial). In order to recover any PAGA penalties, Plaintiff would be required at trial to prove
12 each of the underlying Labor Code violations. See *Cardenas v. McLane Foodservice, Inc.*, 2011
13 U.S. Dist. LEXIS 13126, *10 (C.D. Cal. 2011) ("Given the statutory language [of PAGA], a
14 Plaintiff cannot recover on behalf of individuals whom the Plaintiff has not proven suffered a
15 violation of the Labor Code by the defendant.") Here, Plaintiff would need to prove that each
16 PAGA Eligible Employee suffered all violations for each pay period the employee worked. As
17 discussed herein, the nature of the PAGA based claims (i.e. rest break, meal period, wage
18 statement, failure to pay all wages owed, and to timely pay wages) and Defendant’s asserted
19 defenses thereto present a risk that some or all of the PAGA penalties sought may not be
20 awarded. Given the nature of these claims, as analyzed above, Class Counsel believes it to be
21 likely that if there would be any award it would be a minimal amount. Therefore, the amount of
22 \$10,000 (which has been reserved for the PAGA claim) is both fair and reasonable.

23 14. Through his counsel, Plaintiff took into consideration the significant risks that
24 class certification could be denied on the central claim, or that a merits decision on the central
25 claim would not favor the Class. Plaintiff has considered the expense and length of continued
26 proceedings necessary to continue the Action against Defendant through trial and any possible
27 appeals. Plaintiff is also aware of the burdens of proof necessary to establish liability for the
28

1 claims asserted in the Action, Defendant 's defenses thereto, and the difficulties in establishing
2 Plaintiff's damages.

3 15. The proposed Settlement requires Defendant to pay each Class Member who does
4 not opt out a portion of the Net Settlement Amount as specifically set forth in the Settlement
5 Agreement. The amount to be paid to the Class is undoubtedly fair, adequate and reasonable
6 especially in light of the significant risk to Plaintiff and Class Members in continuing with the
7 litigation and not prevailing on class certification or at trial.

8 16. The Settlement Agreement provides for an award to be paid to the Class
9 Representative. The primary purpose is to provide Plaintiff an enhancement payment, taking into
10 consideration the risks, time, effort and expenses incurred by their coming forward to provide
11 invaluable information and negotiate and litigate this matter on behalf of all Class Members.
12 Plaintiff actively participated in this litigation by providing significant supporting documents and
13 information and assisting counsel in developing information necessary to litigate and settle this
14 case which has resulted in a favorable settlement for the putative Class Members. Thus, the
15 payment to the Class Representative of \$5,000 represents a small portion of the aggregate
16 settlement amount and should be awarded.

17 17. I have a great deal of experience in wage and hour class action litigation. I have
18 obtained certification of several classes, I have been approved as class counsel in many other
19 wage/hour class actions, and I am currently litigating numerous others. Although not an all
20 inclusive list, over the years I have prosecuted the following class action matters as lead and/or
21 co-lead counsel, all of which implicated similar law and facts to those associated with this action:

22 a. *Aguilar v. 7-Eleven, Inc., et. al.*, Orange County Superior Court- Case No.: 30-
23 2009-00268714-CU-OE-CXC. Certified Wage and Hour Class action seeking premium wages for
24 meal period and rest periods and resultant penalties. Class Notice pending.

25 b. *Carey, et. al. v. Arthur J. Gallagher, et. al.*, USDC, SOUTHERN DISTRICT Case
26 No.: 09-cv-0168. Wage and Hour Class action seeking past wages of overtime for
27 misclassification of insurance claims adjusters employed by Gallagher Bassett, a third party
28 administrator (TPA) in the State of California. Certification granted. Plaintiffs' counsel co-lead

1 counsel. Case settled, Final Approval granted, no objections and funds fully distributed.

2 c. *Dao v. 3M Company, et al.* USDC, CENTRAL DISTRICT, Case No. CV-08-
3 04554. Wage and Hour Class Action case seeking past wages for “off the clock”, overtime and
4 meal and rest break violations for production workers in the State of California. Plaintiff’s
5 Counsel appointed as Lead Counsel. Case settled, Final Approval granted, no objections and
6 funds fully distributed.

7 d. *Ortiz v. Kmart*, USDC, CENTRAL DISTRICT, Case No. SACV 06-638 ODW.
8 Wage and Hour Class Action case seeking past wages for meal and rest period violations for
9 retail employees in the State of California. Plaintiff’s counsel appointed co-lead counsel. Case
10 settled, Final Approval granted, no objections and funds fully distributed.

11 e. *Morgan v. Aramark Campus, LLC*, USDC, CENTRAL DISTRICT, Case No.
12 SACV08-00412. Wage and Hour Class Action case seeking past wages for meal and rest period
13 violations for retail employees in the State of California. Plaintiff’s Counsel appointed as Lead
14 Counsel. Case settled, Final Approval granted, no objections and funds fully distributed.

15 f. *West v Iron Mountain Information Management, Inc, et. al.*; Los Angeles County
16 Superior Court, Case No. BC393709. Wage and Hour Class Action seeking past wages for
17 overtime, meal and rest break violations for driver employees in the State of California.
18 Settlement for “binding arbitration.” Arbitration Award for Plaintiff Class. Arbitration Award
19 confirmed. Plaintiff’s counsel, lead trial counsel and class counsel.

20 g. *Gonzalez v. Superior Industries Inter, Inc., et al.*, Los Angeles County Superior
21 Court, Case No. BC 357912. Wage and Hour Class Action seeking past wages for overtime, meal
22 and rest breaks violations for production employees in the State of California. Plaintiff’s counsel
23 appointed as lead counsel. Case settled, Final Approval granted, no objections and funds fully
24 distributed.

25 h. *Acosta v. Fleetwood Travel Trailers of California, Inc., et al.*, Riverside County
26 Superior Court, Case No. RIC 440630. Wage and Hour Class Action seeking past wages for
27 overtime, meal and rest break violations for production employees in the State of California.
28 Plaintiff’s counsel appointed as co-lead counsel. Case settled, Final Approval granted, no

1 objections and funds fully distributed.

2 i. *Walker v. Sharkeez, et al.*, Orange County Superior Court, Case No. 05CC00293.
3 Wage and Hour Class Action seeking past wages for unlawful deductions, meal and rest break
4 violations for restaurant employees in the State of California. Plaintiff's counsel appointed as lead
5 counsel. Case settled, Final Approval granted and funds fully distributed.

6 j. *Padron v. Universal Protection Service, et al*, Orange County Superior Court,
7 Case No. 05CC00013. Wage and Hour Class Action seeking past wages for overtime, meal and
8 rest break violations for security officers in the State of California. Plaintiff's counsel appointed
9 as co-lead counsel. Case settled, Final Approval granted, no objections and funds fully
10 distributed.

11 k. *Martinez v. Securitas Security Services USA, et al.*, Santa Clara Superior Court,
12 Case No. 105-CV047499, et al. J.C.C.P. No. 4460. Wage and Hour Class Action seeking past
13 wages for meal and rest break violations for security officers employed by defendant in the State
14 of California. Plaintiff's counsel and co-counsel. Case settled, Final Approval granted and funds
15 fully distributed.

16 l. *Velasquez-Lopez v. Hotel Cleaning Services, Inc. et al.*, Riverside Superior Court,
17 Case No. RIC 420909. Wage and Hour Class Action seeking past wages for overtime, meal and
18 rest break violations for housekeepers employed by defendant in the State of California.
19 Plaintiff's counsel appointed as lead counsel. Case settled, Final Approval granted, no objections
20 and funds fully distributed.

21 m. *Ruiz, et al. v. Unisourse Worldwide, Inc., et al.*, USDC, CENTRAL DISTRICT,
22 Case No. CV09-05848. Wage and Hour Class Action seeking past wages for meal and rest period
23 violations for non-exempt employees employed by defendant in the state of California. Case
24 settled. Awaiting Preliminary Approval hearing. Plaintiff has petitioned the Court for Lead
25 Counsel.

26 n. *Herrador v. Culligan International Company, et al.*, USDC, CENTRAL
27 DISTRICT, Case No. SACV 08-680. Wage and Hour Class Action seeking past wages for field
28 and branch employees of defendant in the State of California. Plaintiff's counsel appointed as

1 lead counsel. Case settled and awaiting Final Approval.

2 o. *Defries v. Domain Restaurants, et al.*, Orange County Superior Court, Case No.
3 05CC00128. Wage and Hour Class Action seeking past wages for restaurant employees of
4 defendant in the State of California. Plaintiff's counsel appointed as lead counsel. Case settled,
5 Final Approval granted, no objections and funds fully distributed.

6 p. *Denton v. BLB Enterprises, Inc., et al.*, Orange County Superior Court, Case No.
7 07CC01292. Wage and Hour Class Action seeking unpaid overtime, meal and rest break
8 violations for security guards employed by defendant in the State of California. Plaintiff's counsel
9 appointed as lead counsel. Case settled, Final Approval granted, no objections and funds fully
10 distributed.

11 q. *Rios v. Sandberg Furniture Manufacturing Co., Inc, et al.*, Los Angeles Superior
12 Court, Case No. BC411477. Wage and Hour Class Action seeking unpaid meal and rest break
13 violations for production employees employed by defendant in the State of California. Plaintiff
14 counsel appointed as lead counsel. Case settled, Final Approval granted, no objections and funds
15 fully distributed.

16 r. *McMurray v. Dave and Busters, Inc., et al.*, Orange County Superior Court, Case
17 No. 06CC00099. Wage and Hour Class Action seeking past wages for meal and rest break
18 violations for restaurant employees employed by defendant in the State of California. Plaintiff's
19 counsel appointed as co-lead counsel. Case settled, Final Approval granted, no objections and
20 funds fully distributed.

21 s. *Osuna v. DFG Restaurants, Inc., et al.*, Los Angeles Superior Court, Case No. BC
22 330145. Wage and Hour Class Action seeking past wages of overtime for misclassification of
23 managers employed by Defendant, DBA Carl's Jrs. in the State of California. Plaintiff's counsel
24 appointed as co-lead counsel. Case settled, Final Approval granted, no objections and funds fully
25 distributed.

26 t. *Burns v. Gymboree Operations, Inc., et al.*, San Francisco Superior Court, Case
27 No. CGC-07-461612. Wage and Hour Class Action seeking past wages for meal and rest break
28 violations for retail employees employed by defendant in the State of California. Plaintiff's

1 counsel appointed lead counsel. Case settled, Final Approval granted, no objections and funds
2 fully distributed.

3 u. *Willems v. Diedrich Coffee, Inc., et al.*, Orange County Superior Court, Case No.
4 07CC00015. Wage and Hour Class Action seeking past wages of overtime for misclassification
5 of managers employed by Defendant in the State of California. Plaintiff's counsel appointed lead
6 counsel. Case settled, Final Approval granted, no objections and funds fully distributed.

7 v. *Davila, et al. v. Beckman Coulter, Inc., et al.*, Orange County Superior Court, Case
8 No. 07CC01347. Wage and Hour Class Action seeking past wages for overtime, meal and rest
9 break violations for production workers employed by defendant in the State of California.
10 Plaintiff's counsel appointed lead counsel. Case settled; final approval granted; no objections
11 and funds fully distributed.

12 w. *Perez v. Naked Juice Company of Glendora, Inc., Los Angeles Superior Court*,
13 Case No. BC387088. Wage and Hour Class Action seeking past wages for overtime, meal and
14 rest period violations for production employees employed by defendant in the State of California.
15 Plaintiff counsel appointed as lead counsel. Case settled, Final Approval granted, no objections
16 and funds fully distributed.

17 18. Isandra Fernandez, my co-counsel on this matter, has been a member of the
18 Florida Bar since January 1996 and a member of the California Bar since August 2002. Ms.
19 Fernandez has specialized in employment-related litigation, including complex wage and hour
20 civil litigation, since 2003. Lance Dacre, also co-counsel in this matter has been practicing law in
21 California since 1997. Mr. Dacre joined my firm in February of 2022. Ms. Fernandez and Mr.
22 Dacre have been and currently are, co-counsel in over 50 wage and hour class actions for our firm
23 and have produced excellent results for this firm's clients in the wage and hour class actions.

24 I declare under penalty of perjury, under the laws of the state of California, that the
25 foregoing is true and correct.

26 Dated: November 14

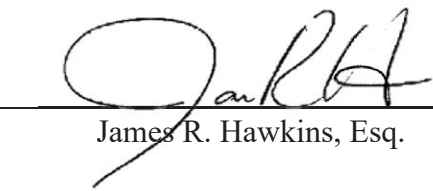
27 
James R. Hawkins, Esq.

Exhibit 1

James R. Hawkins (SBN 192925)
 Isandra Fernandez (SBN220482)
 Lance Dacre (SBN190305)
JAMES HAWKINS APLC
 9880 Research Drive, Suite 200
 Irvine, CA 92618
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Attorneys for Plaintiff,
 CESAR RODRIGUEZ VINLAY on behalf
 of himself and all others similarly situated

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Attorneys for Defendant
 RESTAURANT PACIFIC GROUP, LLC

SUPERIOR COURT OF CALIFORNIA

COUNTY OF MONTEREY

CESAR RODRIGUEZ VINLAY on
 behalf of himself and all others similarly
 situated,

Plaintiff,

v.

RESTAURANT PACIFIC GROUP, LLC, a
 California limited liability company; and
 DOES 1 through 50, inclusive,

Defendants.

Case No. 22CV000486

JOINT STIPULATION OF CLASS ACTION SETTLEMENT

Complaint Filed: February 18, 2022
 FAC Filed: April 26, 2022
 Trial Date: Not Set

JOINT STIPULATION OF CLASS ACTION SETTLEMENT

This Joint Stipulation of Class Action Settlement (“Agreement” or “Settlement”) is made
 and entered into by and between Plaintiff Cesar Rodriguez Vinalay (“Plaintiff”) and Defendant

1 Restaurant Pacific Group, LLC (“Defendant”). Plaintiff and Defendant are collectively referred
2 to as the “Parties” or a “Party”.

3 DEFINITIONS

4 The following definitions are applicable to this Agreement. Definitions contained
5 elsewhere in this Agreement shall also be effective:

6 1. “Action” means *Cesar Rodriguez Vinalay v. Restaurant Pacific Group, LLC, et*
7 *al.*, Monterey County Case No. 22CV000486 (filed on February 18, 2022, and amended on
8 April 26, 2022) and all pleadings filed therein, including the operative pleadings.

9 2. “Agreement” or “Settlement Agreement” means this Joint Stipulation of Class
10 Action Settlement.

11 3. “Aggrieved Employees” means all current and former non-exempt employees of
12 Defendant who worked for Defendant in the State of California at any time from February 18,
13 2021, through August 13, 2021. Defendant’s records indicate that there are approximately 123
14 Aggrieved Employees. Defendant represents that the Aggrieved Employees worked
15 approximately 1,010 pay periods during the Class Period.

16 4. “Class” or “Class Member(s)” mean all current and former non-exempt
17 employees of Defendant who worked for Defendant in the State of California at any time from
18 February 18, 2018 through August 13, 2021. Defendant’s records indicate that there are
19 approximately 315 Class Members. Defendant represents that the Class Members worked
20 approximately 12,756 workweeks during the Class Period.

21 5. “Class Counsel” means James R. Hawkins, Isandra Fernandez, and Lance Dacre
22 of James Hawkins APLC.

23 6. “Class Counsel Award” means such award of fees and costs and expenses as the
24 Court may authorize to be paid to Class Counsel for the services they have rendered and will
25 render to Plaintiff and the Class in the Action. Defendant agrees not to oppose Class Counsel
26 Award not to exceed one-third of the Gross Settlement Amount (\$275,000.00), *i.e.*, the sum of
27 Ninety-One Thousand Six Hundred Sixty-Six Dollars and Sixty-Six Cents (\$91,666.66), and
28 litigation costs in the amount of up to Fifteen Thousand Dollars (\$15,000.00), subject to the

1 Court finally approving this Settlement. Any portion of the Class Counsel Award not awarded
2 to Class Counsel shall be added to the Net Settlement Amount and shall be distributed to Class
3 Members as provided in this Agreement.

4 7. "Class List and Data" means information regarding all Class Members that
5 Defendant will diligently and in good faith compile from its records and provide to the
6 Settlement Administrator after Preliminary Approval of this Settlement. The Class List shall be
7 formatted as a Microsoft Office Excel spreadsheet and shall include: each Class Member's full
8 name, most recent mailing address, employee number, Social Security number, hire date,
9 separation date (if applicable), the estimated number of workweeks worked by each Class
10 Member during the Class Period, and the number of pay periods worked by each Aggrieved
11 Employee during the PAGA Period.

12 8. "Class Period" means the period from February 18, 2018, through August 13,
13 2021.

14 9. "Class Representative" means Plaintiff Cesar Rodriguez Vinalay.

15 10. "Class Representative Enhancement Payment" means the amount that the Court
16 authorizes to be paid to Plaintiff, in addition to Plaintiff's Individual Settlement Payment, in
17 recognition of Plaintiff's efforts and risks in assisting with the prosecution of the Action and in
18 consideration for providing a general release of all claims and a waiver under Civil Code § 1542.
19 Subject to the Court granting final approval, the Parties agree that Plaintiff shall be paid up to
20 Five Thousand Dollars (\$5,000.00) from the Gross Settlement Amount for Plaintiff's Class
21 Representative Enhancement Payment.

22 11. "Counsel for Defendant" or "Defense Counsel" means Christopher E. Panetta
23 and Marco A. Lucido of the law firm of Fenton & Keller.

24 12. "Court" means the Superior Court for the State of California, County of Monterey,
25 or any other court taking jurisdiction of the Action.

26 13. "Defendant" means Defendant Restaurant Pacific Group, LLC, including its
27 predecessors, if any, as well as each of its respective predecessors, successors, and all former,
28 current, related organizations, companies, divisions, subsidiaries, affiliates, insurers, and

1 parents, and collectively, their respective former, current and future owners, directors, officers,
2 employees, agents, representatives, attorneys, fiduciaries, assigns, heirs, executors,
3 administrators, beneficiaries, insurers, and trustees.

4 14. "Effective Date" means: (a) the date when the Final Approval Order is signed,
5 if there are no objections, or if an objection is withdrawn prior to the Final Approval hearing,
6 or (b) in the event there are objectors, sixty (60) days after service of notice of entry of the
7 Final Approval Order and Judgment on the Parties and all objectors to the Settlement without
8 any appeals or request for review being taken, or orders affirming said Final Approval Order
9 and Judgment or denying review after exhaustion of all appellate remedies, if appeals or
10 requests for review have been taken.

11 15. "Final Approval" means that the Final Approval Order and Judgment have been
12 entered by the Court.

13 16. "Gross Settlement Amount" means the all-inclusive maximum settlement amount
14 of Two Hundred Seventy-Five Thousand Dollars (\$275,000.00) to be paid by Defendant as a
15 result of this Stipulation. The Gross Settlement Amount includes all Individual Settlement
16 Payments to Participating Class Members, Class Representative Enhancement Payment to
17 Plaintiff, Settlement Administration Costs to the Settlement Administrator, PAGA Payment, and
18 Class Counsel Award. The Gross Settlement Amount shall also include any interest that accrues
19 in the escrow account created by the Settlement Administrator.

20 17. "Individual Settlement Payment" means the amount payable from the Net
21 Settlement Amount to each Participating Class Member and the amount payable from the PAGA
22 Payment to each Aggrieved Employee.

23 18. "Net Settlement Amount" means the balance of the Gross Settlement Amount
24 remaining after deduction of the approved Class Representative Enhancement Payment,
25 Settlement Administration Costs, the PAGA Payment, and Class Counsel Award. The entire
26 Net Settlement Amount is the maximum amount that will be available for distribution to
27 Participating Class Members.

28 //

1 19. “Notice of Objection” means a Class Member’s valid and timely written objection
2 to the Settlement. For the Notice of Objection to be valid, it must include: (a) the objector’s full
3 name, address, and telephone number; (b) a written statement of basis for the objection; and (c)
4 the objector’s signature. The objector may include any copies of papers, briefs, or documents
5 upon which the objection is based. The Notice of Objection must be returned by mail or fax to
6 the Settlement Administrator at the specified address/facsimile indicated in the Notice Packet
7 and be postmarked by the Response Deadline.

8 20. “Notice Packet” means the Notice of Proposed Class Action Settlement,
9 substantially in the form attached as Exhibit A.

10 21. “PAGA Payment” means the portion of the Gross Settlement Amount that the
11 Parties have agreed will be allocated to resolve all claims and remedies under the Labor Code
12 Private Attorneys General Act of 2004 (Cal. Lab. Code § 2698, *et seq.*, “PAGA”). The amount
13 of the PAGA Payment is subject to Court approval pursuant to California Labor Code § 2699(l).
14 The Parties have agreed that Ten Thousand Dollars (\$10,000.00) of the Gross Settlement
15 Amount shall be allocated to the resolution of any Aggrieved Employees’ claims arising under
16 PAGA. Pursuant to the PAGA, 75% of the PAGA Payment, *i.e.*, the sum of Seven Thousand
17 Five Hundred Dollars (\$7,500.00), shall be paid to the California Labor and Workforce
18 Development Agency (“LWDA”), and 25% of the PAGA Payment, *i.e.*, the sum of Two
19 Thousand Five Hundred Dollars (\$2,500.00), shall be distributed to Aggrieved Employees
20 pursuant to Paragraph 44.

21 22. “PAGA Period” means the period from February 18, 2021, through August 13,
22 2021.

23 23. “Parties” means Plaintiff, on behalf of himself and the Class, and Defendant
24 collectively.

25 24. “Participating Class Members” means all Class Members who do not submit valid
26 and timely Requests for Exclusion. Participating Class Members does not include Aggrieved
27 Employees.

28 25. “Plaintiff” means Plaintiff Cesar Rodriguez Vinalay.

1 26. “Preliminary Approval” means the Court’s order granting preliminary approval of
2 the Settlement.

3 27. “Released Class Claims” means all claims that were alleged in the operative
4 complaint of the Action and any claims that could have been alleged based on the facts as
5 alleged in the operative complaints of the Action.

6 28. “Released Claims Period” means the period from February 18, 2018, through
7 August 13, 2021.

8 29. “Released PAGA Claims” means all claims under the Private Attorneys General
9 Act that were alleged in the operative complaint in the Action and any claims that could have
10 been alleged based on the facts as alleged in the operative complaint in the Action.

11 30. “Released Parties” means Defendant Restaurant Pacific Group, LLC and any of
12 its past and present affiliated entities, parents, subsidiaries, owners, officers, shareholders,
13 executives, managers, and employees.

14 31. “Request for Exclusion” means a timely written letter submitted by a Class
15 Member indicating a request to be excluded from/opt out of the Settlement. The Request for
16 Exclusion must: (a) state that the Class Member does not wish to be included in the Settlement;
17 (b) set forth the name, address, and telephone number of the Class Member requesting exclusion;
18 and (c) be signed by the Class Member. The Request for Exclusion must be returned by mail or
19 fax to the Settlement Administrator at the specified address/facsimile indicated in the Notice
20 Packet and must be postmarked on or before the Response Deadline. If a Class Member submits
21 both a valid Request for Exclusion and a valid Notice of Objection, the Request for Exclusion
22 shall control.

23 32. “Response Deadline” means forty-five (45) days after the Settlement
24 Administrator initially mails the Notice Packet to Class Members, and the last date on which
25 Class Members may submit Requests for Exclusion or Notices of Objections to the Settlement.
26 Those Class Members who receive a re-mailed Notice Packet shall have their Response
27 Deadline extended fifteen (15) calendar days from the original Response Deadline.

28 33. “Settlement” means the agreement among parties to resolve the Action, as set forth

1 in this Stipulation.

2 34. "Settlement Administration Costs" means the fees and expenses reasonably
3 incurred by the Settlement Administrator as a result of the procedures and processes expressly
4 required by this Agreement, which are not to exceed Eight Thousand Eight Hundred Fifty
5 Dollars (\$8,850). Any portion of the Settlement Administration Costs not approved by the Court
6 shall become part of the Net Settlement Amount.

7 35. "Settlement Administrator" means ILYM Group, Inc.

8 36. "Settlement Payment Check" means the payment to Participating Class Members
9 and/or Aggrieved Employees pursuant to this Settlement.

10 RECITALS

11 35. This Settlement is made and entered into by and between Plaintiff and Defendant,
12 and is subject to the terms and conditions hereof, and to the Court's approval. The Parties
13 expressly acknowledge that this Agreement is entered into solely for the purpose of
14 compromising significantly disputed claims and that nothing herein is an admission of liability
15 or wrongdoing by Defendant.

16 36. Procedural History. On February 18, 2022, Plaintiff initiated this Action in
17 Monterey County Superior Court. On April 26, 2022, Plaintiff filed a first amended class and
18 representative action complaint. Defendant timely answered Plaintiff's initial and amended
19 complaints.

20 37. On September 27, 2022, the Parties participated in private mediation with
21 experienced mediator Hon. John Leo Wagner of Judicate West. The matter did not immediately
22 settle. After mediation, Hon. John Leo Wagner continued settlement discussions with the
23 Parties, and on February 13, 2023, the Parties and their counsel agreed to settle the Action on
24 the terms set forth herein.

25 38. The Parties recognize the risk, expense, and delay in continuing the Action, and
26 therefore believe the Settlement to be fair, reasonable, and adequate. Accordingly, the Parties
27 desire to settle, compromise, and discharge all disputes and claims arising from or relating to
28 the Action.

1 **TERMS OF AGREEMENT**

2 Plaintiff, on behalf of himself and the Class, and Defendant agree as follows:

3 39. Settlement Consideration. Defendant shall pay the sum of the Gross Settlement
4 Amount as specified in this Agreement, which shall be used to pay: (1) Individual Settlement
5 Payments to Class Members; (2) Class Counsel Award; (3) Class Representative Enhancement
6 Payment; (4) Settlement Administration Costs to the Settlement Administrator; and (5) the
7 PAGA Payment. The Parties agree that this is a non-reversionary Settlement and that no portion
8 of the Gross Settlement Amount shall revert to Defendant. In no event shall Defendant be
9 required to pay more than the Gross Settlement Amount as specified in this Agreement, with the
10 exception of Defendant's share of employer payroll taxes, which shall be paid separate and in
11 addition to the Gross Settlement Amount.

12 40. Funding of the Gross Settlement Amount. Within fifteen (15) calendar days after
13 the Effective Date, Defendant shall make a one-time deposit of the Gross Settlement Amount
14 into a Qualified Settlement Account to be established by the Settlement Administrator.

15 41. Class Counsel Award. Defendant agrees not to oppose or impede any application
16 or motion by Class Counsel for attorneys' fees not to exceed one-third of the Gross Settlement
17 Amount (\$275,000.00), *i.e.*, the sum of Ninety-One Thousand Six Hundred Sixty-Six Dollars
18 and Sixty-Six Cents (\$91,666.66), and litigation costs in the amount of up to Fifteen Thousand
19 Dollars (\$15,000.00), which shall be paid from the Gross Settlement Amount. The Settlement
20 Administrator shall issue an IRS Form 1099 to Class Counsel reflecting the awarded attorneys'
21 fees and costs. Any portion of the Class Counsel Award not awarded to Class Counsel shall
22 become part of the Net Settlement Amount and shall be distributed to Class Members as
23 provided in this Agreement.

24 42. Class Representative Enhancement Payment. Defendant agrees not to oppose or
25 impede any application or motion by Plaintiff for a Class Representative Enhancement Payment
26 of up to Five Thousand Dollars (\$5,000.00). The Class Representative Enhancement Payment
27 shall be paid from the Gross Settlement Amount and shall be paid in addition to the Class
28 Representatives' Individual Settlement Payments as Class Members. The Settlement

1 Administrator shall issue an IRS Form 1099 to Plaintiff reflecting the Class Representative
2 Enhancement Payment. Plaintiff shall be solely and legally responsible to pay any and all
3 applicable taxes on Plaintiff's Class Representative Enhancement Award and shall hold
4 harmless Defendant from any claim or liability for taxes, penalties, or interest arising as a
5 result of the Class Representative Enhancement Award. Any portion of the Class
6 Representative Enhancement Payment not awarded to Plaintiff shall become part of the Net
7 Settlement Amount and shall be distributed to Class Members as provided in this Agreement.

8 43. Settlement Administration Costs. The Settlement Administrator shall be paid for
9 the reasonable costs of administration of the Settlement from the Gross Settlement Amount, not
10 to exceed Eight Thousand Eight Hundred Fifty Dollars (\$8,850.00) except for a showing of good
11 cause and as approved by the Court. These costs, which shall be paid from the Gross Settlement
12 Amount, shall include, *inter alia*, distributing the Notice Packet, the required tax reporting on
13 the Individual Settlement Payments, the issuing of 1099 IRS Forms, establishing a Qualified
14 Settlement Fund, administering and distributing the Gross Settlement Amount and Class
15 Counsel Award, providing necessary reports and declarations, and providing notice to the
16 Participating Class Members of the Final Order and Judgment. Any portion of the Settlement
17 Administration Costs not approved by the Court shall become part of the Net Settlement Amount
18 and shall be distributed to Class Members as provided in this Agreement.

19 44. PAGA Payment. Subject to Court approval, the Parties agree that the amount of
20 Ten Thousand Dollars (\$10,000.00) of the Gross Settlement Amount shall be designated for
21 satisfaction of claims for civil penalties under the Labor Code Private Attorneys General Act of
22 2004. The Settlement Administration shall pay seventy-five percent (75%) of the PAGA
23 Payment, *i.e.*, the sum of Seven Thousand Five Hundred Dollars (\$7,500.00), shall be paid to
24 the California Labor and Workforce Development Agency ("LWDA"), and 25% of the PAGA
25 Payment, *i.e.*, the sum of Two Thousand Five Hundred Dollars (\$2,500.00), shall be distributed
26 to Aggrieved Employees on a pro rata basis, based on the number of pay periods each respective
27 Aggrieved Employee worked during the PAGA Period as compared to all aggregate pay periods
28 worked by all Aggrieved Employees during the PAGA Period.

1 45. Net Settlement Amount. The Net Settlement Amount shall be used to satisfy
2 Individual Settlement Payments to Participating Class Members in accordance with the terms
3 of this Agreement. The Settlement Administrator will allocate the Individual Settlement
4 Payments by first dividing the Net Settlement Amount by the total number of approximate
5 workweeks worked by Class Members during the Class Period. That value will then be
6 multiplied by the number of approximate workweeks each respective Participating Class
7 Member worked during the Class Period to arrive at the Individual Settlement Amount for
8 each respective Participating Class Member. Participating Class Members are entitled to
9 100% of the Net Settlement Amount. Defendant maintains no reversionary right to any portion
10 of the Net Settlement Amount. If there are any timely submitted Requests for Exclusion, the
11 Settlement Administrator shall proportionately increase the Individual Settlement Payments
12 for each Participating Class Member so that the amount actually distributed to Participating
13 Class Members equals 100% of the Net Settlement Amount.

14 46. No Credit Toward Benefit Plans. The Individual Settlement Payments made to
15 Participating Class Members under this Agreement, as well as any other payments made
16 pursuant to this Agreement, shall not be utilized to calculate any additional benefits under any
17 benefit plans to which any Class Members may be eligible, including, but not limited to: profit-
18 sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans,
19 PTO plans, and any other benefit plan. Rather, it is the Parties' intention that this Settlement
20 will not affect any rights, contributions, or amounts to which any Class Members may be entitled
21 under any benefit plans.

22 47. Settlement Administration Process. The Parties agree to cooperate in the
23 administration of the Settlement and to make all reasonable efforts to control and minimize the
24 costs and expenses incurred in the administration of the Settlement. The Settlement
25 Administrator shall provide the following services:

- 26 a. Establish and maintain a Qualified Settlement Fund account;
27 b. Calculate the amount of the Settlement each Class Member/Aggrieved
28 Employee is eligible to receive;

1 c. Prior to mailing the Notice Packet, the Settlement Administrator will
2 verify the last known address for each Class Member through a generally utilized, national
3 address update database;

4 d. Translating, printing, and mailing the Notice Packet;

5 e. Establishing and maintaining a toll-free informational telephone support
6 line in English and Spanish to assist Class Members who have questions regarding the Notice
7 Packet;

8 f. Conducting additional address searches for mailed Notice Packets that are
9 returned as undeliverable, and to the extent new and more current addresses are found, the
10 Settlement Administrator will also reprint and re-mail Notice Packets accordingly;

11 g. Calculating Participating Class Members' settlement share, fielding
12 inquiries from Class Members, and administration of any Requests for Exclusion. This service
13 will include settlement proceed calculations, printing and issuance of checks, and preparation of
14 IRS Forms W-2 and 1099. Basic accounting for and payment of employee tax withholdings
15 will also be included as part of this service;

16 h. Providing declarations and/or other information to the Court as requested.

17 i. Providing notice to the Participating Class Members of the Final Order and
18 Judgment by posting the Final Order and Judgment, and other related documents as may be
19 necessary, on the administrator's website.

20 48. Delivery of the Class List and Data. Within fifteen (15) calendar days of
21 Preliminary Approval, Defendant shall provide the Class List and Data to the Settlement
22 Administrator.

23 49. Notice by First-Class U.S. Mail. Within seven (7) calendar days after receiving
24 the Class List and Data from Defendant, the Settlement Administrator shall mail the Notice
25 Packet to all Class Members via regular First-Class U.S. Mail, using the most current, known
26 mailing addresses identified in the Class List.

27 50. Confirmation of Contact Information in the Class List. Prior to mailing, the
28 Settlement Administrator shall perform a search based on the National Change of Address

1 Database for information to update and correct for any known or identifiable address changes.

2 51. Notice Packets. All Class Members will be mailed a Notice Packet. Each Notice
3 Packet will include without limitation: (1) information regarding the nature of the Action; (2) a
4 summary of the Settlement's principal terms; (3) each Class Member's estimated Individual
5 Settlement Payment and the formula for calculating Individual Settlement Payments, if they do
6 not request to be excluded; (4) information about the PAGA Payment and that the Aggrieved
7 Employees have no right to opt out of the PAGA Payment; (5) instructions on how to submit
8 valid opt outs or objections; (6) the deadlines by which the Class Member must submit their
9 exclusions or objections to the Settlement; (7) the date for the final approval hearing; and (8)
10 the claims to be released. The Notice Packet will also inform Class Members that in order to
11 receive the Individual Settlement Payment, they do not need to do anything except keep the
12 Settlement Administrator apprised of their current mailing addresses.

13 52. Re-Mailing of Returned Notices. Any Notice Packets returned to the Settlement
14 Administrator as non-deliverable on or before the Response Deadline shall be re-sent promptly
15 via regular First-Class U.S. Mail to the forwarding address affixed thereto and the Settlement
16 Administrator shall indicate the date of such re-mailing on the Notice Packet. If no forwarding
17 address is provided, the Settlement Administrator shall promptly attempt to determine the
18 correct address using a skip-trace, or other search using the name, address and/or Social Security
19 number of the Class Member involved, and shall then perform a re-mailing. Those Class
20 Members who receive a re-mailed Notice Packet shall have their Response Deadline extended
21 fifteen (15) calendar days from the original Response Deadline.

22 53. Request for Exclusion Procedures. Aggrieved Employees may not opt-out from
23 the Settlement as to the PAGA Payment. However, any Class Member may opt-out from the
24 Settlement as to the class claims and release by submitting a written Request for Exclusion to
25 the Settlement Administrator postmarked by the Response Deadline. Requests for Exclusion
26 must: (1) contain the name, address, and telephone number of the person requesting exclusion;
27 (2) state that the Class Member does not wish to be included in the Settlement; and (3) be signed
28 by the Class Member. The Request for Exclusion must be returned by mail or fax to the

1 Settlement Administrator at the specified address/facsimile number, and be postmarked on or
2 before the Response Deadline. The date of the postmark or date of the fax shall determine
3 whether a Request for Exclusion has been timely submitted. By submitting such a Request for
4 Exclusion, a Class Member shall be deemed to have exercised his or her option to opt out of the
5 Action and not be bound by this Agreement. Accordingly, a Class Member that timely submits
6 a valid Request for Exclusion will not be entitled to the Class Member's portion of the Net
7 Settlement Amount as to the Class Payments and will not be bound by this Agreement as to the
8 release of the class claims. However, if the same employee is also an Aggrieved Employee, the
9 employee will still receive his or her share of the PAGA Payment because Aggrieved Employees
10 cannot opt out of a PAGA. Any Class Member who fails to submit a valid and timely Request
11 for Exclusion on or before the Response Deadline shall be deemed a Participating Class
12 Member, and will be bound by all terms of the Settlement, if the Settlement is granted final
13 approval by the Court. If a Class Member submits both a valid Request for Exclusion and a valid
14 Notice of Objection, the Request for Exclusion shall control.

15 54. Settlement Terms Bind All Class Members Who Do Not Opt-Out. Any Class
16 Member who does not affirmatively opt-out of the Settlement by submitting a valid and timely
17 Request for Exclusion shall be bound by all of its terms, including those pertaining to the
18 Released Claims, as well as any Judgment that may be entered by the Court.

19 55. No PAGA Opt-Out. The Parties acknowledge and agree that for purposes of the
20 Settlement, all Aggrieved Employees were allegedly aggrieved in the same manner pursuant to
21 Labor Code § 2698, *et seq.*, in that each Aggrieved Employee allegedly suffered at least one of
22 the alleged Labor Code violations asserted in the operative Complaint for which the PAGA
23 provides an available remedy. In light of the binding nature of a PAGA judgment on non-party
24 employees pursuant to *Arias v. Superior Ct. (Dairy)*, 46 Cal. 4th 969 (2009), and *Cardenas v.*
25 *McLane Foodservice, Inc.*, 2011 WL 379413 at *3 (C.D. Cal. Jan. 31, 2011), individuals
26 otherwise meeting the definition of Aggrieved Employees who exclude themselves from the
27 Settlement, nonetheless shall be bound by the Judgment of the Released PAGA Claims and will
28 receive their proportionate share of the PAGA Payment. All Aggrieved Employees shall be

1 bound by the Judgment entered herein and will have released the Released PAGA Claims upon
2 the final approval of this Settlement and the payment of the Settlement Payment Check.

3 56. Objection Procedures. Any Class Member who does not opt-out of this Settlement
4 shall be entitled to object to the Settlement. To submit a written objection or Notice of Objection
5 to the Settlement, a Class Member should return by mail or fax a written statement of objection
6 to the Settlement Administrator at the specified address or facsimile by the Response Deadline.
7 The Notice of Objection must include: (a) the objector's full name, address, and telephone
8 number; (b) a written statement of basis for the objection; and (c) the objector's signature. The
9 objector may include any copies of papers, briefs, or documents upon which the objection is
10 based. The Notice of Objection must be returned by mail and/or fax to the Settlement
11 Administrator at the specified address/facsimile indicated in the Notice Packet, and should be
12 postmarked and/or fax stamped on or before the Response Deadline. The date of the
13 postmark/fax stamp on the Notice of Objection shall be deemed the exclusive means for
14 determining that a Notice of Objection is timely. Any Class Member who does not submit a
15 Notice of Objection in compliance with this paragraph may nevertheless appear at the final
16 approval hearing and present an oral objection to the Settlement. An attorney who will represent
17 an individual objecting to this Settlement who has not filed a written objection must file a notice
18 of appearance with the Court and serve Class Counsel and counsel for Defendant with this notice
19 no later than the Response Deadline. Any Class Member who does not submit a Notice of
20 Objection in compliance with this section, or who does not appear at the final approval hearing
21 and present an oral objection to the Settlement, shall be deemed to have waived any objection(s),
22 shall be conclusively deemed a Participating Class Member, and shall be precluded from making
23 any objection (including by appeal or otherwise) to the Settlement. At no time shall any of the
24 Parties or their counsel seek to solicit or otherwise encourage Class Members to object to the
25 Settlement or appeal from the Order and Judgment. Class Counsel shall not represent any Class
26 Members with respect to any such objections to this Settlement. Any Class Member who
27 submits a valid Request for Exclusion shall not be allowed to object to this Settlement. If a Class
28 Member submits both a valid Request for Exclusion and a valid Notice of Objection, the Request

1 for Exclusion shall control.

2 57. Defendant's Right to Rescind. If the number of Class Members opting out of the
3 Settlement by submitting valid and timely Requests for Exclusion account for more than ten
4 percent (10%) of the total approximate workweeks worked by Class Members during the Class
5 Period, Defendant has the right in its sole discretion to elect to rescind the Parties' Settlement.
6 The Parties agree that they will not encourage any Class Member to object or to opt out. If
7 Defendant exercises its option to rescind, Defendant shall: (a) provide written notice to Class
8 Counsel at least ten (10) business days prior to the final approval hearing. In the event the
9 Settlement is terminated, the Parties shall proceed in all respects as if this Agreement had not
10 been executed.

11 58. Certification Reports Regarding Individual Settlement Payment Calculations.
12 The Settlement Administrator shall provide Defense Counsel and Class Counsel a weekly report
13 which certifies the number of Class Members who have submitted valid Requests for Exclusion.
14 Additionally, the Settlement Administrator will provide to counsel for both Parties any updated
15 reports regarding the administration of the Settlement as needed or requested.

16 59. Distribution Timing of Individual Settlement Payments. Within seven (7)
17 calendar days of Defendant funding the Gross Settlement Amount, the Settlement Administrator
18 shall issue respective payments to (1) Participating Class Members; (2) Aggrieved Employees;
19 (3) the Labor and Workforce Development Agency; (4) Plaintiff; and (5) Class Counsel. The
20 Settlement Administrator shall also issue a payment to itself for services performed in
21 connection with the Settlement.

22 60. Uncashed Settlement Payment Checks. Any checks issued by the Settlement
23 Administrator to Class Members shall be negotiable for not less than one hundred and eighty
24 (180) days from the date of their issuance. In the event an Individual Settlement Payment check
25 has not been cashed within one hundred and eighty (180) days, all funds represented by such
26 uncashed checks, shall be transmitted by the Settlement Administrator to the California
27 Controller's Unclaimed Property Fund in the name of the Class Member, thereby leaving no
28 "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384,

1 subd. (b). In such event, those Class Members will nevertheless remain bound by the Settlement.

2 61. Certification of Completion. Upon completion of administration of the
3 Settlement, the Settlement Administrator shall provide a written declaration under oath to certify
4 such completion to the Court and counsel for all Parties.

5 62. Administration Costs if Settlement Fails or is Delayed. If an objection to the
6 Settlement is filed with the Court, regardless of the ultimate outcome of any appeals taken, or if
7 the Settlement is voided or rescinded, any costs incurred by the Settlement Administrator shall
8 be borne equally by Defendant and Plaintiff, unless otherwise specified in this Agreement.

9 63. Treatment of Individual Settlement Payments. All Individual Settlement
10 Payments to Class Members shall be allocated as follows: 10% as payment for wages, of which
11 an IRS Form W-2 shall issue, and 90% as penalties and interest, of which an IRS Form 1099
12 shall issue. 100% of the PAGA Payment distributed to Aggrieved Employees shall be allocated
13 as penalties and reported on IRS Form 1099.

14 64. Administration of Taxes by the Settlement Administrator. The Settlement
15 Administrator shall be responsible for issuing to Plaintiff, Participating Class Members, and
16 Class Counsel, 1099 forms or other tax forms as may be required by law for all amounts paid
17 pursuant to this Agreement.

18 65. Tax Liability. Defendant makes no representation as to the tax treatment or legal
19 effect of the payments called for hereunder, and Plaintiff and Participating Class Members are
20 not relying on any statement, representation, or calculation by Defendant or by the Settlement
21 Administrator in this regard. Plaintiff and Participating Class Members understand and agree
22 that they will be solely responsible for the payment of any employee's payroll withholdings and
23 taxes (*i.e.*, Social Security, Medicare, federal and state income taxes, SDI, etc.) assessed on their
24 respective payments described herein and will defend, indemnify, and hold Defendant free and
25 harmless from and against any claims, taxes, penalties, and/or assessments resulting from
26 treatment of such payments as wages or non-taxable damages.

27 66. Circular 230 Disclaimer. EACH PARTY TO THIS AGREEMENT (FOR
28 PURPOSES OF THIS SECTION, THE "ACKNOWLEDGING PARTY" AND EACH PARTY

1 TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN “OTHER
2 PARTY”) ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS
3 AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN
4 OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR
5 WAS INTENDED TO BE, NOR SHALL ANY SUCH COMMUNICATION OR
6 DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX
7 ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY DEPARTMENT
8 CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING
9 PARTY (A) HAS RELIED EXCLUSIVELY UPON HER OR ITS OWN, INDEPENDENT
10 LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN
11 CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS
12 AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY OR
13 ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED
14 TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR
15 ADVISER TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE
16 IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR
17 ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT
18 PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY’S OR ADVISER’S
19 TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY
20 BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX
21 TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING ANY
22 TRANSACTION CONTEMPLATED BY THIS AGREEMENT.

23 67. No Prior Assignments. The Parties and their counsel represent, covenant, and
24 warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported
25 to assign, transfer, or encumber to any person or entity any portion of any liability, claim,
26 demand, action, cause of action or right herein released and discharged.

27 68. Release of Claims by Participating Class Members. Upon the Effective Date and
28 funding of the Gross Settlement Amount, all Participating Class Members, on behalf of

1 themselves and their heirs, executors, representatives, administrators, trustees, and/or permitted
2 assigns, hereby do and shall be deemed to have fully, finally and forever released, settled,
3 compromised, relinquished and discharged any and all of the Released Parties of and from any
4 and all Released Class Claims that accrued during the Released Claims Period.

5 69. Release of Claims by Aggrieved Employees. Upon the Effective Date and funding
6 of the Gross Settlement Amount, all Aggrieved Employees, on behalf of themselves and the
7 State of California, hereby do and shall be deemed to have fully, finally and forever released,
8 settled, compromised, relinquished and discharged any and all of the Released Parties of and
9 from any and all Released PAGA Claims that accrued during the PAGA Period.

10 70. Release of Claims by Class Representative. Upon the Effective Date and funding
11 of the Gross Settlement Amount, Plaintiff Cesar Rodriguez Vinalay, on behalf of himself and
12 his heirs, executors, administrators, and representatives, will and hereby does forever release,
13 discharge, and agree to hold harmless the Released Parties from any and all charges, complaints,
14 claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of
15 action, suits, rights, demands, costs, losses, debts and expenses (including attorney fees and
16 costs), known or unknown, at law or in equity, which they may now have or may have after the
17 signing of this Agreement, against the Released Parties including, but not limited to, the
18 Released Claims, claims that were asserted or could have been asserted in the Complaint, and
19 claims of any kind related to any and all transactions, occurrences, or matters between the parties
20 occurring prior to and through the Effective Date. Without limiting the generality of the
21 foregoing, this release shall include, but not be limited to, any and all claims under the (a)
22 Americans With Disabilities Act, as amended; (b) Title VII of the Civil Rights Act of 1964, as
23 amended; (c) the Civil Rights Act of 1991; (d) 42 U.S.C. § 1981, as amended; (e) the Age
24 Discrimination in Employment Act, as amended; (f) the Fair Labor Standards Act, as amended;
25 (g) the Equal Pay Act; (h) the Employee Retirement Income Security Act, as amended; (i) the
26 Consolidated Omnibus Budget Reconciliation Act; (j) the Rehabilitation Act of 1973; (k) the
27 Family and Medical Leave Act; (l) the Civil Rights Act of 1966; (m) the California Fair
28 Employment and Housing Act; (n) the California Constitution; (o) the California Labor Code;

(p) the California Government Code; (q) the California Civil Code; and (r) any and all other federal, state and local statutes, ordinances, regulations, rules and other laws, and any and all claims based on constitutional, statutory, common law or regulatory grounds as well as any other claims based on theories of wrongful or constructive discharge, breach of contract or implied contract, fraud, misrepresentation, promissory estoppel or intentional and/or negligent infliction of emotional distress, or damages under any other federal, state or local statutes, ordinances, regulations, rules or laws. This release is for any and all relief, no matter how denominated, including, but not limited to, back pay, front pay, vacation pay, bonuses, compensatory damages, tortious damages, liquidated damages, punitive damages, damages for pain and suffering, and attorney fees and costs, and Plaintiff hereby forever releases, discharges, and agrees to hold harmless Defendant and the Released Parties from any and all claims for attorney fees and costs arising out of the matters released in this Agreement.

Plaintiff specifically acknowledges that Plaintiff is aware of and familiar with the provisions of Civil Code § 1542, which provides as follows:

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

Plaintiff, being aware of Section 1542, hereby expressly waives and relinquishes all rights and benefits they may have under Section 1542 as well as any other statutes or common law principles of a similar effect. Plaintiff understands that Plaintiff may hereafter discover facts in addition to or different from those which Plaintiff now knows or believes to be true with respect to the subject matter of all the claims referenced herein, but stipulates and agrees that, upon the Effective Date, Plaintiff shall and hereby does fully, finally, and forever settle and release any and all claims against the Released Parties, known or unknown, suspected or unsuspected, contingent or non-contingent, that were asserted or could have been asserted upon any theory of law or equity without regard to the subsequent discovery of existence of such different or

1 additional facts.

2 71. Nullification of Settlement. If the Settlement does not become final for any
3 reason, then this Agreement, and any documents generated to bring it into effect, shall be null
4 and void. Any order or judgment entered by the Court in furtherance of this Agreement shall
5 likewise be treated as void from the beginning.

6 72. Disputes Regarding Individual Settlement Payments. If Class Members have a
7 dispute as to the data provided by the Defendant, Class Members will have the opportunity to
8 provide documentation and/or an explanation. If there is a dispute, the Settlement Administrator
9 will consult with the Parties to determine whether an adjustment is warranted. The Settlement
10 Administrator shall determine the eligibility for, and the amounts of, any Individual Settlement
11 Payments under the terms of this Agreement, and that determination shall be binding, subject to
12 final resolution by the Court if the Court decides to rule on the dispute. If the Court does not
13 issue a ruling on the dispute, the Settlement Administrator's determination of the dispute will
14 be binding upon Class Members.

15 73. Disputes Regarding Administration of Settlement. Any disputes not resolved by
16 the Settlement Administrator concerning the administration of the Settlement will be resolved
17 by the Court under the laws of the State of California. Prior to any such involvement of the
18 Court, counsel for Parties will confer in good faith to resolve the disputes without the necessity
19 of involving the Court.

20 74. Preliminary Approval Hearing. Plaintiff shall obtain a hearing before the Court
21 to request the Preliminary Approval of the Settlement, and the entry of a Preliminary Approval
22 Order: (i) approving of the proposed Settlement, and (ii) setting a date for a Final
23 Approval/Settlement Fairness Hearing. The Preliminary Approval Order shall provide for the
24 Notice Packet to be sent to all Class Members as specified herein. In conjunction with the
25 Preliminary Approval hearing, Plaintiff shall submit this Agreement, which sets forth the terms
26 of this Settlement, and will include the proposed Notice Packet, attached to this Agreement as
27 Exhibit A.

28 75. Final Settlement Approval Hearing. Upon expiration of the deadlines to submit

1 Requests for Exclusion or Notices of Objections to the Settlement, and with the Court's
2 permission, a Final Approval/Settlement Fairness Hearing shall be conducted to determine the
3 Final Approval of the Settlement along with the amounts properly payable for (i) Individual
4 Settlement Payments; (ii) the payment to the Labor and Workforce Development Agency; (ii)
5 the Class Counsel Award; (iii) the Class Representative Enhancement Payment; and (iv)
6 Settlement Administration Costs. Class Counsel will be responsible for drafting all documents
7 necessary to obtain final approval. Class Counsel will also be responsible for drafting the
8 attorneys' fees and costs application to be heard at the final approval hearing.

9 76. Entry of Judgment and Continued Jurisdiction of the Court. Concurrent with the
10 Motion for Final Approval, the Parties shall also jointly seek the entry of Judgment consistent
11 with the terms of this Agreement. After entry of the Judgment, the Court shall have continuing
12 jurisdiction solely for purposes of addressing: (i) the interpretation and enforcement of the terms
13 of the Settlement, (ii) Settlement administration matters, and (iii) such post-Judgment matters
14 as may be appropriate under court rules or as set forth in this Agreement.

15 77. Mutual Non-Disparagement. Neither Party shall disparage or defame one another
16 to any third parties with or through any written or oral statement or image (including, but not
17 limited to, any statements made via websites, blogs, postings to the internet, or emails).

18 78. Exhibits Incorporated by Reference. The terms of this Agreement include the
19 terms set forth in any attached Exhibits, which are incorporated by this reference as though fully
20 set forth herein. Any Exhibits to this Agreement are an integral part of the Settlement.

21 79. Entire Agreement. This Agreement and any attached Exhibits constitute the
22 entirety of the Parties' Settlement terms. No other prior or contemporaneous written or oral
23 agreements may be deemed binding on the Parties.

24 80. Amendment or Modification. This Agreement may be amended or modified only
25 by a written instrument signed by the Parties, their counsel, or their successors-in-interest.

26 81. Authorization to Enter Into Agreement. Counsel for all Parties warrant and
27 represent they are expressly authorized by the Parties whom they represent to negotiate this
28 Agreement and to take all appropriate action required or permitted to be taken by such Parties

1 pursuant to this Agreement to effectuate its terms and to execute any other documents required
2 to effectuate the terms of this Agreement. The Parties and their counsel will cooperate with
3 each other and use their best efforts to effect the implementation of the Settlement. If the Parties
4 are unable to reach agreement on the form or content of any document needed to implement the
5 Settlement, or on any supplemental provisions that may become necessary to effectuate the
6 terms of this Settlement, the Parties may seek the assistance of the Court to resolve such
7 disagreement.

8 82. Binding on Successors and Assigns. This Agreement shall be binding upon, and
9 inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

10 83. California Law Governs. All terms of this Agreement and Exhibits hereto shall
11 be governed by and interpreted according to the laws of the State of California.

12 84. Execution and Counterparts. This Agreement is subject only to the execution of
13 all Parties. However, the Agreement may be executed in one or more counterparts, including
14 by electronic scan, .pdf, or DocuSign. All executed counterparts and each of them, including
15 facsimile and scanned or electronic copies of the signature page, shall be deemed to be one and
16 the same instrument provided that counsel for the Parties shall exchange among themselves
17 original signed counterparts.

18 85. Acknowledgement that the Settlement is Fair and Reasonable. The Parties believe
19 this Agreement is a fair, adequate, and reasonable settlement of the Action and have arrived at
20 this Settlement after arm's-length negotiations and in the context of adversarial litigation, taking
21 into account all relevant factors, present and potential. The Parties further acknowledge that
22 they are each represented by competent counsel and that they have had an opportunity to consult
23 with their counsel regarding the fairness and reasonableness of this Agreement.

24 86. Invalidity of Any Provision. Before declaring any provision of this Agreement
25 invalid, the Court shall first attempt to construe the provision as valid to the fullest extent
26 possible consistent with applicable precedents so as to define all provisions of this Agreement
27 valid and enforceable. Any invalid, illegal, or unenforceable provision determined by the Court
28 shall in no way affect any other provision if Defendant and Class Counsel, on behalf of the

1 Parties and the Class, mutually elect in writing to proceed as if such invalid, illegal, or
2 unenforceable provision had never been included in this Agreement.

3 87. Waiver of Certain Appeals. The Parties agree to waive appeals; except, however,
4 that Plaintiff or Class Counsel may appeal any reduction in the Class Counsel's Award below
5 the amount Class Counsel requests, and either party may appeal any order that materially alters
6 the Agreement's terms.

7 88. Non-Admission of Liability. The Parties enter into this Agreement to resolve the
8 dispute that has arisen between them and to avoid the burden, expense, and risk of continued
9 litigation. In entering into this Agreement, Defendant does not admit, and specifically denies,
10 it has violated any federal, state, or local law; violated any regulations or guidelines promulgated
11 pursuant to any statute or any other applicable laws, regulations, or legal requirements; breached
12 any contract; violated or breached any duty; engaged in any misrepresentation or deception; or
13 engaged in any other unlawful conduct with respect to its employees. Neither this Agreement,
14 nor any of its terms or provisions, nor any of the negotiations connected with it, shall be
15 construed as an admission or concession by Defendant of any such violations or failures to
16 comply with any applicable law. Except as necessary in a proceeding to enforce the terms of
17 this Agreement, this Agreement and its terms and provisions shall not be offered or received as
18 evidence in any action or proceeding to establish any liability or admission on the part of
19 Defendant or to establish the existence of any condition constituting a violation of, or a non-
20 compliance with, federal, state, local or other applicable law.

21 89. Captions. The captions and section numbers in this Agreement are inserted for
22 the reader's convenience, and in no way define, limit, construe, or describe the scope or intent
23 of the provisions of this Agreement.

24 90. Waiver. No waiver of any condition or covenant contained in this Agreement or
25 failure to exercise a right or remedy by any of the Parties hereto shall be considered to imply or
26 constitute a further waiver by such party of the same or any other condition, covenant, right, or
27 remedy.

28 //

1 91. Enforcement Actions. Pursuant to California Code of Civil Procedure § 664.6,
2 the Court shall retain jurisdiction with respect to the interpretation, implementation, and
3 enforcement of the terms of this Agreement and all orders and judgments entered in connection
4 therewith, and the Parties and their counsel hereto submit to the jurisdiction of the Court for
5 purposes of interpreting, implementing, and enforcing the settlement embodied in this
6 Agreement and all orders and judgments entered in connection therewith. In the event that one
7 or more of the Parties institutes any legal action or other proceeding against any other Party or
8 Parties to enforce the provisions of this Settlement, or to declare rights and/or obligations under
9 this Settlement, the prevailing Party or Parties shall be entitled to recover from the non-
10 prevailing Party or Parties reasonable attorneys' fees and costs, including expert witness fees
11 incurred in connection with any enforcement actions.

12 92. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms
13 and conditions of this Agreement. Accordingly, this Agreement shall not be construed more
14 strictly against one party than another merely by virtue of the fact that it may have been prepared
15 by counsel for one of the Parties, it being recognized that, because of the arm's-length
16 negotiations between the Parties, all Parties have contributed to the preparation of this
17 Agreement.

18 93. Representation by Counsel. The Parties acknowledge that they have been
19 represented by counsel throughout all negotiations that preceded the execution of this
20 Agreement, and that this Agreement has been executed with the consent and advice of counsel.
21 Further, Plaintiff and Class Counsel warrant and represent that there are no liens on the
22 Agreement.

23 94. Cooperation and Execution of Necessary Documents. All Parties shall cooperate
24 in good faith and execute all documents to the extent reasonably necessary to effectuate the
25 terms of this Agreement.

26 95. Binding Agreement. The Parties warrant that they understand and have full
27 authority to enter into this Agreement, and further intend that this Agreement shall be fully
28 enforceable and binding on all Parties, and agree that it shall be admissible and subject to

disclosure in any proceeding to enforce its terms.

IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this Joint Stipulation of Class Action Settlement Between Plaintiff and Defendant as of the date(s) set forth below:

SIGNATURES
READ CAREFULLY BEFORE SIGNING

DATED: May 22, 2023

**PLAINTIFF CESAR RODRIGUEZ
VINALAY**

DocuSigned by:

Cesar Rodriguez Vinalay

DATED: May __, 2023

**DEFENDANT RESTAURANT PACIFIC
GROUP, LLC**

Please Print Name of Authorized Signatory

APPROVED AS TO FORM

DATED: May 22, 2023

JAMES HAWKINS APLC


James R. Hawkins
Isandra Fernandez
Lance Dacre
Attorneys for Plaintiff Cesar Rodriguez Vinalay

DATED: May __, 2023

FENTON & KELLER

Christopher E. Panetta
Marco A. Lucido
Attorneys for Defendant Restaurant Pacific
Group, LLC

disclosure in any proceeding to enforce its terms.

IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this Joint Stipulation of Class Action Settlement Between Plaintiff and Defendant as of the date(s) set forth below:

**SIGNATURES
READ CAREFULLY BEFORE SIGNING**

DATED: May __, 2023

**PLAINTIFF CESAR RODRIGUEZ
VINALAY**

Cesar Rodriguez Vinalay

DATED: May 10, 2023

**DEFENDANT RESTAURANT PACIFIC
GROUP, LLC**

Chair Shake

en

Please Print Name of Authorized Signatory

APPROVED AS TO FORM

DATED: April __, 2023

JAMES HAWKINS APLC

James R. Hawkins
Isandra Fernandez
Lance Dacre
Attorneys for Plaintiff Cesar Rodriguez Vinalay

May
DATED: April 11, 2023

FENTON & KELLER

Christopher E. Panetta
Marco A. Lucido
Attorneys for Defendant Restaurant Pacific
Group, LLC

Exhibit A

NOTICE OF CLASS ACTION AND PAGA SETTLEMENT

[CLASS MEMBER NAME]

Cesar Rodriguez Vinalay v. Restaurant Pacific Group, LLC

Superior Court of the State of California, County of Monterey
Case No.: 22CV000486

If you are a current or former employee of Restaurant Pacific Group, LLC dba Scales Restaurant (“Restaurant Pacific Group” or “Defendant”), a class action lawsuit may affect your rights and you may be entitled to benefits under the settlement.

You are not being sued. A court authorized this notice. This is not a solicitation from a lawyer.

PLEASE READ THIS NOTICE CAREFULLY. IT CONTAINS IMPORTANT INFORMATION ABOUT YOUR RIGHTS.

**YOUR ESTIMATED TOTAL INDIVIDUAL SETTLEMENT PAYMENT AMOUNT
FROM THIS CLASS ACTION SETTLEMENT IS \$ [REDACTED].**

According to Restaurant Pacific Group’s records, the total number of workweeks that you worked as an employee in California between February 18, 2018, through and including August 13, 2021, is [REDACTED]. Based on this number, your Individual Settlement Payment Amount as a member of the Class is estimated to be \$[REDACTED].

[PAGA MEMBERS ONLY:]

**YOUR ESTIMATED TOTAL PAGA PAYMENT AMOUNT FROM THIS CLASS
ACTION SETTLEMENT IS \$ [REDACTED].**

According to Restaurant Pacific Group’s records, the total number of pay periods that you worked as an employee in California between February 18, 2021, through and including August 13, 2021, is [REDACTED]. Based on this number, your PAGA Payment is estimated to be \$[REDACTED].

- This lawsuit involves a class defined as: All current and former non-exempt employees employed by Restaurant Pacific Group in the State of California from February 18, 2018, through August 13, 2021. It also asserts claims on behalf of aggrieved employees from February 18, 2021, through August 13, 2021.

- You are receiving this Notice because the records reflect that you may be a class member.
- In the lawsuit, Plaintiff *Cesar Rodriguez Vinalay* (“Plaintiff”) alleged that Defendant failed to pay wages for all hours worked, provide proper meal and rest breaks, pay premiums for missed meal and rest breaks, reimburse work-related expenses, provide accurate itemized wage statements, and timely pay all wages at the time owed and upon separation of employment, and that Defendant engaged in unfair business practices. Based on these allegations, Plaintiff sought unpaid wages and penalties. Defendant denies Plaintiff’s allegations. After the exchange of relevant information and evidence, the parties agreed to enter settlement negotiations in an attempt to resolve the claims in the case.
- There has been a settlement that affects your rights. Although the Court has authorized the Parties to provide this notice of the proposed settlement, the Court has expressed no opinion on the merits of Plaintiff’s claims or Defendant’s defenses.
- You will not be penalized or retaliated against by Restaurant Pacific Group for participating in this settlement.
- You have several options available to you, which are explained in the chart below:

DO NOTHING	By doing nothing, you <u>will</u> receive a share of the settlement proceeds. In exchange for the settlement proceeds, you will give up any rights to sue Restaurant Pacific Group separately for claims based on the facts pled in the operative Complaint, which are or could be the basis of claims that Restaurant Pacific Group failed to pay wages for all hours worked, provide proper meal and rest breaks, pay premiums for missed meal and rest breaks, reimburse work-related expenses, provide accurate itemized wage statements, and timely pay all wages at the time owed and upon separation of employment. See Section 8 below for an explanation of the claims you are giving up. If you move, you must notify the Settlement Administrator of your new address.
ASK TO BE EXCLUDED (OPT OUT)	You can exclude yourself from this lawsuit. If you ask to be excluded, you will not receive a share of the class settlement proceeds, but you keep any rights you may have to bring your own separate suit against Restaurant Pacific Group for the same legal claims in this lawsuit that are released in this settlement. You cannot ask to be excluded <u>and</u> still get a settlement payment for the class claims. If you ask to be excluded from the settlement, you cannot object to the settlement.

	Even if you request to be excluded from the class settlement, you may not exclude yourself from the settlement of claims under the Private Attorneys' General Act ("PAGA") and will receive your portion of the PAGA Payment and give up your right to pursue the Released PAGA Claims.
OBJECT	If you do not agree with the settlement, you can object to the terms of this settlement. The Court may or may not agree with your objection. If you object to the settlement and the Court does not agree with your objection, you will still be bound by the terms of the settlement and will receive a settlement payment. Objecting to the settlement will not exclude you from the settlement.
ATTEND THE FINAL APPROVAL HEARING	You can ask to speak in Court about the fairness of the settlement at the Final Approval Hearing. The Court will hold a Final Approval Hearing to determine whether the settlement is fair, reasonable, and adequate on [DATE] , 2023 at [TIME] . More information regarding this hearing is set forth in Section 12.

**Your options are explained in this notice.
To opt out or object, you must act by **XXXXX**.**

1. Why did I get this notice?

A proposed settlement has been reached in a class action lawsuit that was brought on behalf of Restaurant Pacific Group's non-exempt employees. You have received this notice because Restaurant Pacific Group's records indicate that you are a member of the settlement class or are an aggrieved employee.

2. What is this lawsuit about?

Plaintiff filed this lawsuit on February 18, 2022, on behalf of individuals who are employed or have been employed by Restaurant Pacific Group as non-exempt employees in the State of California, during the Class Period. Plaintiff amended his lawsuit on April 26, 2022.

"Class Period" is defined as the period from February 18, 2018, through August 13, 2021. The operative complaint alleges class and representative PAGA claims against Restaurant Pacific Group for (1) failure to pay wages for all hours worked including overtime and minimum wage in violation of Labor Code sections 210, 1194, and 1199 and applicable Wage Orders; (2) failure to provide meal periods or meal period premiums in violation of Labor Code sections 226.7, 512 and applicable Wage Orders; (3) failure to provide rest periods or rest period premiums in violation of

Labor Code sections 226.7 and applicable Wage Orders; (4) failure to reimburse work-related expenses in violation of Labor Code section 2802 and applicable Wage Orders; (5) failure to timely pay wages during employment in violation of Labor Code section 204 and applicable Wage Orders; (6) failure to timely pay wages upon separation of employment in violation of Labor Code sections 201-203 and applicable Wage Orders; (7) failure to provide accurate itemized wage statements in violation of Labor Code section 226 and applicable Wage Orders; (8) unfair competition in violation of Business and Professions Code section 17200 et seq.; and (9) PAGA penalties under Labor Code section 2699 et seq.

3. Has the Court decided who is right?

No. The Court has made no decision regarding the merits of Plaintiff's allegations or Restaurant Pacific Group's defenses.

4. Why did this case settle?

The Parties reached a settlement in order to avoid the risk, inconvenience, and expense of further litigation. Plaintiff and his attorneys believe the proposed settlement is fair, adequate, and in the best interest of the class members to whom it applies given the outcome of their investigation, and the consumption of time and resources required in connection with further litigation. Although Restaurant Pacific Group disputes Plaintiff's claims and asserts that it has complied with all of its legal obligations toward its employees, Defendant has also concluded that further litigation would be expensive and would divert management and employee time.

5. What are the terms of the settlement and how much will I receive?

The Gross Settlement Amount is \$275,000.00. Under the proposed settlement, the following amounts will be deducted before any payments are made to employees, subject to final approval by the Court:

- Attorneys' fees: \$91,666.66
- Litigation Costs: \$15,000.00
- Settlement Administration Costs to the Settlement Administrator: \$8,850.00
- Class Representative Enhancement Award to Class Representative: \$5,000.00
- Payment to the Labor and Workforce Development Agency ("LWDA") and Aggrieved Employees: \$10,000.00, representing its share of the settlement payment for the PAGA claims made in this lawsuit, pursuant to the California Labor Code section 2699.

After these deductions, and to the extent that the Court approves these amounts in full, approximately \$125,516.66 is estimated to be available for payment to the Class Members receiving this notice ("Net Settlement Amount"). These amounts may change and are subject to Court approval.

Each class member's Individual Settlement Payment shall be determined as follows:

- The Net Settlement Amount will be apportioned among Class Members on a pro rata basis,

based on the number of workweeks worked by each respective Class Member during the Class Period.

All Individual Settlement Payments will be treated as follows: 10% as payment for wages (subject to withholding of employment taxes and to be reported on IRS Forms W-2, and 90% as penalties and interest (not subject to withholding of employment taxes and to be reported on IRS Forms 1099).

According to Restaurant Pacific Group's records, the total number of workweeks you worked during the Class Period is [REDACTED].

If you disagree with the above information regarding your number of workweeks worked and would like someone to look into the matter, please follow the procedure below. Based on the above information, your estimated Individual Settlement Payment from the class settlement is [REDACTED].

[PAGA MEMBERS ONLY: In addition, you are also eligible to receive a payment under the PAGA, California Labor Code section 2698, *et seq.* Your PAGA payment constitutes 100% penalties, not wages. Restaurant Pacific Group's records indicate that you worked for Restaurant Pacific Group as a non-exempt employee from February 18, 2021, through August 13, 2021 (the "PAGA Period"). Individual payments under the PAGA will be paid to employees who worked during the PAGA Period on a pro rata basis, based on the number of pay periods each respective employee worked during the PAGA Period. Based Restaurant Pacific Group's records, it has been determined that you worked a total of [REDACTED] pay periods during the PAGA Period. Based on that, your individual share of the PAGA Payment is \$ [REDACTED].]

6. What if I disagree with information or the number of workweeks shown above?

If you believe the information in the notice is incorrect regarding the number of workweeks or number of pay periods you worked, you can provide documentation or explanation to the Settlement Administrator to show contrary information. You can write a letter setting forth the number of workweeks or pay periods that you believe you worked as a non-exempt employee in California during the Class Period or the PAGA Period that you believe are correct. You may attach any relevant documentation in support thereof. You must mail or fax your letter to:

ILYM Group, Inc.

[INSERT SETTLEMENT ADMINISTRATION INFORMATION]

You must submit such information by [REDACTED]. Class Counsel and the Settlement Administrator will work together in good faith and do their best to promptly resolve the dispute based on available records. The Settlement Administrator shall review all information, material and documents and make a decision regarding the dispute, subject to the final resolution by the Court if the Court decides to rule on the dispute. If the Court does not issue a ruling on the dispute, the Settlement Administrator's determination of the number of workweeks you worked will be binding.

7. What do I have to do to receive a share of the settlement?

If you would like to receive an award under the terms of this settlement, **you do not have to do anything**. However, it is advisable to confirm your current mailing address with the Settlement Administrator in order to ensure you receive your settlement share. If you move, you must notify the Settlement Administrator of your new address. You will be covered by the release summarized in Section 8, below.

8. What rights am I giving up?

The class claims you will release by doing nothing and participating in the settlement are as follows:

All claims that were alleged in the operative complaints of the Action and any claims that could have been alleged based on the facts as alleged in of the operative complaints of the Action.

This includes claims that accrued during the Class Period for (1) failing to pay wages for all hours worked including overtime and minimum wage; (2) failing to provide compliant meal or rest periods or pay meal or rest period premiums; (3) failing to reimburse work-related expenses; (4) failing to timely pay all wages owed during employment or upon separation of employment; (5) failing to provide accurate itemized wage statements, and (6) engaging in unfair business practices.

PAGA MEMBERS ONLY: If you are an Aggrieved Employee, you are also giving up the right to sue for the Released PAGA Claims, which means all claims under the Private Attorneys General Act that were alleged in the operative complaints in the Action and any claims that could have been alleged based on the facts as alleged in the operative complaints in the Action.

This includes claims under the PAGA premised on Defendant's alleged failure to: (1) pay wages for all hours worked including overtime and minimum wage; (2) provide compliant meal or rest periods or pay meal or rest period premiums; (3) reimburse work-related expenses; (4) timely pay all wages owed during employment or upon separation of employment; or (5) provide accurate itemized wage statements.

Class Members and PAGA Members will be releasing these claims against Restaurant Pacific Group and any and all of its past and present affiliated entities, parents, subsidiaries, owners, officers, shareholders, executives, managers, and employees.

9. What if I do not wish to be involved?

Anyone not wishing to participate in the settlement may exclude himself or herself ("opt out") by completing, signing, and mailing/faxing a letter indicating that they do not want to participate in the settlement to the Settlement Administrator, ILYM Group, Inc., at the following address by **XXXX**.

ILYM Group, Inc.

[INSERT SETTLEMENT ADMINISTRATION INFORMATION]

Your letter must include (1) your name, address, and telephone number; (2) a statement indicating

that you wish to be excluded from the settlement; and (3) your signature. Your letter must be postmarked or fax stamped on or before XXX.

If your Request for Exclusion is postmarked or fax stamped after XXX, it will be rejected as untimely, and you will be a Settlement Class Member and be bound by the settlement terms and release. Anyone who submits a timely and valid Request for Exclusion shall not be deemed a Settlement Class Member and will not receive any payment as part of this settlement. Such individuals will keep any right to sue Restaurant Pacific Group separately about the claims made in this lawsuit. If a Class Member submits both a valid Request for Exclusion and a valid Notice of Objection, the Request for Exclusion shall control. Aggrieved Employees cannot opt out of the PAGA Settlement.

10. What if I have an objection?

A class member may object to the settlement in writing or in person. Written objections and all supporting briefs or other materials must be submitted to the Settlement Administrator, ILYM Group, Inc., by mail or fax no later than XXXX. The Court will decide on the objections at the Final Approval Hearing. If your objection is overruled at the Final Approval Hearing, you will still be bound by the terms of this settlement and will receive a settlement payment. If a Class Member submits both a valid Request for Exclusion and a valid Notice of Objection, the Request for Exclusion shall control.

For written objections to be valid, it must contain (1) your name, address, and phone number; (2) the written basis of your objection, and (3) your signature. You may include copies of any papers, briefs, or documents upon which the objection is based. The written objection must be post marked or fax stamped on or before XXX. The postmark or fax stamp date shall be the exclusive means for determining that a written objection is timely and valid.

Any class member may nevertheless appear and make an objection at the Final Approval Hearing. The class member may appear personally or through an attorney, at his or her own expense, at the Final Approval Hearing to present his or her objection directly to the Court. Any attorney who will represent an individual objecting to this Settlement who has not filed a written objection must file a notice of appearance with the Court and serve Class Counsel and Defense Counsel no later than . The Final Approval Hearing will be held in Dept. 15 of the Monterey County Superior Court, Monterey Courthouse, located at 1200 Aguajito Road, Monterey, California 93940 on , 2023, at XXX (Pacific Time). Information on appearing remotely can be found here: <https://www.monterey.courts.ca.gov/remote>.

11. Do I need a lawyer? Who are the lawyers in this case?

You do not need to hire your own lawyer because Class Counsel is working on your behalf. However, if you want your own lawyer, you are free to hire one at your own expense.

The below are Class Counsel:

James R. Hawkins (SBN 192925)
Isandra Fernandez (SBN220482)

Lance Dacre (SBN190305)
JAMES HAWKINS APLC
9880 Research Drive, Suite 200
Irvine, CA 92618
Telephone: (949) 387-7200
Facsimile: (949) 387-6676

12. What happens next in the case?

The Settlement has only been preliminarily approved. The Court will hold a hearing in Dept. 15 of the Monterey County Superior Court, Monterey Courthouse, located at 1200 Aguajito Road, Monterey, California 93940 at _____, 2023, at XXX (Pacific Time), to determine whether the settlement should be finally approved as fair, reasonable, and adequate. The Court will also be asked to approve Class Counsel's request for attorneys' fees and costs, Plaintiff's enhancement award, and the costs of settlement administration. At the Final Approval Hearing, the Court will hear all objections, as well as arguments for and against the proposed settlement. You have a right to attend this hearing, **but you are not required to do so**. You also have the right to hire an attorney to represent you, at your own expense, or to enter an appearance and represent yourself. The hearing may be continued without further notice to you. It is not necessary for you to appear at this hearing.

13. How can I receive more information?

This Notice is a summary of the basic terms of the settlement. For further information, you may telephone ILYM Group, Inc. [INSERT SETTLEMENT ADMINISTRATION INFORMATION], or you may go to the Administrator's website at _____ admin website. This website will contain pertinent documents including the operative Complaint, the Settlement Agreement, and the Final Approval and Judgment. You may also contact Class Counsel (listed above). You may also review the settlement agreement and other filed documents, which are on file with the Clerk of the Monterey Superior Court, 1200 Aguajito Road, Monterey, California 93940.

ALL INQUIRIES REGARDING THIS LITIGATION SHOULD BE MADE TO PLAINTIFF'S ATTORNEYS:

James R. Hawkins (SBN 192925)
Isandra Fernandez (SBN220482)
Lance Dacre (SBN190305)
JAMES HAWKINS APLC
9880 Research Drive, Suite 200
Irvine, CA 92618
Telephone: (949) 387-7200
Facsimile: (949) 387-6676

Please do not telephone the Court, the Office of the Clerk, or Restaurant Pacific Group's counsel for information regarding this settlement.

Exhibit 2



State of California

Labor and Workforce Development Agency /
Department of Industrial Relations

Private Attorneys General Act (PAGA) – Filing

New PAGA Claim Notice

Your Information (Person Who is Filing)

Your First Name *

Lance

Your Last Name *

Dacre

Firm Name (if any) *

James Hawkins APLC

(Enter "in pro per" if you are representing yourself)

Your Email Address *

lance@jameshawkinsaplc.com

Your Street Name, Number and Suite/Apt *

9880 Research Dr., Suite 200

Your Mobile Phone Number

9493877200

Your City *

Irvine

Your Work Phone Number

Your State *

California

Your Zip/Postal Code *

92618

Plaintiff Information

Plaintiff/Aggrieved Employee Name *

Cesar Rodriguez Vinalay

Plaintiff/Aggrieved Employee Occupation *

Line Cook

[Add Additional Plaintiffs](#)

Employer Information

Employer Entity Type

Please select...

Employer Name *

RESTAURANT PACIFIC GROUP, LLC

Maximum 80 Character Limit

Employer Street Name, Number and Suite/Apt *

2801 Monterey Salinas Highway

Employer City *

Monterey

Employer State *

California

**Employer Zip/Postal Code ***

93940

Employer Industry *

Restaurant

**Add additional defendants**

- ☐ Add any entity other than an individual
- ☐ Add an individual/sole proprietor employer

Notice General Information**Estimated Number of Employees Impacted by Violations ***

100

Notice Violations – Check All that Apply *

- ☐ Child Labor
- ☐ Misclassification Employee Classified as Contractor
- ☐ Misclassification NonExempt Classified as Exempt
- ☒ Minimum Wage
- ☒ Overtime
- ☒ Not paid for all hours worked
- ☒ Not paid wages due on termination
- ☒ Other Unpaid Wages
- ☐ Tips or Gratuities
- ☒ Payment or Reimbursement of Employee Expenses
- ☐ Improper Form of Payment Including NSF Checks
- ☐ Kickbacks
- ☒ Meal and Rest Breaks
- ☐ Sick Leave
- ☐ Lactation Accommodation (Labor Code 1030–1033)
- ☐ Not providing required time off, other
- ☐ Pay Discrimination on basis of sex, (Labor Code 1197.5)
- ☐ No Wage Statements
- ☒ Improper or Incomplete Wage Statements
- ☒ Other Notice or Posting or Recordkeeping
- ☐ Public Works (Labor Code 1720 – 1815)
- ☐ Apprenticeship (Labor Code 3070 – 3098)
- ☐ Occupational Safety and Health (Labor Code 6300 et seq)
- ☐ No Workers' Compensation
- ☐ Licensing, Registration, or Permit
- ☐ Unfair Immigration Activities
- ☐ Agricultural Labor Relations
- ☐ Industrial Homework
- ☐ Retaliation for Protected Status or Activity (Specify)
- ☒ Other

Child Labor – Specify Ages**Provide Details of Other Violation *****Other(Maybe Multiple)**

- ☐ Other Violation

PAGA Claim Type – Check All that Apply *

- ☒ Notice asserts one or more Labor Code violations listed in Labor Code 2699.5– not curable subject to 2699.3(a)
- ☐ Notice asserts one or more OSHA violations subject to requirements of 2699.3(b)
- ☒ Includes one or more violations not listed in Labor Code 2699.5 – curable subject to 2699.3(c)

Filing Fee

A filing fee of \$75 is required to file a new PAGA claim notice.

IFP

- ☐ I wish to claim In Forma Pauperis and am attaching a Confidential Request to Waive Court Fees (Judicial Council Court Form FW-001) or similar form to this submission.

Billing information**Billing First Name *****Billing Last Name *****Billing Email *****Billing Phone****Billing Street Name, Number and Suite/Apt *****Billing City *****Billing State ***

Please select...

**Billing Zip/Postal Code *****Credit Card Type ***

Please select... ▼

Credit Card Number ***CVV Number *****Credit Card Expiration Month ***

mm

Credit Card Expiration Year *

yyyy

Notice and Other Attachments**PAGA Claim Notice (must be a .pdf) *** 02.18.22 LWDA Letter.pdf**Other Attachment – (if any) (must be a .pdf)** 02.18.22 Clas...fic Group.pdf

[Add Another Attachment](#)

Should you have questions regarding this online form, please contact PAGAInfo@dir.ca.gov

IMPORTANT NOTICE OF REDACTION RESPONSIBILITY: All filers must redact: Social Security or taxpayer identification numbers; personal addresses, personal telephone numbers, personal email addresses, dates of birth; names of minor children; & financial account numbers. This requirement applies to all documents, including attachments.

☒ I understand that, if I file, I must comply with the redaction rules consistent with this notice.

[Previous Page](#)[Submit](#)

Naomi Adams

From: Lance Dacre
Sent: Friday, February 18, 2022 4:41 PM
To: Isandra Fernandez; Staff
Subject: FW: Thank you for submission of your PAGA Case.

-----Original Message-----

From: noreply@salesforce.com <noreply@salesforce.com> On Behalf Of LWDA DO NOT REPLY
Sent: Friday, February 18, 2022 3:46 PM
To: Lance Dacre <lance@jameshawkinsaplc.com>
Subject: Thank you for submission of your PAGA Case.

2/18/2022

LWDA Case No. LWDA-CM-869090-22
Law Firm : James Hawkins APLC
Plaintiff Name : Cesar Rodriguez Vinalay
Employer: RESTAURANT PACIFIC GROUP, LLC
Filing Fee : \$75.00
IFP Claimed : No

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

JAMES *JH* HAWKINS
A PROFESSIONAL LAW CORPORATION

9880 RESEARCH DRIVE, SUITE 200, IRVINE, CALIFORNIA 92618
TELEPHONE (949) 387-7200; FACSIMILE (949) 387-6676

February 18, 2022

Via LWDA Website:

Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612
<http://www.dir.ca.gov/Private-Attorneys-General-Act>

Via Certified Mail:

RESTAURANT PACIFIC GROUP, LLC.
Agent for Service of Process:
Fenton & Keller, APC.
2801 Monterey Salinas Highway
Monterey, CA 93940
Receipt No.: 7018 1130 0001 8270 3350

Re: NOTICE PURSUANT TO LABOR CODE SECTIONS 2699 et seq.

To Whom It May Concern:

PLEASE TAKE NOTICE that plaintiff, Cesar Rodriguez Vinalay, on behalf of himself and all others similarly situated gives NOTICE to file and/or amend a civil action pursuant to Labor Code Sections 2699, *et seq.* Plaintiff hereby gives written notice by online submission to the Labor and Workforce Development Agency ("LWDA"), and by certified mail to Defendants, Restaurant Pacific Group, LLC via their agent for service of process. Plaintiff hereby attaches the Complaint 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 provision violations alleged in the Complaint PERTAIN TO ALL ENTITIES AND INDIVIDUALS NAMED IN THE COMPLAINT even if not specifically specified.

Please advise by certified mail within sixty (60) days of the post mark on this letter if the LWDA intends to investigate these claims. Thank you.

If you have any questions, please do not hesitate to contact me.

Very Truly Yours,

/s/ Lance Dacre

Lance Dacre, Esq.

Enclosures: Complaint

James R. Hawkins, Esq. SBN 192925
Isandra Y. Fernandez, Esq. SBN 220482
Lance Dacre, Esq. SBN 190305
JAMES HAWKINS APLC
9880 Research Drive, Suite 200
Irvine, CA 92618
TEL: (949) 387-7200
FAX: (949) 387-6676

Attorneys for Plaintiff, CESAR RODRIGUEZ VINALAY
on behalf of himself and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF MONTEREY

CESAR RODRIGUEZ VINALAY on behalf of
himself and all others similarly situated

Plaintiff,

vs.

RESTAURANT PACIFIC GROUP, LLC, a
California limited liability company and DOES
1 through 50, inclusive,

Defendants.

Case No.

ASSIGNED FOR ALL PURPOSES TO:

JUDGE:

DEPT:

CLASS ACTION COMPLAINT

- 1) Failure to pay Lawful Wages**
- 2) Failure to Provide Lawful Meal
Periods or Compensation in Lieu
Thereof**
- 3) Failure to Provide Lawful Rest
Periods or Compensation in Lieu
Thereof**
- 4) Failure to Reimburse Employee
Expenses**
- 5) Failure to Timely Pay Wages During
Employment**
- 6) Failure to Timely Pay Wages At
Termination**
- 7) Knowing and Intentional Failure to
Comply With Itemized Employee
Wage Statement Provisions**
- 8) Violations of the Unfair Competition
Law**

JURY TRIAL DEMANDED

1 Named Plaintiffs allege as follows

2 **I.**

3 **INTRODUCTION**

4 1. Plaintiff CESAR RODRIGUEZ VINALAY (“Plaintiff”) asserts the following
5 Class Action claims, pursuant to Code of Civil Procedure section 382, against Defendants
6 RESTAURANT PACIFIC GROUP, LLC (hereinafter “RPG”) and Does 1 through 50 inclusive,
7 (collectively “Defendants”)

8 2. Plaintiff brings this class action on behalf of himself, and all similarly situated
9 employees not classified as “Exempt” or primarily employed in executive, professional, or
10 administrative capacities, employed by, or formerly employed by Defendants in California.
11 (hereinafter referred to as “Non-Exempt Employees” and/or “Class Members”).

12 3. During the liability period, defined as the applicable statute of limitations for each
13 and every cause of action contained herein, Defendants enforced shift schedules, employment
14 policies and practices and/or workload requirements wherein Plaintiff and Non-Exempt
15 Employees were, amongst other statutory violations, not paid all lawful wages owed; not
16 provided compliant rest and meal periods; not provided accurate itemized wage statements; not
17 reimbursed employee expenses, and not paid timely wages during their employment and/or at
18 termination, including vacation wages owed to resigned or discharged employees.

19 4. Plaintiff on behalf of himself and Non-Exempt Employees, brings this action
20 pursuant to Labor Code sections 201, 202, 203, 204, 210, 226, 226.7, 227.3, 510, 512, 558, 1194,
21 1198, 1199, 2802, Title 8, Section 11040, any other applicable Industrial Welfare Commission
22 (“IWC”) Wage Orders, seeking unpaid lawful wages, unpaid rest and meal period compensation,
23 expense reimbursements, penalties and other equitable relief, and reasonable attorneys’ fees and
24 costs.

25 **II.**

26 **VENUE**

27 5. Venue as to each Defendant is proper in this judicial district pursuant to Code of
28 Civil Procedure section 395. Defendant conducts substantial and continuous commercial

1 activities in Monterey County and each Defendant is within the jurisdiction of this Court for
2 service of process purposes. Defendant employs numerous Class Members in Monterey,
3 California.

4 6. Plaintiff is, and at all times mentioned in this complaint was, a resident of
5 California.

6 **III.**

7 **PARTIES**

8 7. On information and belief, RESTAURANT PACIFIC GROUP, LLC owns and
9 operates restaurants, fish markets, and gift shops providing dining and shopping to the general
10 public within the state of California.

11 8. The true names and capacities of Defendants, whether individual, corporate,
12 associate, or otherwise, sued herein as DOES 1 through 50, inclusive, are currently unknown to
13 Plaintiff, who therefore sues Defendant by such fictitious names under Code of Civil Procedure
14 section 474. Plaintiff is informed and believes, and based thereon alleges, that each of the
15 Defendants designated herein as a DOE is legally responsible in some manner for the unlawful
16 acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the
17 true names and capacities of the Defendants designated hereinafter as DOES when such identities
18 become known.

19 9. Plaintiff is informed and believes, and based thereon alleges, that Defendants
20 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a
21 joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each
22 Defendants are legally attributable to the other Defendants.

23 **IV.**

24 **FACTUAL BACKGROUND**

25 10. Plaintiff was employed by Defendants as a line cook on or about October 19,
26 2019. Plaintiff occupied said non-exempt, hourly position until the last day of his employment on
27 or about March 4, 2021.

28 11. During the relevant time period, RPG exercised control over the wages, hours,

and/or work conditions of Plaintiff and Non-Exempt Employees.

12. During the relevant time period, Plaintiff and Non-Exempt Employees typically worked six days a week. During their scheduled workdays, Plaintiff and Class Members were typically scheduled to work ten (10) hour shifts but at times also worked eight (8) hour shifts and shifts greater than ten (10) hours.

13. During the relevant time period, Defendants implemented policies and practices which resulted in Plaintiff and Non-Exempt Employees working off the clock and without compensation. For instance, before the scheduled start of their shifts, Plaintiff and Non-Exempt Employees are required to arrive at the work site and don appropriate uniforms and clothing and were required to park several minutes' walk from the work site. Plaintiff typically arrived for work on average between fifteen (15) to thirty (30) minutes before the scheduled start of his shifts to perform his pre shift requirements. Plaintiff was not compensated for the work performed "off the clock" prior to the scheduled start of the shift.

14. During the relevant time period, due to Defendant's practices and policies and the demands of the work shifts, Plaintiff and Non-Exempt Employees were frequently required to work in excess of five (5) hours without a minimum, uninterrupted thirty (30) minute meal break by the end of the fifth hour of their shift and/or in excess of ten (10) hours without a second 30-minute meal period by the end of the tenth hour of their shift. By way of example, Plaintiff could not take a break until allowed by his supervisor. His breaks were almost always 6 or 7 hours after his shift started. Plaintiff and, on information and belief, Non-Exempt Employees were not paid one (1) hour of pay at their regular rate of compensation for each workday that a compliant meal period was not provided, in violation of California labor laws, regulations and IWC Wage Order.

15. During the relevant time period, due to the demands of the work shifts, as discussed herein, Plaintiff and Non-Exempt Employees were required to work without being permitted or authorized a minimum ten (10) minute compliant rest period for every four hours or major fraction thereof worked, nor were they permitted or authorized a third minimum ten (10) minute compliant rest period for working in excess of ten (10) hours and not compensated one (1) hour of pay at their regular rate of compensation for each workday that a rest period was not

provided, in violation of California labor laws, regulations, and IWC Wage Orders.

16. During the relevant time frame, Defendants failed to adequately reimburse Plaintiff and Class Members for tools that were required in direct consequence of the discharge of their duty. As a line cook, Plaintiff was required to provide, among other tools, his own knives, peelers and tongs. On information and belief, Non-Exempt Employees were required to provide their own pens, pencils and writing pads.

17. During the relevant time period, pursuant to uniform policy and practice, Plaintiff and other Non-Exempt Employees accrued vacation time.

18. On information and belief, Defendants willfully failed to pay all earned wages in a timely manner to Non-Exempt Employees during their employment and at the termination of their employment failed to pay all compensation due, including but not limited to all wages owed, including vacation wages, and compensation for having failed to properly provide rest periods and meal periods.

19. Defendants have also failed to maintain accurate itemized records reflecting total hours worked and have failed to provide Non-Exempt Employees with accurate, itemized wage statements reflecting total hours worked and appropriate rates of pay for those hours worked.

20. Plaintiff is informed and believes, and based thereon alleges, that Defendant currently employs and during the relevant period have employed approximately one hundred (100) Non-Exempt Employees in California.

21. Plaintiff and Non-Exempt Employees employed by Defendants, at all times pertinent hereto, have been non-exempt employees within the meaning of the California Labor Code and the implementing rules and regulations of the IWC California Wage Orders.

V.

CLASS ALLEGATIONS

22. Plaintiff seeks to represent a Class comprised of and defined as: All persons who are or were employed by Defendants in the state of California as hourly non-exempt employees within four (4) years prior to the date this lawsuit is filed (“liability period”) until resolution of this lawsuit (collectively referred to as the “Class” and/or Class Members”).

23. Plaintiff also seeks to represent Subclasses which are composed of persons satisfying the following definitions:

a. All Class Members in the state of California who were not accurately and fully paid all lawful wages owed to them including proper minimum wage and/or overtime compensation for all their hours worked;

b. All Class Members in the state of California who have not been provided compliant 30-minute meal periods when they worked over five hours in a work shift by the end of the fifth hour and were not provided compensation in lieu thereof;

c. All Class Members in the state of California who have not been provided a compliant second 30-minute meal period when they worked over ten hours in a work shift by the end of the tenth hour and were not provided compensation in lieu thereof;

d. All Class Members in the state of California who, within the liability period, have not been authorized and permitted to take a compliant minimum ten (10) minute rest period for every four (4) hours or major fraction thereof worked per day and were not provided compensation in lieu thereof;

e. All employees of Defendants in state of California who, within the liability period, were not indemnified for expenses incurred in direct consequence of the discharge of their duty;

f. All Class Members in the state of California who, within the liability period, were not timely paid all wages due and owed to them during their employment with Defendant;

g. All Class Members in the state of California who, within the liability period, were not timely paid all wages, including vacation wages, due and owed to them upon the termination of their employment with Defendant; and

h. All Class Members in the state of California who, within the liability period, were not provided with accurate and complete itemized wage statements.

24. Plaintiff reserves the right under Rule 3.765, California Rules of Court, to amend or modify the class description with greater specificity or further division into subclasses or

1 limitation to particular issues.

2 25. This action has been brought and may properly be maintained as a class action
3 under the provisions of section 382 of the Code of Civil Procedure because there is a well-
4 defined community of interest in the litigation and the proposed Class is easily ascertainable.

5 **A. Numerosity**

6 26. The potential members of the Class as defined are so numerous that joinder of all
7 the members of the Class is impracticable. While the precise number of Class Members has not
8 been determined at this time, Plaintiff is informed and believes that Defendants currently employ,
9 and/or during the relevant time period employed, approximately 100 Non-Exempt Employees in
10 California who are or have been affected by Defendants' unlawful practices as alleged herein.

11 **B. Commonality**

12 27. There are questions of law and fact common to the Class predominating over any
13 questions affecting only individual Class Members. These common questions of law and fact
14 include, without limitation:

15 a. Whether Defendant violated Labor Code sections 510, 1194 and
16 applicable IWC Wage Orders by failing to pay all earned wages including correct overtime
17 compensation to Non-Exempt Employees who worked in excess of eight (8) hours in a workday
18 and/or more than forty (40) hours in a workweek;

19 b. Whether Defendants also violated Labor Codes sections 200, 1194, and
20 1197 for failing to pay minimum wages for time spent under the Defendants' control and
21 working "off the clock" without pay;

22 c. Whether Defendant violated Labor Code sections 226.7, 512 and
23 applicable IWC Wage Order by failing to provide statutorily compliant 30-minute meal periods
24 to Non-Exempt Employees on days in which they worked in excess of 5 hours and/or 10 hours
25 and failing to compensate said employees one hour of wages in lieu of meal periods;

26 d. Whether Defendant violated Labor Code section 226.7 and applicable
27 IWC Wage Orders by failing to authorize and permit minimum 10-minute rest periods to Non-
28 Exempt Employees for every four hours or major fraction thereof worked and failing to

1 compensate said employees one hours wages in lieu of rest periods;

2 e. Whether Defendant violated Labor Code section 2802 and applicable IWC
3 Wage Orders for failing to indemnify employees for the expenditures incurred as a direct
4 consequence and/or in the performance of their job duties;

5 f. Whether Defendant violated sections 201-203 of the Labor Code by failing
6 to pay all earned wages and/or premium wages due and owing at the time that any Class
7 Members' employment with Defendant terminated including vacation wages;

8 g. Whether Defendant violated sections 226 of the Labor Code and
9 applicable IWC Wage Orders by failing to, among other violations, maintain and provide
10 accurate records of Non-Exempt Employees' earned wages, work periods, meal periods and
11 deductions;

12 h. Whether Defendant violated section 17200 *et seq.* of the Business and
13 Professions Code through their violation of the above-referenced Labor Code and Civil Code
14 sections and applicable IWC Wage Orders which violation constitutes a violation of fundamental
15 public policy.

16 **C. Typicality**

17 28. The claims of the named Plaintiff are typical of the claims of the Class. Plaintiff
18 and all members of the Class sustained injuries and damages arising out of and caused by
19 Defendant's common course of conduct in violation of California laws, regulations, and statutes
20 as alleged herein.

21 **D. Adequacy of Representation**

22 29. Plaintiff will fairly and adequately represent and protect the interests of the
23 members of the Class. Counsel who represents Plaintiff is competent and experienced in
24 litigating large employment class actions.

25 **E. Superiority of Class Action**

26 30. A class action is superior to other available means for the fair and efficient
27 adjudication of this controversy. Individual joinder of all Class Members is not practicable, and
28 questions of law and fact common to the Class predominate over any questions affecting only

1 individual members of the Class. Each member of the Class has been damaged and is entitled to
2 recovery by reason of Defendant's unlawful policies and/or practices complained of herein.

3 31. Class action treatment will allow those similarly situated persons to litigate their
4 claims in the manner that is most efficient and economical for the parties and the judicial system.
5 Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this
6 action that would preclude its maintenance as a class action.

7 **VI.**
8 **CAUSES OF ACTION**

9 **First Cause of Action**

10 Failure to Pay Lawful Wages
Including Minimum and/or Overtime Wages
(Lab. Code §§ 510, 1194 1199)

11 (Against All Defendants)

12 32. Plaintiff repeats and incorporates herein by reference each and every allegation set
13 forth above, as though fully set forth herein.

14 33. As alleged herein, during the statutory liability period, Defendants' policies,
15 practices and work shift requirements, resulted in Plaintiff and Non-Exempt Employees working
16 "off the clock" and not receiving compensation for all earned wages including overtime in
17 violation of California state wage and hour laws.

18 34. As alleged herein, during the statutory liability period, Defendants' policies and/or
19 practices resulted in Plaintiff and Non-Exempt Employees working in excess of eight (8) hours in
20 a workday and/or forty (40) hours in a workweek without receiving the proper compensation at
21 the rate of time and one-half (1 1/2) of such employee's correct regular rate of pay.

22 35. As alleged herein, during the statutory liability period, Defendants' policies and/or
23 practices resulted in Plaintiff and Non-Exempt Employees not receiving minimum wages for
24 time spent under Defendants' control and working off the clock without pay. Labor Code § 1197
25 provides that employees are to be paid minimum wage for each hour worked and the payment of
26 a lesser wage than the established minimum is unlawful.

27 36. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as
28 described herein and below.

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Second Cause of Action
Failure to Provide Lawful Meal Periods
Or Compensation in Lieu Thereof
(Lab. Code §§226.7, 512, IWC Wage Orders)
(Against All Defendants)

37. Plaintiff repeats and incorporates herein by reference each and every allegation set forth above, as though fully set forth herein.

38. As alleged herein, by their failure to provide Plaintiff and Non-Exempt Employees a compliant 30-minute uninterrupted meal period by the end of the fifth hour for days on which Non-Exempt employees worked shifts in excess of 5 hours and/or a second compliant uninterrupted 30-minute meal period by the end of the tenth hour on days in which they worked in excess of 10 hours and not providing compensation for such statutorily non-compliant meal periods, Defendants violated the provisions of Labor Code §512 and applicable IWC Wage Orders.

39. By failing to record and maintain adequate and accurate time records according to sections 226 and 1174 (d) of the Labor Code, Defendants have injured Plaintiff and Class Members and made it difficult to calculate the unpaid meal period compensation due Plaintiff and Class Members.

40. As a result of the unlawful acts of Defendants, Plaintiff and the Class he seeks to represent have been deprived of premium wages in amounts to be determined at trial, and are entitled to recovery of such amounts, plus interest and penalties thereon under Labor Code §226.7.

41. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as described herein and below.

Third Cause of Action
Failure to Provide Rest Periods
Or Compensation in Lieu Thereof
(Lab. Code §§226.7, IWC Wage Orders)
(Against All Defendants)

42. Plaintiff repeats and incorporates herein by reference each and every allegation set forth above, as though fully set forth herein.

43. As alleged herein, by their failure to provide a compliant minimum ten (10)

1 minute rest period for every four hours or major fraction thereof worked per day and their failure
2 to provide a third compliant minimum ten (10) minute rest period for work in excess of ten (10)
3 hours worked per day, by Non Exempt Employees, and failing to provide compensation for such
4 non-provided rest periods, as alleged above, Defendants willfully violated the provisions of
5 Labor Code section 226.7 and IWC applicable Wage Orders.

6 44. As a result of the unlawful acts of Defendants, Plaintiff and the Class he seeks to
7 represent have been deprived of premium wages in amounts to be determined at trial, and are
8 entitled to recovery of such amounts, plus interest and penalties thereon under Labor Code
9 §226.7.

10 45. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as
11 described herein and below.

12 **Fourth Cause of Action**
13 Failure to Reimburse Employee Expenses
14 (Lab. Code § 2802)
(Against All Defendants)

15 46. Plaintiff repeats and incorporates herein by reference each and every allegation set
16 forth above, as though fully set forth herein.

17 47. As alleged herein, by their policy and/or practice of not providing adequate
18 reimbursement for expenses incurred by Plaintiff and the Class as a direct consequence of their
19 job duties, Defendants willfully violated the provisions of Lab. Code § 2802.

20 48. As a result of the unlawful acts of Defendants, Plaintiff and the Class he seeks to
21 represent are entitled to recovery of the full amount of expenses incurred plus interest, attorneys'
22 fees, and costs, under Labor Code § 2802.

23 49. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as
24 described herein and below.

25 **Fifth Cause of Action**
26 Failure to Timely Pay Wages During Employment
(Lab. Code § 204)
(Against All Defendants)

27 50. Labor Code section 204 requires that all wages are due and payable twice in each
28 calendar month. The wages required by Labor Code §§ 226.7, 510, 1194, 1197 and other sections

1 became due and payable to Plaintiff and Class Members in each month that he or she was not
2 paid all lawful wages owed or provided with lawful meal period or rest period to which he or she
3 was entitled. Defendants violated Lab. Code §204 by failing to pay said wages when they were
4 due and payable.

5 51. Labor Code section 210 (a) provides that “In addition to, and entirely independent
6 and apart from, any other penalty provided in this article, every person who fails to pay the wages
7 of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 204.11, 205, 205.5, and
8 1197.5, shall be subject to a penalty as follow:

9 a. For any initial violation, one hundred dollars (\$100) for each failure to pay
10 each employee.

11 b. For each subsequent violation, or any willful or intentional violation, two
12 hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount
13 unlawfully withheld.

14 52. As a result of the unlawful acts of Defendants alleged herein, Plaintiff and the
15 Class he seeks to represent have been deprived of wages in amounts to be determined at trial, and
16 are entitled to recovery of such amounts, plus interest and penalties.

17 53. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as
18 described herein and below.

19 **Sixth Cause of Action**

20 Failure to Timely Pay Wages Due At Termination

21 (Lab. Code §§ 201-203)

22 (Against All Defendants)

23 54. Plaintiff repeats and incorporates herein by reference each and every allegation set
24 forth above, as though fully set forth herein.

25 55. Sections 201 and 202 of the California Labor Code require Defendant to pay its
26 employees all wages due within 72 hours of termination of employment. Section 203 of the
27 Labor Code provides that if an employer willfully fails to timely pay such wages the employer
28 must, as a penalty, continue to pay the subject employees' wages until the back wages are paid in
full or an action is commenced. The penalty cannot exceed 30 days of wages.

1 56. As alleged herein, affected class members are entitled to compensation for all
2 forms of wages earned, including, overtime compensation, minimum wage, vacation wages, and
3 compensation for non provided rest and meal periods but to date have not received such
4 compensation therefore entitling them Labor Code section 203 penalties.

5 57. More than 30 days have passed since Plaintiff and affected Class Members have
6 left Defendants' employ, and on information and belief, have not received payment pursuant to
7 Labor Code §203. As a consequence of Defendant's willful conduct in not paying all earned
8 wages, certain Class Members are entitled to 30 days' wages as a penalty under Labor Code
9 section 203 for failure to pay legal wages.

10 58. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as
11 described herein and below.

12 **Seventh Cause of Action**
13 Knowing and Intentional Failure to Comply With Itemized Employee
14 Wage Statement Provisions
 (Lab. Code § 226(b))
 (Against All Defendants)

15 59. Plaintiff repeats and incorporates herein by reference each and every allegation set
16 forth above, as though fully set forth herein.

17 60. Section 226(a) of the California Labor Code requires Defendant to itemize in
18 wage statements all deductions from payment of wages and to accurately report total hours
19 worked by Plaintiff and the members of the proposed class. IWC Wage Orders require Defendant
20 to maintain time records showing, among others, when the employee begins and ends each work
21 period, meal periods, split shift intervals and total daily hours worked in an itemized wage
22 statement and must show all deductions and reimbursements from payment of wages, and
23 accurately report total hours worked by Plaintiff and the members of the proposed class. On
24 information and belief, Defendant has failed to record all or some of the items delineated in
25 Industrial Wage Orders and Labor Code §226.

26 61. As alleged herein, Plaintiff and Class Members have been injured by Defendant's
27 actions by rendering them unaware of the full compensation to which they were entitled under
28 applicable provisions of the California Labor Code and applicable IWC Wage Orders.

1 62. Pursuant Labor Code §226, Plaintiff and Class Members are entitled up to a
2 maximum of \$4,000.00 each for record-keeping violations.

3 63. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as
4 described herein and below.

5 **Eighth Cause of Action**
6 Violation of Unfair Competition Law
7 (Bus. & Prof. Code, §§ 17200-17208)
8 (Against All Defendants)

9 64. Plaintiff repeats and incorporates herein by reference each and every allegation set
10 forth above, as though fully set forth herein.

11 65. Business & Professions Code Section 17200 provides:

12 a. As used in this chapter, unfair competition shall mean and include
13 any **unlawful, unfair** or fraudulent business act or practice and
14 unfair, deceptive, untrue or misleading advertising and any act
15 prohibited by Chapter 1 (commencing with Section 17500) of Part
16 3 of Division 7 of the Business and Professions Code.) (Emphasis
17 added.)

18 66. Defendants' violations of the Labor Code and Wage Order provisions set forth
19 above constitute unlawful and/or unfair business acts or practices.

20 67. The actions of Defendants, as alleged within this Complaint, constitute false,
21 fraudulent, unlawful, unfair, fraudulent and deceptive business practices, within the meaning of
22 Business and Professions Code section 17200, *et seq.*

23 68. Plaintiff and Class Members have been personally aggrieved by Defendants'
24 unlawful and unfair business acts and practices alleged herein.

25 69. As a direct and proximate result of the unfair business practices of Defendants,
26 and each of them, Plaintiff, individually and on behalf of all employees similarly situated, is
27 entitled to restitution of all wages which have been unlawfully withheld from Plaintiff and
28 members of the Plaintiffs Class as a result of the business acts and practices described herein.

 70. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as

described herein and below.

VII.

PRAYER

WHEREFORE, Plaintiff prays for judgment as follows:

1. That the Court determine that this action may be maintained as a class action;
2. For compensatory damages in an amount according to proof with interest thereon;
3. For economic and/or special damages in an amount according to proof with interest thereon;
4. For premium wages pursuant to Labor Code §§226.7 and 512;
5. For premium pay and penalties pursuant to Labor Code §§203, 204;
6. For attorneys' fees, interests and costs of suit under Labor Code §§218.5, 226, 1194, 2802; and
7. For such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial of his claims by jury to the extent authorized by law.

Dated: February 18, 2022

JAMES HAWKINS, APLC

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