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Attorneys for Plaintiff Mireya Serrato Martinez

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

MIREYA SERRATO MARTINEZ, on
behalf of herself and all "aggrieved
employees" pursuant to Labor Code § 2698
et seq.,

Plaintiffs,

v.

EM TORTILLAS, LLC, a California
limited liability company, and DOES 1
through 10, inclusive,

Defendants.

CASE NO: 30-2022-01263512-CU-OE-CXC

*Assigned to Hon. Melissa R. McCormick,
Dept. C13*

**DECLARATION OF DANIEL F. GAINES
IN SUPPORT OF UNOPPOSED MOTION
FOR AN ORDER APPROVING
SETTLEMENT OF CLAIMS BROUGHT
PURSUANT TO THE PRIVATE
ATTORNEYS GENERAL ACT OF 2004,
AWARDING ATTORNEYS' FEES, COSTS,
ENHANCEMENT AWARD, AND
REIMBURSEMENT OF SETTLEMENT
ADMINISTRATION EXPENSES, AND
ENTERING JUDGMENT THEREON**

Date: December 14, 2023

Time: 2:00 p.m.

Dept.: CX104

Complaint Filed: June 3, 2022

1 I, DANIEL F. GAINES, hereby declare and state as follows:

2 1. I am an attorney duly admitted to the practice of law in the State of California. I am
3 the managing shareholder of Gaines & Gaines, APLC, counsel for Plaintiff Mireya Serrato
4 Martinez ("Plaintiff") in this action. I have personal knowledge of the facts set forth herein and if
5 called as a witness to testify to them, I could and would do so competently.

6 **Counsel's Experience and Recommendation:**

7 2. I obtained my BS degree from the University California at Berkeley in 2003. I
8 majored in Business Administration at the Haas School of Business.

9 3. Thereafter, I attended the University of Virginia School of Law. At Virginia, I was
10 a member of the editorial board of the Virginia Tax Review. I was also the recipient of the Lacy
11 Armour Scholarship, awarded to recognize academic excellence. At Virginia, I focused my studies
12 on tax and real estate. I earned my JD and became a member of the California Bar in 2007.

13 4. Until his retirement, I practiced law with my partner/father, Kenneth, at Gaines &
14 Gaines, APLC. Our practice specializes in litigation, with an emphasis in employment disputes
15 like this one. Over 95% of our practice is devoted to complex employment litigation similar to the
16 instant action.

17 5. My firm has represented employees in complex employment matters such as this
18 one, with an emphasis in wage and hour issues. I have participated in and have been certified as
19 Court-approved class and representative counsel in hundreds of class and representative action
20 matters since my admission to the Bar. Attached hereto as **Exhibit A** is a true and correct list of
21 the cases in which I have represented employees in wage and hour matters been appointed as class
22 and representative counsel.

23 **Background and Procedural History**

24 6. On March 14, 2022, pursuant to Labor Code § 2699.3, Plaintiff gave written notice
25 by online filing with the Labor and Workforce Development Agency ("LWDA") and by certified
26 mail, return receipt requested, to Defendant of the specific provisions of the Labor Code alleged to
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1 have been violated, including the facts and theories to support the alleged violations. A true and
2 correct copy of the notice letter to the LWDA is attached hereto as **Exhibit B**.

3 7. On June 3, 2022, and after the LWDA declined to take action within the statutorily
4 permissible time with respect to Plaintiff's March 14, 2022 letter, Plaintiff filed her representative
5 action complaint in this Court.

6 8. Defendant is a Tortilla Company that manufactures and distributes tortillas to its
7 wholesale customers in Orange, Los Angeles and San Bernardino counties and employed Plaintiff
8 and Aggrieved Employees.

9 9. Defendant employed Plaintiff Mireya Serrato Martinez as a non-exempt employee
10 from January 2018 through November 2021. The Aggrieved Employees are any and all individuals
11 who were employed by Defendant for at least one Eligible Pay Period in non-exempt position in
12 California from March 14, 2021 through May 15, 2023.

13 10. Plaintiff asserts claims that Defendant failed to compute bonuses and other non-base
14 hourly wages earned by Plaintiff and other Aggrieved Employees into their regular rate of pay for
15 purposes of paying them sick pay, meal and rest period premiums and overtime wages at the correct
16 rates, failed to reimburse Plaintiff and Aggrieved Employees for all business expenses incurred,
17 failed to provide Plaintiff and Aggrieved Employees all minimum and overtime wages due, failed
18 to provide Plaintiff and Aggrieved Employees with legally compliant rest periods, or correct
19 compensation in lieu thereof, failed to provide Plaintiff and Aggrieved Employees with legally
20 compliant meal periods, or correct compensation in lieu thereof, failed to issue accurately itemized
21 wage statements to Plaintiff and Aggrieved Employees, and failed to timely pay certain Aggrieved
22 Employees all wages due at the separation of their employment. Plaintiff asserts these claims under
23 PAGA, seeking civil penalties for the alleged Labor Code violations.

24 **Compliance with Procedural Requirements of PAGA:**

25 11. My office, on behalf of Plaintiff, submitted the Stipulation and Settlement
26 Agreement for PAGA Representative Action Settlement (the "Settlement Agreement"), together
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1 with this Motion and all supporting documents, to the LWDA via online upload on September 13,
2 2023, concurrently with the filing of this Motion.

3
4 **Counsel's Diligence In Advance of, and In Connection With, Settlement Negotiations:**

5 12. My office engaged in targeted, informal discovery of Defendant's alleged Labor
6 Code violations, which specifically targeted evaluating the strength and value of the PAGA claims
7 in preparation for a resolution of this Action.

8 13. We obtained and reviewed relevant data and documents, including (i) Plaintiff's
9 employee file and wage statements, (ii) policy documents relating to the employment of Plaintiff
10 and other Aggrieved Employees, and (iii) the number of alleged violations and the value of the
11 recoverable penalties, including the number of Aggrieved Employees and pay periods during the
12 PAGA Period.

13 14. Based on the information received, as well as through discussions with Defendant's
14 Counsel, my office was able to (i) determine the total number of distinct individuals falling within
15 the definition of "Aggrieved Employee" for the relevant statutory period, and (ii) construct a
16 damage model that calculated the maximum realistic amount of PAGA penalties that could be
17 levied against Defendant within the PAGA Period based on conversations with Defendant's
18 Counsel. Defendant, however, disputed Plaintiff's claims and disputed both the existence of and
19 extent of liability as alleged by Plaintiff. Based on the information received, as well as through
20 discussions with Defendant's Counsel, Plaintiff's Counsel was able to ascertain (i) the size of the
21 Aggrieved Employee group, (ii) the number of affected pay periods at issue among them, and (iii)
22 the strength of Plaintiff's claims.

23 15. On May 15, 2023, following the exchange of information and documents regarding
24 the Aggrieved Employees and the claims and defenses asserted by the Parties, the Parties engaged
25 in arm's-length negotiations with the assistance of mediator Steve Pearl, Esq., through which they
26 were able to reach the resolution of the Action set forth in the Settlement Agreement and Release
27 of Private Attorneys General Act Claim ("Settlement Agreement"). During the course of
28 mediation, the Parties engaged in arm's-length negotiations and reached a resolution of the PAGA

1 claims asserted in this Action. The Parties jointly prepared and executed the Settlement Agreement.
2 A true and correct copy of the Settlement Agreement is attached hereto as **Exhibit C**.

3 **Settlement Terms:**

4 16. Defendant represents there are approximately 50 non-exempt employees who
5 worked for Defendant and in California at any time between March 14, 2021 and May 15, 2023.

6 17. All Aggrieved Employees will receive a pro rata share of the approximately
7 \$30,112.16 allocated to Aggrieved Employees, which shall be distributed based on the number of
8 pay periods each Aggrieved Employee worked during the PAGA Period. Although these
9 calculations will not be made until after approval, a rough estimation of the value to the 50
10 individuals falling within the definition of "Aggrieved Employee" may be gleaned from the fact
11 that an equal division would provide about \$602 to each Aggrieved Employee, net of payments to
12 the LWDA, the Settlement Administrator, attorney's fees, and costs. The LWDA will be paid a
13 substantial \$90,336.47.

14 18. Phoenix Settlement Administrators, a reputable settlement administration company,
15 has agreed to administer the settlement for no more than \$4,000, submitting a competitive bid.

16 19. This case addresses violations of important employee protections embodied in the
17 California Labor Code – namely, that Defendant failed to compute bonuses and other non-base
18 hourly wages earned by Plaintiff and other Aggrieved Employees into their regular rate of pay for
19 purposes of paying them sick pay, meal and rest period premiums and overtime wages at the correct
20 rates, in violation of Labor Code §§ 226.7, 246, 510, 512, 558 and 1194, failed to provide Plaintiff
21 and Aggrieved Employees all minimum and overtime wages due, in violation of Labor Code §§
22 510, 558, and 1194, failed to provide Plaintiff and Aggrieved Employees with legally compliant
23 rest periods, or correct compensation in lieu thereof, in violation of Labor Code § 226.7, failed to
24 provide Plaintiff and Aggrieved Employees with legally compliant meal periods, or correct
25 compensation in lieu thereof, in violation of Labor Code §§ 226.7, 510, 512, 558, and 1194, failed
26 to reimburse Plaintiff and Aggrieved Employees for necessary business expenses, in violation of
27 Labor Code § 2802, failed to issue accurately itemized wage statements to Plaintiff and Aggrieved
28

1 Employees, in violation of Labor Code §§ 226(a) and 226.3, and failed to timely pay certain
2 Aggrieved Employees all wages due at the separation of their employment, in violation of Labor
3 Code §§ 201-202. Defendant's maximum theoretical exposure in this Action, without stacking
4 penalties, totals approximately \$450,000, computed by multiplying 4,500 aggregate pay periods by
5 \$100 each. If penalties are stacked – i.e. the Court awards multiple PAGA penalties per employee
6 pay period, the maximum value of the case is \$2,053,200 at the \$100 per pay period rate.

7
8 20. Defendant, however, contends it acted within the requirements of California law at
9 all times as to all Aggrieved Employees. For example, Defendant contends that the company has
10 compliant meal and rest break practices and compensates its employees for all minimum and
11 overtime wages due. Defendant further contends that not every pay period at issue involved an
12 alleged Labor Code violation potentially subject to civil penalties. Moreover, it maintained that
13 even if the Court did award penalties, the Court could and would *substantially* reduce the penalties
14 awarded based on the discretionary factors contained in Labor Code § 2699(e)(2).

15 21. Based on these disputes, which had the potential to completely eliminate Plaintiff's
16 recovery, the range of realistic "litigation outcomes" on the Plaintiff's PAGA claim was defined
17 by a "maximum realistic possible liability" amount of approximately \$450,000 [Gaines Decl., ¶
18 19], and a net-zero recovery based on the defenses asserted by Defendant. Notwithstanding the
19 existence of such issues, the Settlement achieves a significant benefit – 50% of the maximum
20 possible realistic liability. As such, this factor weighs very heavily in favor of resolution by way
21 of the compromise set forth in the Settlement.

22 **Attorneys' Fees:**

23 22. My office is submitting an attorney fee request equaling \$75,000. Based on a
24 projected final lodestar of \$45,050, this yields a multiplier of approximately 1.66 over the \$75,000
25 fee request. The billing rates used to compute the lodestar are reasonable in view of the evidence
26 submitted herewith. A true and correct copy of my firm's time-task chart is attached hereto as
27 **Exhibit D.**
28

1 23. As detailed in the first few paragraphs of this declaration, I have practiced law in
2 California since 2007 and most of that time has been dedicated exclusively to representing
3 employees in wage and hour matters, many of which have been litigated and resolved in the PAGA
4 and class action contexts. My reasonable hourly rate is \$700; this rate has been approved by judges
5 throughout California over the past year.

6 24. Mr. Katofsky is a highly skilled and experienced litigator with 24 years of
7 experience. He earned his J.D. in 1999 from the University of the Pacific McGeorge School of
8 Law. His hourly rate of \$750 reflects his extensive experience and education and comports to the
9 market rate. This rate has been approved by judges throughout California over the past year.

10 25. Mr. Evan S. Gaines is a 2012 graduate of Michigan State University College of Law.
11 He graduated from the University of California, Santa Barbara in 2005. Evan has substantial
12 experience litigating wage and hour cases in California. His proffered hourly rate of \$575 has been
13 approved by judges throughout California over the past year.

14 26. Amelia Booth is a paralegal with more than five years of experience working in the
15 legal profession, including several years with my office as a class action paralegal. She is a 2018
16 graduate of The University of Puget Sound and an incoming first-year law student at the St. Francis
17 School of Law in Newport Beach, California. Her proffered hourly rate of \$200 is reasonable based
18 on her education and experience.

19 27. This case was taken on a contingency basis with the real risk that my office would
20 receive no compensation whatsoever for our efforts. The potential costs which we can be required
21 to advance in wage and hour representative actions like this one are substantial. Furthermore, as
22 described above, my firm has extensive experience in representative action litigation, particularly
23 in the employment context, and as detailed herein, the Aggrieved Employees and the State of
24 California reaped significant benefits. The success achieved by the Settlement supports my firm's
25 fee request.

26 28. This Court can undoubtedly appreciate that litigating a representative action case in
27 dynamic, ever-changing areas of law is not appealing to most lawyers, particularly when the
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1 plaintiff's lawyer undertakes the obligation to finance the litigation and effectively bears the risk in
2 the event of an unsuccessful outcome, at trial or otherwise. This case was taken on a contingency
3 basis with the real risk that my office would receive no compensation whatsoever for our efforts.
4 The potential costs which we can be required to advance in wage and hour actions like this one are
5 substantial.

6 29. Notwithstanding the existence of issues having the potential to eliminate recovery
7 on the PAGA claim, the Settlement Agreement not only achieves a recovery that exceeds typical
8 PAGA awards routinely approved by the courts, but it also recovers monies for Aggrieved
9 Employees which they otherwise would not receive.

10 30. Representative action work also requires specialized learning and the willingness to
11 take large risks. My office has extensive experience in wage and hour representative action
12 litigation, particularly in the employment context, as detailed herein.

13 31. Furthermore, as described above, the Aggrieved Employees and the State of
14 California reaped significant benefits. The success achieved by the Settlement supports my firm's
15 fee request.

16 32. A small firm like ours can only properly litigate a limited number of cases at one
17 time. The requirements of this case were significant. Had we not reached a settlement with
18 Defendant, the demands of this case would have required a significant portion of our resources.
19 We were precluded from taking other employment cases due to the demands of litigating this case.

20 **Counsel's Costs:**

21 33. My firm's total costs are \$15,551.37 and include, among other expenses, filing fees,
22 service of process fees, postage fees, and other charges typical of litigation of this nature. A true
23 and correct copy of an itemized list of costs incurred by my firm in this action is attached hereto as
24 **Exhibit E**. These costs were reasonably incurred in litigating this matter.

25 **Plaintiff's General Release Payment:**

26 36. The Parties have agreed that Plaintiff will be paid an enhancement award/general
27 release payment in the amount of \$10,000. This payment is intended to recognize the time and
28

1 effort that Plaintiff spent on behalf of other Aggrieved Employees and the State and compensates
2 her for a general release of all claims against Defendant.

3 37. Without Plaintiff's efforts, there would be no recovery at all. The requested award
4 is appropriate to compensate Plaintiff for the risk and expense she incurred in conferring a benefit
5 on other of Defendant's employees and the State of California. As a result of the named Plaintiff's
6 efforts, Aggrieved Employees will receive monetary settlement payments, and the State of
7 California will receive \$90,336.47 to be put toward education about and enforcement of
8 California's labor laws.

9 38. Plaintiff is also entering into a full general release against Defendant and its
10 Released Parties, which is far broader than the release by other Aggrieved Employees. Specifically,
11 Aggrieved Employees are releasing only limited PAGA civil penalty claims, including Labor Code
12 §§ 201-203, 226.3, 226.7, 246, 510, 512, 558, 1194, 2698, 2699, 2802 for underlying PAGA claims,
13 while Plaintiff is releasing all claims which she asserts or could assert against Defendant. No other
14 Aggrieved Employee is subject to this broad form of release.

15 39. This broad release by Plaintiff was negotiated (and necessary) to resolve the Action.
16 Plaintiff threatened to assert her individual claims and Defendant required that they be resolved in
17 connection with the resolution of the Action. Without the resolution and release of Plaintiff's
18 individual claims, litigation would continue in a piecemeal fashion. Defendant is buying peace with
19 this settlement, such that its objectives would not be achieved absent the general release.

20 I declare, under penalty of perjury, under the laws of the State of California, that the
21 foregoing is true and correct. Executed on September 13, 2023, at Westlake Village, California.

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23 Daniel F. Gaines
24 DANIEL F. GAINES
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EXHIBIT A

Adams v. Newell Rubbermaid, USDC – Central District of California (Los Angeles), Case No. EDCV 08-1499 JTM (CTx)

Adams v. Sam's West, Inc., San Bernardino County Superior Court, Case No. CIVDS1403987

Agredano v. GS Brothers, Inc., Los Angeles County Superior Court, Case No. BC445561

Allen v. Toms Sierra Company, Nevada County Superior Court, Case No. CU18-082823

Allen v. Valley Inventory Service, Inc., Solano County Superior Court, Case No. FCS034682

Alvarez v. Pilot Travel Centers, LLC, San Joaquin County Superior Court, Case No. STK-CV-UOE-2018-4605

Alonzo v. Camblin Steel Service, Inc., Placer County Superior Court, Case No. SCV0034165

Amenhotep v. Google, Inc., Santa Clara County Superior Court, Case No. 17CV311528

Anaya v. Progressive Logistics Services, LLC, Riverside County Superior Court, Case No. RIC1308270

Andre v. Newell Rubbermaid, Inc., San Bernardino County Superior Court, Case No. CIVVS1200282

Anduha v. ABC Phones of North Carolina, Inc., Stanislaus County Superior Court, Case No. 2022729

Anslow v. Wellington Energy, Inc., USDC – Northern District of California (San Francisco), Case No. CV11-1596-JCS

Aranda, et al. v. Universal Lumpers of California, Inc., San Joaquin County Superior Court, Case No. STK-UOE-2017-7826

Armendariz v. Integrated Pain Management Medical Group, Inc., Kern County Superior Court, Case No. BCV-19-100267-SDS

Barrow, et al. v. Desmond Foods, L.P., Sacramento County Superior Court, Case No. 34-2015-00187227

Batmanghelich v. Sirius XM Radio Inc., USDC – Central District of California (Los Angeles), Case No. CV 09-9190 VBF (JCx)

Bosser v. Hooked on Solar, Yolo County Superior Court, Case No. CVCV-2016-876

Bourland v. Horizon Personnel Services, Inc., Sacramento County Superior Court, Case No. 34-2014-00161365-CU-OE-GDS

Bowen v. IMI Material Handling Logistics, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2016-0000192

Branson v. Mladen Buntich Construction, San Bernardino County Superior Court, Case No. CIVDS1609129

Brandt v. Sacramento Auto Insurance Center, Inc., San Joaquin County Superior Court, Case No. 39-2009-00202938-CU-OE-STK

Brown v. 22nd District Agricultural Association, United States District Court, Southern District of California, Case No. 15-cv-2578-DHB

Brown v. Sierra Central Credit Union, Sutter County Superior Court, Case No. CVCS18-0002161

Burgess v. Blue Cross and Blue Shield of South Carolina, San Joaquin County Superior Court, Case No. 39-2012-00277449-CU-BT-STK

Burgess v. Strategic Retail Solutions, LLC, Los Angeles County Superior Court, Case No. BC413791

Calhoun v. Celadon Trucking Services, Inc., USDC – Central District of California (Los Angeles), Case No. 5:16-cv-01351-PSG-FFM

Caporicci v. Owens & Minor Distribution, Inc., San Joaquin County Superior Court, Case No. 39-2013-00295662-CU-OE-STK

Carl v. Advanced Call Center Technologies, LLC, Sacramento County Superior Court, Case No. 34-2013-00148310

Carlisle, et al. v. Professional Technical Security Services, Inc., Case No. CGC18569791

Carrete v. Gamestop, Inc., Imperial County Superior Court, Case No. ECU08501

Carrillo v. Bimbo Bakeries, Inc., San Bernardino County Superior Court, Case No. CIVDS1606813

Caudillo v. Aegis Treatment Centers, LLC, Merced County Superior Court, Case No. 18CV-0744

Cerami v. Metlife, Inc., USDC – Central District of California (Orange County), Case No. 11-CV-00681-CJC (MLGx)

Charles v. Aaron's Inc., Los Angeles County Superior Court, Case No. BC431468

Charles v. Nursefinders, LLC, Imperial County Superior Court, Case No. ECU07422

Cheifer v. JetBlue Airways Corporation, Los Angeles County Superior Court, Case No. BC451887

Cheifer, et al. v. WHGM, Inc., Los Angeles County Superior Court, Case No. LC104900

Chong, et al. v. Crescent Northwoods Inn, Inc., Del Norte County Superior Court, Case No. CVUJ-2018-1133

Church v. GameStop, Inc., et. al., USDC – Central District of California (Los Angeles), Case No. 11-CV-00132-VAP-RZ

Clothier v. Spar Marketing Services, Inc., Alameda County Superior Court, Case No: RG12-639317

Coleman v. Wireless Lifestyle, Inc., USDC – Western District of Missouri, Case No. 4:12-cv-00855-ODS

Colombo-Beyeler, et al. v. Viking River Cruises, Inc., San Bernardino County Superior Court, Case No. CIVDS1611608

Conlee v. Clark Pacific Corporation, Yolo County Superior Court, Case No. CV14-1409

Contreras v. Osmose Utilities Services, Inc., San Bernardino County Superior Court, Case No. CIVDS1513998

Contreras v. West American Service Corporation, Kings County Superior Court, Case No. 14C0280

Corona v. Yosemite Meat & Locker Service, Inc., Stanislaus County Superior Court, Case No. 2006828

Cortellessa v. Dotnext, Inc., Alameda County Superior Court, Case No. RG09429971

County v. Ingram Mirco, Inc., San Bernardino Superior Court, Case No. CIVRS 1304445

Covarrubias, et al. v. Petersendean Builder Group, Inc., Kern County Superior Court, Case No. BCV-16-101122

Cowen, et al. v. Evergreen Alliance Golf Limited, L.P., d/b/a Arcis Golf, San Bernardino County Superior Court, Case No. CIVDS1719283

Cruz-Garcia v. Lemonade Restaurant Group, LLC, Los Angeles County Superior Court, Case No. BC478205

Cunningham v. Performance Contracting, Inc., Contra Costa County Superior Court, Case No. C16-02157

Dabney v. Coneybeare, LLC, et al., Orange County Superior Court, Case No. 30-2018-00999989-CU-OE-CXC

Dabney, et al. v. Panera, LLC., San Bernardino County Superior Court, Case No. CIVDS1516030

Diaz, et al. v. Seaworld Entertainment, Inc., Imperial County Superior Court, Case No. ECU10046

Diggs v. Western Waterproofing Company, Inc., San Francisco County Superior Court, Case No. CGC-14-539281

Dismuke v. Rhodes Retail Services, Inc., Sacramento County Superior Court, Case No. 34-2011-00105001

Dorsette v. TA Operating, LLC, USDC – Central District of California (Los Angeles), Case No. EDCV 09-1350 PA (RZx)

Duran v. The Image of California, Inc., Kern County Superior Court, Case No. S-1500-CV-284056 DRL

Edwards v. Trans World Entertainment Corp., San Diego County Superior Court, Case No. 37-2010-00095123-CU-OE CTL

Esakhani v. Central Valley Gaming, Stanislaus County Superior Court, Case No. 2020667

Escobar v. SMSSI of California, Inc., San Francisco Superior Court, JCCP No. 4776

Espinosa v. Taltech Construction, et al., Los Angeles County Superior Court, Case No. BC590176

Espinosa v. Bodycote Thermal Processing, Inc., Los Angeles County Superior Court, Case No. BC501617

Espinoza v. Pabco Building Products, LLC, Los Angeles County Superior Court, Case No. VC065660

Estrada v. Net Source Communications, Inc., Los Angeles County Superior Court, Case No. BC431169

Estrada v. OS Restaurant Services, LLC, Santa Clara County Superior Court, Case No. 16CV293249

Estupinan v. Global Development Strategies, Inc., Santa Clara County Superior Court, Case No. 110CV178898

Fadhl. v. Siemens Healthcare Diagnostics Inc., Sacramento County Superior Court, Case No. 34-2017-00209518

Fernandez v. The Regents of the University of California, Los Angeles County Superior Court, Case No. BC656256

Ferrer v. Dish Network Corporation, Los Angeles County Superior Court, Case No. BC441354

Findora v. Barry Callebaut USA LLC, Napa County Superior Court, Case No. 19CV000219

Flores v. Cintas Corporation, Los Angeles County Superior Court, Case No. BC400422

Friel v. Midwest Construction Services, Inc., San Joaquin County Superior Court, Case No. 39-2015-00329204-CU-OE-STK

Gagnon v. Banc of California, Contra Costa County Superior Court, Case No. C 15-00196

Galarza v. Bayou Well Services, LLC, Kern County Superior Court, Case No. S-1500-CV-279372 DRL

Galarza v. C & H Testing Service LLC, Kern County Superior Court, Case No. BCV-15-100008 SPC

Garcia v. Old Dominion Freight Line, Inc., San Bernardino County Superior Court, Case No. CIVDS1404636

Geer v. Applied Aerospace Structures Corp., San Joaquin County Superior Court, Case No. 39-2014-00313702-CU-OE-STK

Getz v. California Cinema Investments, Inc., Ventura County Superior Court, Case No. 56-2013-00437706-CU-MC-VTA

Gibbs v. M. Lehmann Enterprises, Orange County Superior Court, Case No. 30-2013-00678538-CU-OE-CXC

Gilles v. Schaefer Ambulance Service Inc., Imperial County Superior Court, Case No. ECU07970

Goldman, et al. v. Defender's, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2018-0009973

Gomez v. Low Desert Empire Pizza, Inc., San Bernardino County Superior Court, Case No. CIVVS900392

Gomez v. Pizza Hut of Southeast Kansas, Inc., San Bernardino County Superior Court, Case No. CIVVS900679

Gonzalez v. Harris Farms, Inc., USDC – Eastern District of California (Fresno), Case No. 1:14-cv-00038-LJO-SAB

Guerrero v. Main Electric Supply Company LLC, Ventura County Superior Court, Case No. 56-2019-00525427-CU-OE-VTA

Gutierrez v. Asset Management Specialists, Inc., Fresno County Superior Court, Case No. 12CECG03577

Gutierrez v. Linkus Enterprises, Inc., Madera County Superior Court, Case No. MCV065774

Gutierrez v. Shiekh, LLC, San Bernardino County Superior Court, Case Nos. CIVRS1206525, CIVRS1303408

Hairston v. Stanislaus Surgical Hospital, Stanislaus County Superior Court, Case No. CV-19-000651

Hindman v. Service Quick, Inc., San Bernardino County Superior Court, Case No. CIVDS1724229

Hogan v. iMobile of CA LLC, San Bernardino County Superior Court, Case No. CIVDS1409263

Hogan v. Wireless Evolution Inc., Riverside County Superior Court, Case No. MCC1300669

Hogan v. Wireless That's It! LLC, Riverside County Superior Court, Case No. RIC1201997

Holmes v. Bottling Group, LLC, Stanislaus County Superior Court, Case No. 2022584

Hooper, et al. v. URS Midwest, Inc., et al., San Bernardino Superior Court, Case No. CIVDS1607489

Humphrey v. Freedomroads, LLC, Shasta County Superior Court, Case No. 178228

Hurtado v. Rush Truck Centers of California, Inc., Los Angeles County Superior Court, Case No. BC427672

Hyde v. Dent Wizard International Corporation, Sacramento County Superior Court, Case No. 34-2015-00173882

Ibrihim v. Imperfect Foods, Inc., San Joaquin County Superior Court, Case No. STK-VI-UOE-2019-0000846

Id-deen v. Educational Services of America, Solano County Superior Court, Case No. FCS040803

Isherwood v. Mason Dixon Intermodal, Inc., San Joaquin County Superior Court, Case No. 39-2012-00279891-CU-OC-STK

Jahanbin v. Pacific Mercantile Bank, Orange County Superior Court, Case No. 30-2011-00480705CU-OE-CXC

Jenkins v. Sedgwick Claims Management Services, Inc., Los Angeles Superior Court, Case No. LC101648

Job v. California Security Services, Yuba County Superior Court, Case No. 14-0000820

Johnson v. The Goodyear Tire & Rubber Company, USDC – Northern District of California (San Francisco), Case No. 3:13-cv-01069-MMC

Jolin v. Bay Cities Recovery, Inc., El Dorado County Superior Court, Case No. PC20100458

Jordan v. Sutter Memorial Hospital, Stanislaus County Superior Court, Case No. 2023344

Keebaugh v. Mike Thompson Recreational Vehicles, San Bernardino County Superior Court, Case No. CIV-DS-1500718

Kelly v. Robin's Enviro Vac, Inc., Kern County Superior Court, Case No. S-1500-CV-282277
DRL

King v. Levy Premium Foodservice Limited Partnership, Alameda County Superior Court, Case No. HG15786353

Kunsman v. Punch Bowl Sacramento, LLC, et al., Sacramento County Superior Court, Case No. 34-2018-00243175

LaFear v. Encore Education Corporation, San Bernardino County Superior Court, Case No. CIVDS1802251

Lanzarin v. AWI Management Corporation, Solano County Superior Court, Case No. FCS041809

Lee, et al. v. Foster Dairy Farms, Stanislaus County Superior Court, Case Nos. 2006542, 2015679

Lemus, et al. v. Eastridge Workforce Technology, Inc., San Bernardino County Superior Court, Case No. CIV-DS-1611470

Lewis v. American Casino & Entertainment Properties LLC, San Bernardino County Superior Court, Case No. CIVDS1719094

Lemus v. On Assignment Staffing Services, San Bernardino County Superior Court, Case No. CIV-DS-1600497

Leon v. Piercey West Inc., Los Angeles County Superior Court, Case No. BC656874

Lopez v. Creative Communication Technologies, Inc., Imperial County Superior Court, Case No. ECU07851

Lopez v. Go Green Auto Spa Franchise, Inc., et al., Los Angeles County Superior Court, Case No. BC 562212

Lopez v. Truck Accessories Group, LLC, Yolo County Superior Court, Case No. CV13798

Ludlow v. Prince Telecom, LLC, Stanislaus County Superior Court, Case No. 684239

Luna v. Express Locations, LLC, Imperial County Superior Court, Case No. ECU09779

Macias v. American Tire Distributors, Inc., Kern County Superior Court, Case No. BCV-18-101586

Maldonado v. Hardwood Flooring Liquidators, Inc., Los Angeles County Superior Court, Case No. BC642170

Mansfield v. Cambridge Real Estate Services, Inc., Butte County Superior Court, Case No. 160175

Martinez v. DPI Specialty Foods West, San Joaquin County Superior Court, Case No. 39-2015-00327311-CU-OE-STK

Martinez v. Styles For Less, Inc., San Bernardino County Superior Court, Case No. CIVVS1203057

Mayne v. John Muir Behavioral Health, Contra Costa County Superior Court, Case No. C17-00998

Maze v. Bulldog Freightway, Inc., Imperial County Superior Court, Case No. ECU08716

McCormick v. G & O Body Shop, Inc., El Dorado Superior Court, Case No. PC20130291

McCrary v. Campbell Soup Supply Company, San Joaquin County Superior Court, Case No. 39-2013-00297698-CU-OE-STK

McDaniel v. Vancary, Inc., Tulare County Superior Court, Case No. 268036

Melgar-Farela v. Guardian Compliance, Inc., Los Angeles County Superior Court, Case No. BC481865

Mendiola v. Tyco Electronics Corporation, Riverside County Superior Court, Case No. RIC1400721

Mettler v. Les Schwab Tire Centers of California, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2018-476

Miller v. California Subshine, Inc., Los Angeles County Superior Court, Case No. BC637754

Miller v. Southwest Airlines Co., USDC – Northern District of California (San Francisco), Case No. 3:12-cv-05978-CRB

Mitchell v. Crossmark, Inc., USDC – Central District of California (Los Angeles), Case No. CV 11-2818-JAK (FMOx)

Moghrabi v. Vitaligent, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2018-1650

Molina v. Berkshire Hathaway Energy Company, et al., Imperial County Superior Court, Case No. ECU000522

Moore v. Horizon Solar Power, Inc., San Bernardino County Superior Court, Case No. CIVDS1410001

Murray v. Select Media Services, LLC, Los Angeles County Superior Court, Case No. BC424506

Myles v. Central Transport LLC, San Bernardino County Superior Court, Case No. CIVDS1401434

Navarro v. Mariana Packing Co., Inc., Solano County Superior Court, Case No. FCS045935

Nehrlich, et al. v. RPM Mortgage, Inc., Orange County Superior Court, Case No. 30-2013-00666783-CU-OE-CXC

Overton v. Hat World, Inc., USDC – Eastern District of California (Sacramento), Case No. 2:11-CV-01645-LKK-KJN

Perez v. Alcatel-Lucent USA Inc., Imperial County Superior Court, Case No. ECU07977

Perez v. Major Gloves and Safety, Inc., San Bernardino County Superior Court, Case No. CIVDS1710445

Perry v. Cardinal Health 200, LLC, Solano County Superior Court, Case No. FCS035303

Phraxayavong-Briones v. RSM, Inc., Sacramento County Superior Court, Case No. 34-2012-00117524

Pugh v. Wi Spa, LLC, Imperial County Superior Court, Case No. ECU07932

Quist v. Knight Transportation, Inc., San Bernardino Superior Court, Case No. CIVDS 1615414

Quitco v. Aviation Fuel Systems Repair, Inc., San Bernardino Superior Court, Case No. CIVRS1302311

Rambeau v. C.C.M. Corporation, et al., Sacramento County Court, Case No. 34-2018-00244842

Rankins v. Roman Empire Living Skills, Inc., Los Angeles County Superior Court, Case No. BC713399

Rees v. Advantel, Incorporated, Santa Clara County Superior Court, Case No. 16-CV-292219

Renfrow v. Janra Enterprises, Inc., Sacramento County Superior Court, Case No. 3402010-00080471

Reynolds v. Diamond Pet Food Processors of Ripon, San Joaquin County Superior Court, Case No. 39-2014-00310818

Richard v. A-Para Transit Corp., Alameda County Superior Court, Case No. HG17870373

Richardson v. TEC Equipment, Inc., et al., Los Angeles County Superior Court, Case No. VC065536

Robles v. North County Health Project Incorporated, San Diego Superior Court, Case No. 37-2014-00001751-CU-OE-NC

Rodas v. Monetary Management of California, Inc., USDC – Eastern District of California (Sacramento), Case No. 2:14 cv 01389 TLN AC

Rodriguez v. 20/20 Plumbing & Heating, Inc., San Bernardino County Superior Court, Case No. CIVDS1705362

Rodriguez v. Commerce Distribution Company, Los Angeles County Superior Court, Case No. BC656259

Rodriguez v. Valley Oak, San Joaquin County Superior Court, Case No. STK-CV-UOE-2016-7980

Roden v. Service Champions, San Bernardino County Superior Court, Case No. CIVDS1613183

Russell v. Bradshaw International, Imperial County Superior Court, Case No. ECU00853

Rutledge, et al. v. Healthport Technologies, LLC, Alameda County Superior Court, Case No. RG16835813

Sabala v. Econtactlive, Inc., Stanislaus County Superior Court, Case No. 684981

Sabatier v. Picture Perfect Installation, Inc., Riverside County Superior Court, Case No. RIC10004953

Salameh v. Sonomaience OPCO, LLC, Sonoma County Superior Court, Case No. SVC264228

Salazar v. Tag-3 Medical Investment Group, LLC, Los Angeles County Superior Court, Case No. BC527698

Salbeck v. Ingredion Incorporated, San Joaquin County Superior Court, Case No. STK-UOE-2017-0012622

Sampson v. Healthnet of California Inc., Sacramento County Superior Court, Case No. 34-2015-00183785-CU-OE-GDS

Sanchez v. Don Roberto Jewelers, Inc., Imperial County Superior Court, Case No. ECU06819

Sanders v. Lionakis, Sacramento County Superior Court, Case No. 34-2017-00223601

Santana v. United Staffing Associates, LLC, Tulare County Superior Court, Case No. 249338

Schrader v. Adidas Promotional Retail Operations, Inc., Los Angeles County Superior Court, Case No. BC414168

Sebrell v. Pomeroy IT Solutions, San Bernardino County Superior Court, Case No. CIVDS1721560

Seymour v. Quest Service Group, LLC, Sacramento County Superior Court, Case No. 34-2017-00206917

Silva v. Trical, San Benito County Superior Court, Case No. CU-16-00218

Simler v. Polly's Inc., Riverside County Superior Court, Case No. RIC 1117862

Sipin, Scott v. Salesforce.com, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2019-0004629

Skuro v. BMW of North America, LLC, USDC – Central District of California (Los Angeles), Case No.: CV 10-8672-GW (FFMx)

Smith v. Steelcase, Inc., San Bernardino County Superior Court, Case No. CIVDS1725850

Sohal v. Foster Poultry Farms, Stanislaus County Superior Court, Case No. 2026605

Solomon v. City of Los Angeles, Los Angeles County Superior Court, Case No. BC570345

Solano v. Vozzcom, Inc., Imperial County Superior Court, Case No. ECU09519

Smith, et al. v. Sente Development, Inc., Sacramento County Superior Court, Case No. 34-2016-00196614

Solorzano v. FDS Manufacturing Corporation, Los Angeles County Superior Court, Case No. BC542532

Solowitz v. BakeMark USA LLC, Los Angeles County Superior Court, Case No. BC467838

Spampinato v. Wind & Sea Restaurants, Inc., San Bernardino County Superior Court, Case No. CIVVS1205154

Spitzer, et al. v. FRHI Hotels & Resorts (Canada) Inc., San Bernardino County Superior Court, Case No. C IVDS1712220

Stephens v. C.S., Inc., Riverside County Superior Court, Case No. PSC1301224

Stevenson v. Harvest Management Sub LLC, Ventura County Superior Court, Case No. 56-2011-00397420-CU-OE-SIM

Thompson v. Continental Labor Resources, Inc. d/b/a Continental Labor & Staffing Resources, Kern County Superior Court, Case No. S-1500-CV-278751-DRL

Thompson v. Sidhu Truck Line, Inc., Kern County Superior Court, Case No. BCV-15-101308-DRL

Tigas v. Ajilon Communications, Los Angeles County Superior Court, Case No. BC409737

Torres v. Coastal Employment Inc., Los Angeles County Superior Court, Case No. BC529207

Tran v. CSP Fiber Services, San Bernardino County Superior Court, Case No. CIVDS172758

Tripp v. California Guest Services, Inc., Plumas County Superior Court, Case No. CV16-00036

Valdez v. Diamond Landscaping, Inc., Los Angeles County Superior Court, Case No. BC497097

Valencia v. American Team Managers, Inc., Orange County Superior Court, Case No. 30-2016-00857365-CU-CR-CXC

Van Son v. Rush Truck Centers of California, Inc., Los Angeles County Superior Court, Case No. BC494747

Vasquez v. Schurman Fine Papers, San Joaquin County Superior Court, Case No. STK-CV-LMC-2015-10035

Velasquez v. Modesto Ventures, LLC, Sacramento County Superior Court, Case No. 32-2012-00126159

Victoria v. Bali Limousines Inc., San Mateo County Superior Court, Case No. CIV507774

Victorian v. Vision X, Inc., Los Angeles County Superior Court, Case No. BC400333

Wade v. Frito Lay, Kern County Superior Court, Case No. BCV-17-102014

Walls v. E. & J. Gallo, Stanislaus County Superior Court, Case No. 2015874

Warner v. Waterdrops Express Car Wash, LLC, Tulare County Superior Court, Case No. 265708

Waybright v. EAH, Inc., Stanislaus County Superior Court, Case No. 2011677

Weiss v. C.A.R. Enterprises, Inc., Riverside County Superior Court, Case No. RIC1113165

White v. Sally Beauty Supply, LLC, Imperial County Superior Court, Case No. ECU08177

Williams v. Dennis Dillon RV, LLC, San Bernardino County Superior Court, Case No. CIVDS 16006879

Williams v. Closet World, Inc., Los Angeles County Superior Court, Case No. BC400178

Williams v. Progress Rail Services Corporation, Kern County Superior Court, Case No. S-1500-CV-280236 DRL

Wing v. Three Group, Inc., Los Angeles County Superior Court, Case No. BC643883

Wilson v. ALSCO, Inc., Imperial County Superior Court, Case No. ECU07406

Wilson v. Michael C. Stead, Inc., Contra Costa Superior Court, Case No. C1400135

Winningham v. Storer Transportation Service, San Joaquin County Superior Court, Case No. 39-2015-00324708-CU-STK

Woody v. WBN Home Design, San Bernardino County Superior Court, Case No. CIVDS1613367

Woods, et al. v. F&B Innovations, LLC, San Bernardino County Superior Court, Case No. CIVDS1717765

Woodyard v. Bellus ALC Acquisition, LLC, USDC – Central District of California (Los Angeles), Case No. 2:13-cv-05285 SJO AGRx

Wright v. Social Vocational Services, Inc., Kern County Superior Court, Case No. BCV-15-101264

Ybarra v. New Legend, Inc., Sutter County Superior Court, Case No. CVCS-16-2097

Zaragoza v. Center Automotive, Inc., Los Angeles Superior Court, Case No. BC505194

EXHIBIT B

GAINES & GAINES

A PROFESSIONAL LAW CORPORATION

WWW.GAINESLAWFIRM.COM

27200 AGOURA ROAD, SUITE 101
CALABASAS, CALIFORNIA 91301

PHONE (818) 703-8985
FAX (818) 703-8984

March 14, 2022

Via Certified Mail

Labor & Workforce Development Agency
By online submission

EM Tortillas, LLC
838 E First St.
Santa Ana, CA 92701

Defendant mailed certified # 70180360000011918230

Agent for Service of Process for EM Tortillas, LLC
Brian Murrieta
838 E First St.
Santa Ana, CA 92701

Agent mailed certified # 70180360000011918247

Re: ***Labor Code Violations of EM Tortillas, LLC – Compliance Letter of California Labor Code § 2698 - Private Attorneys General Act***

Dear LWDA:

This office represents Mireya Serrato Martinez, a former non-exempt California employee of EM Tortillas, LLC ("Defendant"). The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698 *et seq.*

Our client was employed by Defendant in Southern California. Herein, we set forth the facts and theories of California Labor Code violations which we allege Defendant engaged in with respect to our client and other of its non-exempt California employees ("Aggrieved Employees").

Our client alleges that Defendant failed to properly compute shift differential wages earned by our client and other Aggrieved Employees into their regular rate of pay for purposes of paying them meal and rest period premiums, overtime wages, and sick pay wages at the correct rates, in violation of Labor Code §§ 226.7, 246, 510, 512, 558 and 1194. Defendant paid our client and other Aggrieved Employees shift differential wages for working the night shift; however, Defendant failed to properly blend these shift differential wages, and instead paid our client and other Aggrieved Employees meal and rest period premiums, overtime wages, and sick pay wages based *only* on the base hourly rate of pay, thus depriving our client and other Aggrieved Employees of all meal and rest period premiums, overtime wages, and sick pay wages earned. This violates Labor Code §§ 226.7, 246, 510, 512, 558 and 1194.

Our client alleges that Defendant failed to pay premium wages to her and other Aggrieved Employees who were denied rest periods, in violation of Labor Code § 226.7 and IWC Wage Order No. 1-2001. Our client and other Aggrieved Employees were routinely unable to take a 10-minute rest period for every four (4) hours of work or major fraction thereof, but were not paid premium wages of one hour's pay for each missed rest period. When they were able to take a rest period, they were oftentimes late, cut short, or they would be improperly prohibited from leaving Defendant's premises while on their rest periods, thereby subjecting them to Defendant's control during their rest periods. This violates Labor Code § 226.7 and IWC Wage Order No. 1-2001.

Defendant failed to pay premium wages to our client and other Aggrieved Employees who were denied proper meal periods, in violation of Labor Code §§ 226.7, 510, 512, 558, and 1194 and IWC Wage Order 1-2001. Our client and other Aggrieved Employees were routinely denied, and not authorized to take, a proper, timely, uninterrupted, 30-minute meal period for every shift worked that exceeded five hours, or a second proper, timely, uninterrupted, 30-minute meal period for every shift worked that exceeded ten hours, but were not paid premium wages of one hour's pay for each missed first or second meal period. In addition, our client and other Aggrieved Employees worked off-the-clock during their meal periods: they were required to wait in line to clock back in on time from their meal period and, thus, they rarely received a full 30-minute meal period. These instances violate Labor Code §§ 226.7, 510, 512, 558, and 1194 and IWC Wage Order 1-2001.

Our client alleges that Defendant failed to pay all minimum and overtime wages earned during the course of employment to our client and other Aggrieved Employees, in violation of Labor Code §§ 510, 558, 1194, and 1194.2. Our client and other Aggrieved Employees worked off-the-clock: they were not paid for time spent waiting to clock in every day, to complete COVID screenings, and to put on and take off their hairnet. To clock in for work, our client and other Aggrieved Employees had to wait in line for the time clock to become available. Our client and other Aggrieved Employees also had to undergo daily COVID screenings before clocking in for the start of their shifts and before clocking back in after their meal periods. Further, our client and other Aggrieved Employees were required to put their hair nets on before clocking in and take them off after clocking out—all performed without compensation. These instances deprived our client and other Aggrieved Employees of significant hours worked and minimum and overtime wages due, and constitute violations of Labor Code §§ 510, 558, 1194, and 1194.2.

Defendant also failed to reimburse our client and other Aggrieved Employees for necessary business expenses incurred in direct consequence of the discharge of their duties, in violation of Labor Code § 2802, including, but not limited to, the cost of laundering and maintaining their uniform while working for Defendant. Labor Code § 2802 states that an employer must indemnify its employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of their duties, and Defendant's failure to do so has violated this section.

Labor & Workforce Development Agency
EM Tortillas, LLC
Brian Murrieta
March 14, 2022
Page 3

Our client further alleges that Defendant failed to provide her and other Aggrieved Employees with wage statements that fully and accurately itemized the requirements set forth in Labor Code § 226(a). Our client and other Aggrieved Employees were not paid all wages due, as stated above. As such, the wage statements provided by Defendant failed to accurately state all gross wages earned, in violation of Labor Code §§ 226(a)(1) and 226.3, total hours worked, in violation of Labor Code §§ 226(a)(2) and 226.3, net wages earned, in violation of Labor Code §§ 226(a)(5) and 226.3, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate, in violation of Labor Code §§ 226(a)(9) and 226.3.

Our client further alleges that Defendant failed to pay her and other Aggrieved Employees all wages due at the separation of their employment based on the time frames required by Labor Code §§ 201 and 202. As stated above, our client and other Aggrieved Employees were not paid all wages due during the course of their employment and, as a result of this failure, they were not timely paid all wages due at the separation of their employment. Furthermore, when our client was terminated, she was not issued her final wages at the time of her termination—rather, she was issued her final wages days later. Our client alleges that Defendant maintains a policy to untimely pay final wages to its former Aggrieved Employees. This violates Labor Code §§ 201-202 and is alleged on behalf of our client and certain Aggrieved Employees no longer employed by Defendant.

The \$75 PAGA filing fee has been mailed to the LWDA concurrently with the transmission of this letter.

We invite Defendant or its attorney to contact our office to discuss this matter, including whether an early resolution of the claims can be reached.

Our office awaits your response.

Very truly yours,

GAINES & GAINES
A Professional Law Corporation

By: 

EVAN S. GAINES

Alex Katofsky

From: Beatriz Franco
Sent: Tuesday, June 7, 2022 3:19 PM
To: Office
Subject: FW: Thank you for your Court Complaint Submission.

Martinez v. EM Tortillas- Summons and Complaint uploaded.

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

From: DIR PAGA Unit <lwdadonotreply@dir.ca.gov>
Sent: Tuesday, June 7, 2022 3:18 PM
To: Beatriz Franco <betty@gaineslawfirm.com>
Subject: Thank you for your Court Complaint Submission.

06/07/2022 03:17:44 PM

Thank you for your submission to the Labor and Workforce Development Agency.

Item submitted: Court Complaint

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

EXHIBIT C

SETTLEMENT AGREEMENT AND RELEASE OF PRIVATE ATTORNEYS
GENERAL ACT CLAIM

This Settlement Agreement and Release of Private Attorneys General Act Claim ("Settlement Agreement") is made by and between, on the one hand, Mireya Serrato Martinez ("Plaintiff"), individually, and on behalf of all other similarly situated PAGA Members and the State of California, and on the other hand, Defendant EM Tortillas, LLC ("Defendant"). Plaintiff and Defendant are collectively referred to herein as the "Parties" and may be individually referred to as a "Party."

A. Definitions

The following terms, when used in this Settlement Agreement, shall have the following meanings:

1. "Action" or "Lawsuit" means and refers to *Mireya Serrato Martinez v. EM Tortillas, LLC*, Orange County Superior Court Case No. 30-2022-10263512-CU-OE-CXC. The operative complaint in the Action is the Representative Action Complaint filed on June 3, 2022.
2. "Agreement" or "Settlement Agreement," shall mean this Settlement Agreement and Release of Private Attorneys General Act Claim, together with all attached Exhibits.
3. "Attorney's Fees and Costs" means the sum for which Plaintiff's Counsel shall make application to the Court, that shall not exceed one-third of the Gross Settlement Amount (\$75,000.00), and actual litigation costs, not to exceed \$16,000.00, which shall be paid out of the Gross Settlement Amount.
4. "Court" shall mean the Superior Court of the State of California, County of Orange.
5. "Defendant's Counsel" means and refers to Gigliotti & Gigliotti, LLP.
6. "Effective Date" means the date the Court approves the terms of the Settlement set forth in this Agreement and has entered the Final Order and Judgment.
7. "Eligible Pay Period" means any pay period worked by a PAGA Member in a non-exempt position in California at any time during the PAGA Period. Defendant represents there are no more than 4,500 Eligible Pay Periods worked by no more than 50 PAGA Members during the PAGA Period. If the actual number of pay periods increases beyond 4,500 and/or the actual number of PAGA Members increases beyond 50, Defendant will increase the Gross Settlement Amount by \$50 for each pay period in excess of 4,500 or \$4,500 for each PAGA Member in excess of 50 (the "Escalator Payment"). The larger percentage increase (pay periods v PAGA Members) will control the Escalator Payment.
8. "Final Order and Judgment" means the Court's Order granting the Motion for Approval of the PAGA Settlement set forth in this Agreement, and entering judgment.
9. "Funding Date(s)" means, with respect to the first settlement installment payment of \$100,000.00, ten (10) calendar days after the Effective Date; and with respect to the second settlement installment payment of \$125,000, ninety (90) calendar days after the Effective Date. If the GSA increases due to the Escalator Payment, each installment payment shall increase on a proportionate basis.

10. "Gross Settlement Amount" or "GSA" means the maximum settlement amount that Defendant will pay in connection with the Settlement of the Action. The GSA is Two Hundred Twenty-Five Thousand Dollars and Zero Cents (\$225,000.00), subject to the Escalator Payment memorialized in Paragraph 7, above. No part of the GSA shall revert to Defendant under any circumstances. Defendant shall pay no more and no less than the GSA to resolve the Action as described herein.
11. "LWDA Payment" means seventy-five percent (75%) of the PAGA Penalty Fund that shall be paid to the California Labor & Workforce Development Agency ("LWDA") pursuant to the PAGA for civil penalties.
12. "Net Settlement Amount" or "PAGA Penalty Fund" is the amount that remains after deduction of Plaintiff's Counsel's Attorney's Fees and Costs, Plaintiff's General Release Payment, and the Settlement Administrator's fees and costs from the Gross Settlement Amount.
13. "Notice" means the written notice to be mailed to all PAGA Members with their settlement payment checks, once the Court enters its Final Order and Judgment, and the Effective Date occurs, in a form substantially similar to **Exhibit "A,"** and as approved by the Court.
14. "PAGA Member(s)" means any and all individuals who were employed by Defendant for at least one Eligible Pay Period in non-exempt position in California during the PAGA Period.
15. "PAGA Settlement" or "Settlement" means the settlement of the Action memorialized in this Agreement.
16. "PAGA Period" or "Statutory Period" means the time period from March 14, 2021 through May 15, 2023.
17. "Plaintiff's Counsel" means Daniel F. Gaines of Gaines & Gaines, APLC.
18. "Plaintiff's General Release Payment" means and refers to the individual settlement payment to Plaintiff in the amount of up to Ten Thousand Dollars and Zero Cents (\$10,000.00) as consideration for Plaintiff's execution of this Agreement and her general release of the Released Parties.
19. "Released Parties" means Defendant, and each of and all of its respective past, present and future agents, employees, officers, directors, partners, trustees, representatives, shareholders, stockholders, members, attorneys, parents, subsidiaries, equity sponsors, related companies/corporations and/or partnerships, divisions, assigns, predecessors, successors, insurers, consultants, joint venturers, joint employers, affiliates, alter-egos, co-employers, dual employers, service providers, contracting partners, subcontractors, employee benefit plans and fiduciaries thereof, and all other persons and/or entities acting under, by, through or in concert with any of them.
20. "Settlement Administrator" means Phoenix Class Action Administration Solutions, or a different third-party administrator agreed to by the Parties and approved by the Court.

B. General

21. On or about March 12, 2022, Plaintiff sent a PAGA Notice to the LWDA, with a copy to Defendant via U.S. Certified Mail, alleging the following claims against Defendant: (1) failure to pay all wages; (2) failure to authorize and provide rest periods; (3) failure to provide meal periods; (4) failure to issue accurate wage statements; (5) failure to reimburse expenses; and (6) failure to pay wages timely at separation of employment.

22. Without indication from the LWDA it intended to investigate the claims, on June 3, 2022, Plaintiff filed the Action in the Superior Court of California, County of Orange, which alleged the claims identified in Plaintiff's PAGA Notice.

23. Defendant denies all of Plaintiff's claims and allegations, as referenced in the Action and the PAGA Notice, and further denies any liability or wrongdoing of any kind associated with the claims alleged in the Action (or otherwise).

24. The Parties have conducted a thorough investigation into the facts of the Action. This included, among other things, informal discovery involving the exchange of extensive information and key documents relating to the underlying alleged violations. Defendant also provided Plaintiff's Counsel with detailed financial records to demonstrate its limited financial resources. After engaging in private mediation with Steve Pearl, Esq., the Parties reach the proposed Settlement described in this Agreement, and believe it is fair, reasonable, and adequate. The Parties understand, acknowledge, and agree this Agreement constitutes a compromise of claims alleged by Plaintiff on behalf of the State of California and the LWDA, and it is the desire and intention of the Parties to effect a final and complete resolution of the representative claims Plaintiff has alleged against Defendant and/or any of the Released Parties. The Parties further acknowledge that this Agreement is a compromise of disputed claims and that nothing in this Agreement shall be construed as an admission of liability by Defendant.

25. Under California Law, the State may assess and collect civil penalties from employers for violations of certain provisions of the Labor Code. Labor Code §§ 2698, *et seq.* Under PAGA, however, if an "aggrieved employee" "give[s] written notice by certified mail to the [State] and the employer of the specific provision of the [Labor Code] alleged to have been violated," and the State thereafter decides not to investigate, as is the case here, or does investigate and determines a citation against the employer should not issue, the employee may, "as an alternative" to enforcement by the State, act as a proxy or agent of the state's labor law enforcement agencies and bring a civil action under PAGA to recover civil penalties "on behalf of himself or herself and other current or former employees." *Id.* "[C]ivil penalties recovered by aggrieved employees shall be distributed as follows: 75 percent to the state and 25 percent to the aggrieved employees." *Id.*

26. California Labor Code § 2699(1)(2) provides "[t]he superior court shall review and approve any settlement of any civil action filed pursuant to this part."

27. In consideration of the promises and agreements contained herein, the Parties agree and covenant as follows:

C. Terms of Settlement

28. Subject to the Court's approval of the Settlement pursuant to Labor Code § 2699(1)(2), which counsel and the Parties agree to recommend in good faith to the Court, the Parties

agree to the following binding settlement of the Action.

29. Upon the Court entering the Final Order and Judgment and the Effective Date occurring, Defendant shall pay the non-reversionary Gross Settlement Amount of Two Hundred Twenty-Five Thousand Dollars and Zero Cents (\$225,000.00), subject to the Escalator Payment memorialized in Paragraph 7, above. The Gross Settlement Amount will be distributed in the following manner:

- a. **Settlement Administration Costs:** The costs associated with settlement administration will be paid from the Gross Settlement Amount, and shall not exceed \$4,000.00. The Administrator's services will include, but not be limited to the following: updating PAGA Members' mailing addresses through a search of the National Change of Address database maintained by the U.S. Post Office, and skip-tracing bad addresses on the return of the PAGA Members' Notice and settlement payment checks; formatting and printing the Notice to be mailed to the PAGA Member with their settlement payment checks; calculating, issuing and mailing payments to LWDA and PAGA Members; performing tax reporting to the appropriate authorities, among other things called for by this Agreement. Subject to Court approval, the Parties agree to use Phoenix Class Action Administration Solutions as the Settlement Administrator.
- b. **Attorney's Fees and Costs:** The Parties agree that, subject to the Court's review and approval, Plaintiff's Counsel will be paid up to one-third of the GSA (\$75,000.00) from the GSA, as reasonable attorney's fees, plus actual litigation costs of up to \$16,000.00, also to be paid from the GSA, incurred to litigate the Action and to obtain Court approval of the Settlement. Plaintiff's Counsel's documented litigation costs are presently estimated at \$16,000.00. The Settlement Administrator will issue an IRS Form 1099 to Plaintiff's counsel for the Attorney's Fees and Costs awarded. In no circumstance(s) shall Defendant be liable for any payment(s) of Attorney's Fees and Costs separate from the GSA.
- c. **Plaintiff's General Release Payment:** The Parties agree that, subject to the Court's review and approval and Plaintiff's execution of an individual settlement agreement with a general release of all claims, Plaintiff will be paid up to Ten Thousand Dollars and Zero Cents (\$10,000.00), which is Plaintiff's General Release Payment. The appropriate tax documents shall be provided to Plaintiff. In exchange for the General Release Payment, Plaintiff will be bound by a general release in favor of the Released Parties.
- c. **PAGA Penalty Fund:** After deducting the Attorney's Fees and Costs, Plaintiff's General Release Payment, and Settlement Administration Costs from the Gross Settlement Amount, the remaining net settlement amount, the PAGA Penalty Fund, will be apportioned as required by the PAGA, Labor Code section 2699(i), with distribution of 75% to the LWDA, (the "LWDA Payment") and 25% to the PAGA Members. The PAGA Penalty Fund shall encompass all payments to the LWDA and to the PAGA Members.
- e. **PAGA Penalty Fund Allocation:** The PAGA Penalty Fund, estimated at \$120,000 shall be allocated \$90,000.00 (75%) for the LWDA Payment, and \$30,000.00 (25%) to the PAGA Members, to be distributed on a proportionate basis, using the number

of Eligible Pay Periods each PAGA Member was employed during the PAGA Period, as detailed in Paragraph 38, herein.

- f. **Taxes and Reporting:** Each PAGA Member's individual share will be treated as non-wage income for which the Administrator shall issue an IRS Form 1099 to be mailed together with the PAGA Member's settlement check, and reported to the applicable governmental authorities.

D. Releases

30. Release as to the PAGA Representative Claims

- a. Upon approval by the Court of this Settlement, and subject to Defendant's full payment of the GSA, Plaintiff, individually and in her representative capacity on behalf the State of California and the PAGA Members, will fully and finally release and discharge the Released Parties from all claims, rights, demands, liabilities, costs, attorney's fees, and causes of action for civil penalties under the PAGA, for the duration of employment in a non-exempt position in California during the PAGA Period, based on the factual and legal allegations pled in the operative Representative Action Complaint that support or relate to the following alleged violations of law asserted by Plaintiff in the Action pursuant to PAGA: (1) failure to pay all wages under Labor Code §§ 246, 510 and 1194; (2) failure to authorize and provide rest periods under Labor Code § 226.7; (3) failure to provide meal periods under Labor Code §§ 226.7 and 512; (4) failure to issue accurate wage statements under Labor Code §§ 226(a) and 226.3; (5) failure to reimburse expenses under Labor Code §§ 2802; and (6) failure to pay wages timely at separation of employment under Labor Code §§ 201-203 (the "Released PAGA Claims").
- b. In accordance with *Arias v. Superior Court* (2009) 46 Cal.4th 969, a judgment in "a representative action brought by an aggrieved employee under the Labor Code Private Attorneys General Act of 2004 ... is binding not only on the named employee plaintiff but also on government agencies and any aggrieved employee not a party to the proceeding," which the Final Order and Judgment shall so reflect. The Final Order and Judgment shall not bind or release the PAGA Members' individual wage claims (or other individual claims). However, in accordance with *Arias*, the Final Order and Judgment shall be binding on the PAGA Members as to the Released PAGA Claims. A statement to this effect shall be included in the Notice sent to the PAGA Members mailed together with their Settlement payment checks and IRS 1099 Forms.

31. Release as to Plaintiff's Individual Claims

- a. Upon approval by the Court of this Settlement, and subject to Defendant's full payment of the GSA, Plaintiff shall be deemed to have fully, finally, and forever released the Released Parties from any and all claims, obligations, demands, actions, rights, causes of action, and liabilities against the Released Parties, of whatever kind and nature, character, and description, whether in law or equity, whether sounding in tort, contract, federal, state and/or local law, statute, ordinance, regulation, common law, or other source of law, whether known or unknown, and whether anticipated or unanticipated, including unknown claims covered by Civil Code Section 1542, arising through the date of her signature hereon, for any type of relief,

including, without limitation, claims for wages, damages, unpaid costs, penalties, liquidated damages, punitive damages, interest, attorneys' fees, litigation costs, restitution, or equitable relief. These claims include, but are not limited to, the Released Claims, as well as any other claims under any provision of the California Labor Code or any applicable California Industrial Welfare Commission Wage Orders, and claims under local, state, or federal discrimination statutes, including, without limitation, the California Fair Employment and Housing Act, California Government Code §§ 12940 et seq.; the Unruh Civil Rights Act, California Civil Code §§ 51 et seq.; the California Constitution; Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000 et seq.; the Americans with Disabilities Act, 42 U.S.C. §§ 12101 et seq.; the Employee Retirement Income Security Act of 1974, 29 U.S.C. §§ 1001 et seq.; the Age Discrimination in Employment Act, 29 U.S.C. §§ 621, et seq., and all of their implementing regulations and interpretive guidelines.

- b. With respect to these Released Claims as described in this Section, Plaintiff confirms that her release is informed, knowing, and voluntary, and she shall be deemed to have expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights, and benefits she may otherwise have had pursuant to Section 1542 of the California Civil Code, 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.

- c. Notwithstanding Section 1542, Plaintiff understands and agrees that this Agreement shall act as a release of all future claims that may arise from Plaintiff's employment or separation from employment with Defendant, or any other matters that existed between Plaintiff and the Released Parties up to the date of this Agreement, whether such claims are currently known or unknown, and that Plaintiff intentionally waives any rights she may have under the provisions of Section 1542, as well as under any other statutes or common law principles of similar effect in the State of California or in any other state.
- d. To the extent applicable, Plaintiff waives and releases hereunder any rights she may have under the Age Discrimination in Employment Act of 1967 ("ADEA") and the Older Workers Benefit Protection Act ("OWBPA"), including any amendments, is knowing and voluntary. Defendant and Plaintiff agree that this waiver and release does not apply to any rights or claims that may arise under the ADEA after the effective date of this Agreement. Plaintiff acknowledges that she has been advised by this writing, as required by the Older Workers Benefit Protection Act, that (a) she should consult with an attorney prior to executing this Agreement; (b) she has twenty-one (21) days to consider this Agreement (although Employee may, by Employee's own choice, execute this Agreement earlier), during which time this Agreement will not be amended, modified, or revoked by the Company; (c) she has seven (7) days following the execution of this Agreement to revoke the Agreement by providing written notice to Defendant; and (d) her release of any rights under the ADEA and OWBPA will not be effective until the expiration, without revocation, of the seven (7) day revocation period. Plaintiff's release of any claims other than those under the ADEA and OWBPA will be effective and enforceable upon his signing of this Agreement. The offer by Defendant to enter into this Agreement, if

not accepted by Plaintiff, will become null and void at the end of the twenty-first day after this Agreement is presented to her if not executed. If Plaintiff elects to revoke this Agreement within the (7) day revocation period, Plaintiff must do so by sending a certified letter, return receipt requested, to: Joseph J. Gigliotti, Gigliotti & Gigliotti LLP, 26501 Rancho Parkway South, Ste. 101, Lake Forest, CA 92630.

E. Settlement Approval and Implemental Procedures

32. Plaintiff's Counsel shall prepare a motion for approval of the Settlement pursuant to California Labor Code § 2699(1)(2). Defendant shall not oppose such a motion provided Plaintiff's Counsel sends a draft of the motion for approval to Defendant's Counsel at least three (3) business days before it is filed. Defendant's Counsel will work with Plaintiff's Counsel to provide Plaintiff's Counsel with, and allow Plaintiff's Counsel to submit to the Court, adequate information related to the Released PAGA Claims to obtain approval of the Settlement pursuant to a reasonable request by Plaintiff's Counsel. As required by Labor Code, at the time the motion for approval of the Settlement is filed with the Court, Plaintiff's Counsel shall submit the motion, together with its exhibits, to the LWDA.

33. Within five (5) calendar days after the Effective Date, the Settlement Administrator shall send Defendant's Counsel electronic wiring instructions to fund the Gross Settlement Amount.

34. Within ten (10) calendar days after the Effective Date, Defendant will send to the Settlement Administrator a list which shall provide for each PAGA Member, the following information: (1) full name; (2) last known address; (3) social security number; and (4) the number of Eligible Pay Periods (the "Data List"). The fact that Defendant may not possess/maintain/know any or all of the PAGA Members' contact information shall not constitute a breach of this Agreement or be grounds for enforcement; however, Defendant will conduct a reasonable search and diligent inquiry to obtain such information and provide to the Settlement Administrator. The Data List shall be treated as and remain confidential and be used solely to manage the notice and payment process described herein, and for no other purpose, and shall not be disclosed to anyone other than the Settlement Administrator, except as may be required by applicable taxing authorities, or pursuant to express written authorization of Defendant, the PAGA Members or by order of the Court.

35. No later than each Funding Date, Defendant shall wire the required portion of the Gross Settlement Amount to the Administrator. The first installment payment of \$100,000 (i.e. 44.44% of the GSA) shall be paid no later than ten (10) calendar days following the Effective Date. The second installment payment of \$125,000 (i.e. 55.56% of the GSA) shall be paid no later than ninety (90) calendar days following the Effective Date.

36. Upon receipt of each installment payment from Defendant, the Administrator will distribute a proportionate share of the Gross Settlement Amount to PAGA Members, the LWDA, Plaintiff's Counsel, Plaintiff, and the Administrator. Should Defendant fail to fund the Gross Settlement Amount at the time and in the amounts as provided for by this Agreement, and unless otherwise agreed upon by the Parties or ordered by the Court, Plaintiff may elect to enforce this Agreement or, at her option, this Agreement and the settlement described within it, shall be rescinded, and the Parties shall be restored to their respective positions as of May 15, 2023.

37. The Settlement Administrator will perform all settlement administration duties, including (i) a National Change of Address ("NCOA") database search, (ii) skip trace to update PAGA Member addresses on the return of undelivered Notices and checks; , (iii) issuing the Notice

and payments to Plaintiff and all PAGA Members, (iv) issuing all required IRS forms, and reporting same to the applicable taxing authorities; and (v) issuing payment to the LWDA, PAGA Members, Plaintiff's Counsel and to itself.

38. The Administrator shall have the authority and obligation to calculate the amounts of the PAGA Members' Settlement payments in accordance with the methodology set forth in this Agreement and orders of the Court. Each PAGA Member will be eligible to receive a Settlement payment based on the total number of his/her Eligible Pay Periods worked during the PAGA Period in relation to the aggregate number of Eligible Pay Periods worked by all PAGA Members during the PAGA Period, e.g.

PAGA Member Payment =

(PAGA Penalty Fund – LWDA Payment) (x) $\frac{\text{PAGA Member's Number of Eligible PAGA Pay Periods}}{\text{All PAGA Members' Eligible PAGA Pay Periods}}$

39. All disbursements to the PAGA Members, the LWDA, the Settlement Administrator, Plaintiff and Plaintiff's Counsel required under this Settlement Agreement shall be made within ten (10) calendar days after each Funding Date. Prior to disbursement, the Settlement Administrator will forward its calculations of the PAGA Members' Settlement payments to all counsel, and receive approval from all counsel as to such amounts. Any Party's failure to respond to the Settlement Administrator's request for approval within five (5) business days shall be deemed approval of the calculations.

40. PAGA Members shall have 180 calendar days after mailing to cash each of their individual settlement checks. If any PAGA Member's check is not cashed within that period, the check will be voided and a stop-payment will be issued. Any funds in the Settlement Administrator's account as a result of a failure to timely cash a settlement check shall be transmitted to the California State Controller's Unclaimed Property Fund in the name of each respective PAGA Member whose check was uncashed and voided. Neither Defendant, Defendant's Counsel, Plaintiff's Counsel, nor Plaintiff will have any liability for lost or stolen settlement checks, forged signatures on settlement checks, or unauthorized negotiation of settlement checks. The Parties agree that this disposition results in no "unpaid residue" under California Civil Procedure Code § 384, as the entire Settlement will be paid out to PAGA Members whether or not they all cash their settlement checks. Therefore, Defendant will not be required to pay any interest on said amount. In no circumstance(s) shall Defendant be liable for any interest payment(s).

41. By no later than 240 days after mailing of the final Settlement payment checks to all PAGA Members, the Settlement Administrator shall provide Plaintiff's Counsel and Defendant's Counsel with a declaration setting forth the disbursements made to the PAGA Members, the LWDA, Plaintiff's Counsel for attorneys' fees and litigation costs, and to itself, and shall include information regarding the number of uncashed checks as of that date, the aggregate sum of uncashed checks, and the timeline for transmittal of sum represented by all uncashed checks to California's Controller, Unclaimed Property Division (if applicable).

F. Miscellaneous Provisions

42. **Eligible Pay Periods and PAGA Members:** Defendant has represented there are no more than 4,500 Eligible Pay Periods worked by no more than 50 PAGA Members during the PAGA Period.

43. **Voiding the Agreement:** The Settlement Agreement shall be voidable and unenforceable as to all Parties herein at the option of either Party if (a) the Court should for any reason fail to approve this Settlement in the form agreed to by the Parties, or (b) the Court should for any reason fail to enter a judgment, or (c) the approval of the Settlement and judgment is reversed, modified or declared or rendered void by a court of competent jurisdiction. In that event, then neither the Settlement nor any of the related negotiations or proceedings shall be of any force or effect, and all Parties to the Settlement shall stand in the same position, without prejudice, as if the Settlement had been neither entered into nor filed with the Court. Notwithstanding the foregoing, the Parties may attempt in good faith to cure any perceived defects in the Settlement to facilitate approval.

44. **Waiver:** The waiver by one Party of any breach of this Agreement by another Party shall not be deemed a waiver of any other prior or subsequent breach of this Agreement.

45. **Parties' Authority:** The signatories hereto represent that they are fully authorized to enter into this Settlement Agreement and bind the Parties hereto to the terms and conditions hereof.

46. **Mutual Full Cooperation:** The Parties agree to fully cooperate with each other to accomplish the terms of this Settlement Agreement, including but not limited to, execution of such documents and to take such other action as may reasonably be necessary to implement the terms of this Settlement Agreement. The Parties to this Settlement Agreement shall use their best efforts, including all efforts contemplated by this Settlement Agreement and any other efforts that may become necessary by order of the Court, or otherwise, to effectuate this Settlement Agreement and the terms set forth herein. As soon as practicable after execution of this Settlement Agreement, Plaintiff's Counsel shall, with the assistance and cooperation of Defendant and Defendant's counsel, take all necessary steps to secure the Court's approval of the Settlement, and the Final Order and Judgment.

47. **No Prior Assignments:** The Parties hereto represent, covenant, and warrant that they have not, directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or rights released and discharged by this Settlement Agreement.

48. **No Admission:** Defendant denies any and all liability to Plaintiff and/or the PAGA Members in this Action, as to any and all causes of action that were asserted or that might have been asserted in this Action based on the facts set forth in the First Amended Representative Action Complaint. Nonetheless, Defendant wishes to settle and compromise the matters at issue in the Action to avoid further substantial expense and the inconvenience and distraction of protracted and burdensome litigation. Defendant also has taken into account the uncertainty and risks inherent in litigation, and without conceding any infirmity in the defenses that it has asserted or could assert against Plaintiff, have determined that it is desirable and beneficial that Plaintiff's claims be settled in the manner and upon the terms and conditions set forth in this Agreement.

49. **Binding Settlement:** Nothing contained herein, nor the consummation of this Settlement Agreement, is to be construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part of Defendant or any of the other Released Parties. Each of the Parties hereto has entered into this Settlement Agreement with the intention of avoiding further disputes and litigation with the attendant inconvenience and expenses. This Settlement Agreement is a settlement document and shall, pursuant to California Evidence Code section 1152 and/or

Federal Rule of Evidence 408, be inadmissible in evidence in any proceeding, except an action or proceeding to approve the settlement, and/or interpret or enforce this Settlement Agreement.

50. **Enforcement Actions; Acceleration; Time is of the Essence:** This Agreement is binding and enforceable under California Code of Civil Procedure section 664.6, and the Court shall retain jurisdiction to enforce this Agreement. Except as otherwise provided in this Settlement Agreement, in the event that one or more of the Parties to this Settlement Agreement institutes any action or proceeding in this case under Section 664.6 or otherwise or separate legal action or other proceeding against any other Party or Parties to enforce the provisions of this Settlement Agreement or to declare rights and/or obligations under this Settlement Agreement, the successful Party or Parties shall be entitled to recover from the unsuccessful Party or Parties reasonable attorney's fees and costs incurred in connection with any enforcement actions. If Defendant breaches the installment payment provisions of this Agreement, all sums due hereunder shall be accelerated and all due and payable. Time is of the essence with respect to all provisions herein.

51. **Notices:** Unless otherwise specifically provided herein, all notices, demands or other communications given hereunder shall be in writing and shall be deemed to have been duly given as of the third business day after mailing by United States registered or certified mail, return receipt requested, addressed as follows:

To Plaintiff:

Daniel F. Gaines
Gaines & Gaines, APLC
4550 E Thousand Oaks Blvd, Suite 100
Westlake Village, CA 91362-3824

To Defendant:

Joseph J. Gigliotti
Gigliotti & Gigliotti, LLP
26501 Rancho Parkway South, Suite 101
Lake Forest, CA 92630

52. **Construction:** The Parties hereto agree that the terms and conditions of this Settlement Agreement are the result of lengthy, intensive arm's-length negotiations between the Parties and that this Settlement Agreement shall not be construed in favor of or against any Party by reason of the extent to which any Party or her or its counsel participated in the drafting of this Settlement Agreement.

53. **Captions and Interpretations:** Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Settlement Agreement or any provision hereof. Each term of this Settlement Agreement is contractual and not merely a recital.

54. **Modification:** This Settlement Agreement may not be materially changed, altered, or modified, except in writing and signed by the Parties hereto, and approved by the Court. Non-material changes requested by the Court may be made upon stipulation signed by all counsel. This Settlement Agreement may not be discharged except by performance in accordance with its terms or by a writing signed by all of the Parties hereto.

55. **Choice of Law:** This Settlement Agreement shall be governed by and construed, enforced and administered in accordance with the laws of the State of California, without regard to its conflicts-of-law rules.

56. **Integration Clause:** This Settlement Agreement contains the entire agreement between the Parties relating to the settlement and transaction contemplated hereby, and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written and whether by a Party or such Party's legal counsel, are merged herein. No rights hereunder may be waived except in writing.

57. **Continuing Jurisdiction:** After entry of the Final Order and Judgment, the Court will have continuing jurisdiction under California Code of Civil Procedure § 664.6 and as otherwise allowed by law solely for purposes of addressing: (i) the interpretation and enforcement of the terms of the Settlement, (ii) settlement administration matters; and (iii) such post-Final Order and Judgment matters as may be appropriate under court rules or as set forth in this Settlement.

58. **Waiver of Appeals:** The Parties waive all appeals from the Court's approval of the Agreement, unless the Court materially modifies the Agreement and/or unless a non-Party files an appeal.

59. **Publicity:** With respect to the Settlement, Plaintiff, Defendant, Defendant's Counsel, and Plaintiff's Counsel agree not to publicize, contact the media, or disclose to the public any information about the Settlement or the negotiation process, with the exception of filing this Settlement Agreement with the Court, and submitting it to the LWDA, informing the Court of the manner in which the Settlement was obtained, and the reasons in support of the fairness of the Settlement only insofar as necessary to obtain Court approval of the settlement of the Action. Plaintiff's Counsel may also respond to inquiries by PAGA Members and the LWDA. With respect to the terms of this Settlement, Plaintiff's Counsel agree not to post the terms of the Settlement on their website or initiate contact with the media about its terms or the negotiations. If asked by the media, Plaintiff's Counsel and Plaintiff agree to state, "The matter was amicably settled. Any further information about the settlement may be obtained by going to the Court's website." Plaintiff's Counsel agree that they will not circumvent this Agreement by facilitating or encouraging any PAGA Group member or any other individual to do what Plaintiff and his counsel have agreed not to do.

60. **Binding On Assigns:** This Settlement Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators, successors and assigns.

61. **Counterparts:** This Settlement Agreement may be executed in counterparts, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one fully-signed Settlement Agreement, which shall be binding upon and effective as to all Parties. Electronic delivery shall be deemed an original.

IN WITNESS WHEREOF, the parties knowingly and voluntarily executed this Settlement Agreement and Release of PAGA Claim as of the date set forth below.

Dated: 07 / 13 / 2023

By: Mireya Serrato
Plaintiff, Mireya Serrato Martinez

Dated: 7/13/23

By: Bruno Martin Man. Member
Defendant, EM Tortillas, LLC

AS TO FORM:

Gaines & Gaines, APLC

Dated: 7/14/23

By: DJ
Daniel F. Gaines, Attorneys for Plaintiff

Gigliotti & Gigliotti, LLP

Dated: 7/13/23

By: Joseph J. Gigliotti
Joseph J. Gigliotti, Attorneys for EM
Tortillas, LLC

EXHIBIT A

Notice of PAGA Settlement and Release of Claims

TO: All persons employed by EM Tortillas, LLC (“EM Tortillas” or “Defendant”) in the State of California in non-exempt positions from March 14, 2021 through May 15, 2023 (the “PAGA Members”).

I. Why Are You Receiving This Notice

You are receiving this Notice because the Superior Court for the State of California, County of Orange, has approved a settlement of a claim under the California Labor Code Private Attorneys General Act (“PAGA”). The PAGA claim seeks civil penalties on behalf of the State of California and for which the State of California receives 75% of any civil penalties collected (with PAGA Members receiving the remaining 25%).

You are receiving this notice because you may be a PAGA Member. Defendant’s records indicate that you were employed by Defendant in the State of California in a non-exempt position at some time from March 14, 2021, through May 15, 2023 (the “PAGA Period”). The Court approved a Settlement Agreement and Release of Private Attorneys General Act Claim (“Settlement”) of the lawsuit *Mireya Serrato Martinez v. EM Tortillas, LLC* and ordered that a portion of the Settlement proceeds allocated to civil penalties under PAGA be distributed to PAGA Members, including you, after certain portions of the penalties are paid to the State of California according to California law.

The enclosed check represents your individual “PAGA Settlement Award” which is your share of the Settlement funds that were allocated to settle claims for civil penalties pursuant to PAGA. Your PAGA Settlement Award is based on your Eligible Pay Periods (pay periods worked in California in a non-exempt position) during the PAGA Period, as set forth in the Settlement. You may deposit or cash the check without any further obligation on your part and there is no need for you to contact the settlement administrator, the parties, or the Court. The Court-approved Settlement releases claims for civil penalties under PAGA as described in more detail in the section under the heading “Release of Claims” below. No wage claims are released or affected by the Settlement.

II. Summary of Case

On June 3, 2022, Plaintiff Mireya Serrato Martinez (the “Plaintiff”) commenced a lawsuit in the Orange County Superior Court, case number 30-2022-01263512, to recover civil penalties (the “Lawsuit”). Plaintiff alleges in the Lawsuit that Defendant failed to pay all wages due, to pay all minimum and overtime wages due, to provide all meal and rest periods or premium compensation in lieu thereof, to timely pay all wages due upon separation of employment, to reimburse all business expenses, and to issue complete and accurate wage statements. For these alleged violations, Plaintiff seeks penalties pursuant to the PAGA.

Defendant denies all claims and allegations in the Lawsuit and asserts that no penalties are due to Plaintiff, the State of California, or any PAGA Member. The Court has made no

determination on the merits of the PAGA claims, but the parties have decided to resolve the action through the Settlement, which the Court has approved.

III. Release of Claims

Plaintiff, individually and in her representative capacity on behalf the State of California and the PAGA Members, will fully and finally release and discharge the Released Parties from all claims, rights, demands, liabilities, costs, attorney's fees, and causes of action for civil penalties under the PAGA, for the duration of employment in a non-exempt position in California during the PAGA Period, based on the factual and legal allegations pled in the operative Representative Action Complaint that support or relate to the following alleged violations of law asserted by Plaintiff in the Action pursuant to PAGA: (1) failure to pay all wages under Labor Code §§ 246, 510 and 1194; (2) failure to authorize and provide rest periods under Labor Code § 226.7; (3) failure to provide meal periods under Labor Code §§ 226.7 and 512; (4) failure to issue accurate wage statements under Labor Code §§ 226(a) and 226.3; (5) failure to reimburse expenses under Labor Code §§ 2802; and (6) failure to pay wages timely at separation of employment under Labor Code §§ 201-203 (the "Released PAGA Claims").

The Released Parties are Defendant, and each of and all of its respective past, present and future agents, employees, officers, directors, partners, trustees, representatives, shareholders, stockholders, members, attorneys, parents, subsidiaries, equity sponsors, related companies/corporations and/or partnerships, divisions, assigns, predecessors, successors, insurers, consultants, joint venturers, joint employers, affiliates, alter-egos, co-employers, dual employers, service providers, contracting partners, subcontractors, employee benefit plans and fiduciaries thereof, and all other persons and/or entities acting under, by, through or in concert with any of them.

Under the Settlement, PAGA Members do not need to do anything in order to receive their PAGA Settlement Award. PAGA Members may not object to, or opt out of, the Settlement.

IV. Calculation of PAGA Claim Employee Settlement Award

You are credited with _____ Eligible Pay Periods, and the total Eligible Pay Periods worked by all PAGA Members is _____. As a result, your PAGA Settlement Award is \$_____.

V. Tax Information

For tax purposes, the PAGA Settlement Awards will be allocated 100% to settlement of claims for penalties, which will be paid without withholdings or deductions and shall be reported on an IRS Form 1099. IRS Forms 1099 (and the equivalent California forms) will be distributed to PAGA Members reflecting the payments they receive under the Settlement. PAGA Members should consult with their tax advisors concerning the tax consequences of the payments they receive under the Settlement.

VI. Privacy

Because you have a constitutional right of privacy to object to the disclosure of your personal contact information, your personal contact information has not been provided to Plaintiff's counsel. The Court has authorized a third-party administrator to send you this notice, and they have agreed to keep your contact information confidential. Should you have any questions about this notice, you may contact the attorneys prosecuting this case on behalf of the State of California and the PAGA Members:

Daniel F. Gaines, Esq. SBN 251488
Alex P. Katofsky, Esq. SBN 202754
Evan S. Gaines, Esq. SBN 287668
GAINES & GAINES, APLC
4550 East Thousand Oaks Boulevard, Suite 100
Westlake Village, CA 91362
Telephone: (866) 550-0855

VII. Additional Information

You may obtain information by contacting Gaines & Gaines at the number above, or by contacting the Settlement Administrator as follows:

Phoenix Settlement Administrators
P.O. Box 7208
Orange, CA 92863
Telephone: (800) 523-5773

THIS NOTICE IS NOT AN EXPRESSION OF ANY OPINION BY THE COURT AS TO THE MERITS OF THE CLAIMS OR DEFENSES BY EITHER SIDE IN THIS PROCEEDING. PLEASE DO NOT CONTACT THE COURT REGARDING THIS CASE, THE COURT CLERK'S OFFICE, DEFENDANT OR DEFENDANT'S ATTORNEYS TO INQUIRE

EXHIBIT D

GAINES & GAINES
A Professional Law Corporation
4550 East Thousand Oaks Boulevard, 100
Westlake Village, CA 91362

Invoice submitted to:
Mireya Serrato Martinez

September 13, 2023

Invoice #4955

Professional Services

	<u>Hours</u>	<u>Amount</u>
3/11/2022 [Estimated] Pre-timekeeping: litigation research and analysis regarding Defendant and claims	10.00	7,500.00
3/14/2022 Draft LWDA letter	1.00	200.00
3/15/2022 Revise LWDA	0.60	375.00
5/24/2022 Review and finalize complaint, summons, cover sheet	0.50	375.00
Review and revise complaint; research	1.60	1,120.00
Draft PAGA complaint	1.20	750.00
Review and finalize complaint, summons, cover sheet	0.50	375.00
6/2/2022 Review and revise LWDA letter	0.40	280.00
6/6/2022 Update client	0.90	562.50
8/4/2022 Introduction call with defense counsel	0.40	250.00
8/9/2022 Prepare informal discovery letter	1.10	687.50
8/10/2022 Revise and send informal discovery letter to defense	0.20	125.00
9/27/2022 Email defense counsel regarding Stip to Continue Case Management Conference	0.30	60.00
9/29/2022 Email signed order to continue Case Management Conference and new dates to defense counsel	0.30	60.00

	<u>Hours</u>	<u>Amount</u>
10/31/2022 Status update to client	0.30	187.50
11/1/2022 Joint Report	0.80	500.00
12/14/2022 Emails with defense regarding claims	0.30	187.50
1/4/2023 Review data and transmit to expert; email with expert	1.00	200.00
1/24/2023 Review emails with expert and damage model	0.40	250.00
1/30/2023 Call with defense counsel regarding demand	0.40	250.00
2/2/2023 Send mediator avail to Defendant with damage model	0.30	187.50
2/6/2023 Draft Joint Case Management Conference Statement	1.10	220.00
2/7/2023 Email Joint Statement to defense counsel for review	0.30	60.00
Revise joint status report	0.30	225.00
3/9/2023 Emails with defense regarding mediation and schedule call regarding same	0.40	250.00
3/20/2023 Emails with defense regarding mediation scheduling	0.40	250.00
5/8/2023 Draft mediation brief	3.60	720.00
5/9/2023 Revise mediation brief	1.30	260.00
5/10/2023 Revise Mediation brief, assemble exhibits, send	1.00	200.00
Call with client regarding pre-mediation call; call with defense regarding reschedule mediation	0.50	312.50
5/15/2023 Mediation with Steve Pearl, Draft Settlement documents. Review financial data.	8.50	5,950.00
Attend mediation	6.50	4,875.00
6/2/2023 Draft PAGA Notice	1.20	750.00
Revise Settlement Agreement with ADEA language	0.50	100.00
6/27/2023 Draft Joint Status Report	0.60	120.00
7/5/2023 Draft Motion for PAGA approval	2.40	1,500.00
7/6/2023 Review and revise motion for PAGA approval	1.80	1,125.00
9/12/2023 Prepare supporting declarations, revise motion and revise order	2.50	1,875.00
9/13/2023 Finalize motion, declarations and order	1.20	900.00

	<u>Hours</u>	<u>Amount</u>
12/14/2023 [ESTIMATED] Time required to finalize approval paperwork, attend approval hearing, communicate with employees, administrator and counsel for Defendant, and close file	7.50	5,250.00
[ESTIMATED] Time required to finalize approval paperwork, attend approval hearing, communicate with employees, administrator and counsel for Defendant, and close file	7.50	5,625.00
For professional services rendered	71.60	\$45,050.00
Balance due		<u>\$45,050.00</u>

User Summary			
<u>Name</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
Alex Katofsky	29.00	750.00	\$21,750.00
Amelia Booth	11.00	200.00	\$2,200.00
Daniel Gaines	18.00	700.00	\$12,600.00
Evan Gaines	13.60	625.00	\$8,500.00

EXHIBIT E

Mireya Serrato Martinez v. EM Tortillas, LLC
Gaines Gaines, APLC Counsel's Costs

<u>EXPENSE CATEGORY</u>	<u>EXPENSE</u>
Filing fees (including related attorney service expenses)	\$ 1,806.37
Expert analysis fee	\$ 5,875.00
Mediation fee	\$ 7,725.00
Future estimated expenses -	\$ 145.00
• <i>Filing fees and One Legal Service fees for Motion for PAGA Approval (will be filed via One Legal) - \$20.00</i> • <i>Courtesy copy delivery fees to department of Motion for PAGA Approval via One Legal - \$80.00</i> • <i>Postage for mailing Motion for PAGA Approval - \$15.00</i> • <i>Filing fees and One Legal Service fees for Notice of Entry of Order once PAGA Order signed (will be filed via One Legal) - \$20.00</i> • <i>Postage for mailing Notice of Entry of Order - \$10.00</i>	
TOTAL EXPENSES	\$ 15,551.37