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Attorneys for Plaintiff Hector Perez, on behalf of himself and all “aggrieved employees” pursuant to Labor Code § 2698 *et seq.*

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

HECTOR PEREZ, on behalf of himself and all  
“aggrieved employees” pursuant to Labor  
Code § 2698 *et seq.*,

Plaintiff,

v.

N M FOOD, INC., a California corporation,  
TACO BROS, INC., a California corporation,  
and DOES 1 through 10, inclusive,

Defendants.

CASE NO: BCV-22-102741

*Assigned to the Hon. T. Mark Smith, Dept. T2*

**DECLARATION OF DANIEL F. GAINES  
IN SUPPORT OF REQUEST FOR  
DISMISSAL**

[Filed Concurrently: Request for Dismissal]

*Complaint Filed: October 17, 2022*

1 I, Daniel F. Gaines, declare as follows:

2 1. I am an attorney duly admitted to practice law in the State of California and I am a  
3 managing shareholder at Gaines & Gaines, APLC, counsel of record for Plaintiff Hector Perez  
4 (“Plaintiff”) in this matter. The matters set forth herein are of my own personal knowledge, and if  
5 sworn as a witness, I could and would testify competently thereto.

6 2. On October 17, 2022, Plaintiff filed the instant Action seeking penalties on a  
7 representative basis, on behalf of himself and all “aggrieved employees,” for Defendants N M Food,  
8 Inc.’s and Taco Bros, Inc.’s (collectively, “Defendants”) violations of California Labor Code and the  
9 Private Attorneys’ General Act of 2004 (“PAGA”), codified as § 2698, *et seq.*, by allegedly  
10 misclassifying employees as overtime-exempt and failing to pay all overtime wages earned, failing  
11 to provide meal and rest periods, or compensation in lieu thereof, failing to retain records, failing to  
12 issue complete and accurate wage statements, and failing to timely pay all wages due at separation of  
13 employment. The alleged violations occurred when Plaintiff worked for Defendants in Kern County,  
14 California.

15 3. Following conversations with Defendants’ counsel, and following a mediation with  
16 Cynthia S. Sandoval, Esq. on October 18, 2023, my office has ascertained that Plaintiff’s claims are  
17 quite individual. In addition, my office has determined that Defendants do not have the financial  
18 means to fund a PAGA settlement. Furthermore, liability is disputed. This determination is based on  
19 information provided by Defendants’ counsel through discussions in this matter.

20 4. The Parties have negotiated a settlement of Plaintiff’s individual claims only, and the  
21 PAGA representative claims will be dismissed without prejudice, as set forth in the concurrently-filed  
22 request for dismissal. Attached hereto as **Exhibit A** is a true and correct copy of the Parties’  
23 Settlement Agreement and Release (the “Settlement Agreement”).

24 5. The settlement does not contemplate the waiver of any claims by anyone other than  
25 Plaintiff and does not provide for the waiver of PAGA representative claims asserted on behalf of any  
26 employee or the State, such that there is no allocation of civil penalties in the Settlement.

27 6. No notice is required to be given to the aggrieved employees because no notice of the  
28 pending Action was ever given; there has been no publicity of which the Parties are aware; neither

1 Plaintiff nor my office have communicated with any absent aggrieved employees about the Action;  
2 there is no other pending action, of which the Parties are aware, brought by any aggrieved employee;  
3 and the aggrieved employees are not reasonably ascertainable at the present time; consequently, no  
4 absent aggrieved employee will suffer prejudice as a result of this dismissal.

5 7. Plaintiff, therefore, requests that the Court enter a dismissal of this action *with*  
6 *prejudice* as to Plaintiff's individual claims and *without prejudice* as to the PAGA representative  
7 claims, pursuant to the request submitted concurrently herewith.

8 8. Concurrent with the filing of this Request for Dismissal, Plaintiff has submitted  
9 the Settlement Agreement to the LWDA in compliance with Labor Code section 2699(1)(2).

10 I declare under penalty of perjury under the laws of the State of California that the foregoing  
11 is true and correct and was executed on November 14, 2023, at Westlake Village, California.

12  
13 *Daniel F. Gaines*  
14 DANIEL F. GAINES

# Exhibit A

## Settlement Agreement and Release

This Confidential Settlement Agreement and Release ("Agreement") is made by and between Hector Perez ("Plaintiff"), on the one hand, and Defendants Taco Bros Inc. and NM Food Inc. ("Taco Bros") on the other. Plaintiff and Taco Bros are collectively referred to in this Agreement as the "Parties." This Agreement shall be effective as of the date the Agreement is signed by the Plaintiff (the "Effective Date").

### Recitals

**Whereas**, Plaintiff was employed by NM Food Inc. from November 2021 through March 2022 (the "Employment").

**Whereas**, Plaintiff asserted various wage and hour claims related to his Employment with Taco Bros pursuant to the Private Attorneys General Act ("PAGA") on his behalf and all other employees who allegedly suffered the same Labor Code violations (the "Aggrieved Employees") in an action filed in the Superior Court of California County of Kern known as *Hector Perez v. NM Food, Inc. et al.*, Case No. BCV-22-102741 (the "Action").

**Whereas**, all claims arising out of or related to Plaintiff's Employment, or that were or could have been asserted in connection with the Action are referred to as the "Claims."

**Whereas**, Taco Bros denies any and all liability and wrongdoing asserted by Plaintiff in the Action.

**Whereas**, the Parties have determined that Plaintiff's Claims are best suited for an individual settlement and have negotiated this settlement of only Plaintiff's Claims on an individual basis, whereby the PAGA claims asserted on behalf of all potentially aggrieved employees shall be dismissed without prejudice. The terms of that settlement are set forth in this Agreement. The Parties agree that this Agreement does not purport to dismiss any claims of, nor is it binding upon, any other employee of Taco Bros or the Labor and Workforce Development Agency ("LWDA").

### Agreement

Now, therefore, in consideration of the mutual promises and covenants contained herein, it is hereby agreed by and between the Parties as follows:

1. **Non-Admission of Liability.** It is understood and agreed that this is a compromise settlement of a disputed claim, or disputed claims, and that the furnishing of consideration pursuant to this Agreement shall not be deemed or construed at any time or for any purpose as an admission of liability or wrongdoing by any party in any manner whatsoever.
2. **Payment.** Taco Bros shall make payment of \$28,750.00 (Twenty-Eight Thousand Seven Hundred Fifty Dollars) (the "Settlement Payment") to Plaintiff as follows: One check made payable to "Gaines & Gaines, APLC Client Trust Account". The Settlement Payment shall be delivered to Plaintiff's counsel at Gaines & Gaines, APLC, 4550 East Thousand Oaks Blvd, Suite 100, Westlake Village, CA 91362 no later than fifteen days after Plaintiff and his counsel have executed this Agreement.

## Settlement Agreement and Release

3. **Acceptance.** Plaintiff knowingly and voluntarily, upon consultation with his own legal counsel, agrees to accept the Settlement Payment and other terms and conditions of this Agreement as full and final satisfaction and settlement of the Claims and further agrees not to bill, charge, or seek to collect any additional amounts from Defendant related to or arising from the Claims. Upon his receipt of the Settlement Payment, Plaintiff acknowledges that there are no other wages due and owing, and that the Settlement Payment is allocated for all purposes to Plaintiff's claims for penalties, interest, and attorney fees.
4. **Dismissal.** Within five business days after the Settlement Payment has cleared the Gaines & Gaines, APLC Client Trust Account, Plaintiff will file a Stipulation and Proposed Order with the Court requesting the dismissal of all of Plaintiff's individual Claims with prejudice, and requesting the dismissal of the representative PAGA claims asserted on behalf of the State of California and all aggrieved employees without prejudice. The parties will each bear their own fees and costs incurred in connection with the Action and the Claims.
5. **Release.** Upon receipt by Plaintiff and full clearance of the Settlement Payment, Plaintiff, for himself and his spouses, heirs, successors, and assigns acting by, through, under, or in concert with him, does hereby fully and finally release and forever discharge each Defendant, any of its respective partners, parent companies, affiliates and subsidiaries, and their respective officers, directors, employees, and agents, and any of its suppliers, vendors, and retailers, insurers, and their respective parent companies, affiliates and subsidiaries, and their respective officers, directors, employees and agents (the "Released Parties") from any and all past, present or future claims, rights, demands, debts, obligations, losses, causes of action, actions, suits, controversies, setoffs, affirmative defenses, counterclaims, third party actions, damages, penalties, costs, expenses, attorneys' fees, liabilities and indemnities of any kind or nature whatsoever, whether known or unknown, suspected or unsuspected, accrued or unaccrued, whether actually pled or raised in the Action, whether at law, equity, administrative, statutory or otherwise, and whether for legal or equitable relief, including commercial damages, lost profits, lost future opportunities, lost business, injunctive relief, or compensatory, punitive or any other kind of damages, including all claims for attorneys' fees and costs, which he ever had in the past, presently may have or which may hereafter accrue against the Released Parties arising from or pertaining to the Claims, his Employment, or the Action, and including any claim which Plaintiff asserts or could assert at common law or under any statute, rule, regulation, order or law, whether federal, state or local, or on any grounds whatsoever, including without limitation, any tort, any oral, written and/or implied contract between Plaintiff and the Released Parties, the California Labor Code, California Labor Code Section 132a, California Labor Code Section 200, the Age Discrimination in Employment Act, the California Fair Employment and Housing Act, the California Family Care and Medical Leave Act, the Federal Family and Medical Leave Act of 1993, the Civil Rights Act of 1964, the Equal Pay Act, the Americans with Disabilities Act, the Pregnancy Discrimination Act, the Rehabilitation Act of 1973, the Racketeer Influenced and Corrupt Organizations Act, the Financial Reform Recovery and Enforcement Act of 1989, the Employee Retirement Income Security Act of 1974, California Labor Code §1102.5, California Business & Professions Code §17200, California Civil Code Sections 1709-1710, Section 1981 of Title 42 of the United States Code, and/or Article 1 §8 of the California Constitution, against the Released Parties

### **Settlement Agreement and Release**

with respect to any event, matter, claim, damage or injury contained or assertable in the Action and/or arising out of or as a result of Plaintiff's employment relationship with Taco Bros, treatment by any of the Released Parties, any alleged harassment (sexual, or on account of any other class membership) in violation of Government Code §§ 12940, et seq. and public policy of the State of California, disability discrimination, age discrimination, and wrongful termination in violation of Government Code §§ 12940, et seq., and the public policy of California, failure to accommodate disability or perceived disability or medical condition in violation of California Government Code §§ 12940, et seq., and in violation of the public policy of California, failure to maintain an environment free of discrimination and harassment in violation of Government Code §§ 12940, et seq., and the public policy of the State of California, retaliation in violation of Government Code §§ 12940, et seq., and the public policy of the State of California, assault, and battery, and/or with respect to any other claims, manner or event arising prior to the date of the execution of this Agreement. If any claim or potential claim referenced in this paragraph is not subject to release, to the extent permitted by law, Plaintiff waives any right or ability to be a class or collective action representative or to otherwise participate in or collect damages from any putative or certified class, collective or multi-party action or proceeding based on such a claim in which Taco Bros or any other of the Released Parties is a party. However, Plaintiff in no way releases any claim for any employee of Taco Bros aside for himself, nor any claim of the LWDA.

6. **Release of Unknown Claims.** Plaintiff intends that this Agreement is a general release that shall be effective as a bar to any and all claims against the Released Parties as described in Section 5. Plaintiff recognizes that Plaintiff may have some claim, demand, or cause of action against the Released Parties of which Plaintiff is completely unaware and unsuspecting that Plaintiff is giving up by execution of this Agreement. Plaintiff intends in executing this Agreement that it will deprive Plaintiff of each such claim, demand or cause of action and prevent Plaintiff from asserting it against the Released Parties. In furtherance of this intention, Plaintiff, knowingly and voluntarily, expressly waives any rights or benefits conferred by the provisions of Civil Code section 1542, which provides as follows:

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

Plaintiff hereby waives application of Civil Code section 1542 and any similar applicable law, statute, or regulation. Plaintiff acknowledges and agrees that this waiver is an essential and material term of this release and the settlement that leads to it, and that without this waiver the settlement would not have been entered into. Plaintiff has had the opportunity to be advised by his legal counsel, and has done so, with respect to this general release and to this express waiver of Civil Code section 1542 and other similar statutes or rules of law.

7. **Tax Consequences.** Plaintiff understands, acknowledges, and agrees that he shall be personally responsible for the payment of any and all federal, state, and local income taxes and other taxes that apply or may apply to any payments to be made pursuant to the terms of

## Settlement Agreement and Release

this Agreement. If Plaintiff is Medicare eligible, he warrants that the Settlement Payment is not subject to any claims or liens or otherwise. Plaintiff agrees to indemnify and hold harmless Taco Bros or its insurer for any and all claims arising out of or related to the tax consequences to Plaintiff of any payment to be made pursuant to this Agreement and any claims under Medi Cal/Medicare or any similar laws for treatment for his alleged condition.

8. **Binding Effect.** This Agreement shall be binding on and inure to the benefit of the Parties and their respective successors, assigns, heirs, executors, administrators and personal representatives.
9. **Confidentiality.** Plaintiff agrees that to the fullest extent allowable by law, and except as required by law, or in response to a subpoena or other legal process, or in connection with any action to enforce the terms of this Agreement, he shall not knowingly or voluntarily disclose, reveal, convey, comment upon, publicize, discuss or cause to be revealed, conveyed commented upon, or publicized, any information privately or publicly, any of (1) the terms or provisions of this Agreement, or (2) any document or other confidential, trade secret, or proprietary information he acquired from Taco Bros in connection with his Employment that are not already on the public record, except pursuant to legal process and/or to his attorneys, tax advisors, or immediate family so long as such persons are advised of the confidentiality of this Agreement and agree to keep the information confidential. Plaintiff further agrees that he shall instruct his counsel in this matter not to reveal the amount or range of any payment made pursuant to this Agreement to any person or entity, except as required by law, or otherwise authorized under this Agreement. Notwithstanding this provision, Defendant understands and agrees that Plaintiff will submit this Settlement Agreement to the Court in connection with the Stipulation and Order to approve the settlement and dismiss the case (as referenced in paragraph 4 herein) and that Plaintiff may also upload the Settlement Agreement and the Stipulation to the LWDA website pursuant to Labor Code § 2699 (1)(2).
10. **Neutral Reference.** Plaintiff agrees to direct all inquiries from prospective future employers exclusively to Taco Bros's Human Resources department. Human Resources shall respond to any queries about Plaintiff from potential employers by providing the prospective employer with the Plaintiff's position(s) held, and date(s) of employment only.
11. **Entire Agreement.** This Agreement constitutes the complete, final and exclusive embodiment of the entire agreement between the Parties regarding the subject matter hereof. This Agreement is entered into without reliance on any promise or representation, written or oral, other than those expressly contained herein, and it supersedes any other such promises, warranties, or representations. The Parties further agree that this Agreement is binding and may be admitted into evidence to prove its terms.
12. **No Assignments or Transfers.** The Parties represent and warrant that they have not heretofore assigned, transferred, or granted, or purported to assign, transfer, or grant, any of the claims, demands, causes of action, or rights waived in or released by way of this Agreement.
13. **Severability.** If it is determined that any term or provision of this Agreement is invalid or unenforceable, in whole or in part, then the remaining terms and provisions hereof shall be unimpaired.

## Settlement Agreement and Release

14. **Choice of Law.** This Agreement shall be deemed to have been entered into and shall be construed and enforced in accordance with the laws of the State of California as applied to contracts made and to be performed entirely within California.
15. **Retention of Jurisdiction; Time is of the Essence.** The Parties agree that the Superior Court of California, County of Kern retains jurisdiction to approve, interpret, or enforce this Agreement pursuant to Code of Civil Procedure section 664.6. Time is of the essence with respect to all provisions of this Agreement.
16. **Attorney's fees.** The Parties agree that each party shall bear its own costs, fees, and expenses (including attorneys' fees) incurred in any way in connection with the Action, including such costs, fees, and expenses incurred in connection with any related mediation or negotiations, and in connection with the execution of this Agreement. However, the parties agree that, in the event that a court of competent jurisdiction determines there has been a breach of this Agreement, the Party deemed by the court to be the prevailing party in such subsequent action shall be entitled to, in addition to any other relief provided by law or equity, reasonable attorneys' fees and statutory costs found by the court to be reasonably necessary. The remedies set forth in this Paragraph are limited to a breach of this Agreement and do not expand the rights of any Party to other matters related to the Actions or this Agreement.
17. **Competence and Authority.** Each of the undersigned parties represents and warrants that he or she is legally competent to execute this Agreement and that each person signing below is duly authorized to execute this Agreement.
18. **Execution of Agreement.** This Agreement may be executed by the signatures of each of the Parties hereto, or their authorized representatives, including electronic signatures, on multiple copies of this Agreement, including copies transmitted by facsimile machines or electronic mail, and upon being so executed by all parties hereto, shall be effective as if all signatures appeared on the original of this Agreement. This Agreement may be executed in multiple counterparts that, when taken together, shall be deemed as one Agreement and that an executed facsimile page of this Agreement shall be deemed an original signature.

The Parties, intending to be legally bound, have executed this Agreement as of the dates written below.

10 / 19 / 2023, 2023

Plaintiff Hector Perez

*Hector Perez*

\_\_\_\_\_, 2023

Defendant NM Food Inc.

By: \_\_\_\_\_

Its: \_\_\_\_\_

\_\_\_\_\_, 2023

Defendant Taco Bros Inc.

By: \_\_\_\_\_

Its: \_\_\_\_\_

## Settlement Agreement and Release

APPROVED AS TO FORM:

10/19/2023, 2023

\_\_\_\_\_, 2023

**Gaines & Gaines, PLC**, Counsel for  
Plaintiff

  
By: Daniel F. Gaines, Esq.

**Belden Blaine Raytis, LLP**, Counsel for  
Defendants

\_\_\_\_\_  
By: Kaleb L. Judy

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The Parties, intending to be legally bound, have executed this Agreement as of the dates written below.

\_\_\_\_\_, 2023

Plaintiff Hector Perez

Oct 19, 2023  
\_\_\_\_\_, 2023

Defendant NM Food Inc.

By:   
Islam Elgafy (Oct 19, 2023 17:20 PDT)

Its: Islam Elgafy, its President

Oct 19, 2023  
\_\_\_\_\_, 2023

Defendant Taco Bros Inc.

By:   
Islam Elgafy (Oct 19, 2023 17:20 PDT)

Its: Islam Elgafy, its President

## Settlement Agreement and Release

APPROVED AS TO FORM:

\_\_\_\_\_, 2023

**Gaines & Gaines, PLC**, Counsel for  
Plaintiff

By: \_\_\_\_\_

19 OCTOBER \_\_\_\_\_, 2023

**Belden Blaine Raytis, LLP**, Counsel for  
Defendants

  
By: Kaleb L. Judy

1 **PROOF OF SERVICE AND CERTIFICATION**

2 I am employed in the County of Ventura, State of California. I am over the age of 18 and not a party to the  
3 within action; my business address is 4550 East Thousand Oaks Boulevard, Suite 100, Westlake Village, CA 91362.

4 \_\_\_\_\_ (For messenger) my business address is:

5 On November 14, 2023, I served the foregoing document described as **DECLARATION OF DANIEL F.**  
6 **GAINES IN SUPPORT OF REQUEST FOR DISMISSAL** on the interested parties in this action by placing a true  
7 copy thereof enclosed in sealed envelopes addressed as follows:

8 **Kaleb L. Judy, Esq. kaleb@bbr.law**  
9 **James R. Harvey, Esq. james@bbr.law**  
10 **Brian J. Hill, Esq. briam@bbr.law**  
11 **BELDEN BLAINE RAYTIS**  
12 **5016 California Avenue, Ste. 3**  
13 **Bakersfield, CA 93309**

14 \_\_\_\_\_ (BY ☐ U.S. MAIL/ BY ☐ CERTIFIED MAIL, RETURN RECEIPT REQUESTED) The sealed envelope was  
15 mailed with postage thereon fully prepaid. I am "readily familiar" with the firm's practice of collection  
16 and processing correspondence for mailing. It is deposited with United States postal service on that same  
17 day in the ordinary course of business. I am aware that on motion of party served, service is presumed  
18 invalid if postal cancellation date or postage meter date is more that one day after date of deposit for  
19 mailing in affidavit.

20 \_\_\_\_\_ (BY FEDERAL EXPRESS OR OTHER OVERNIGHT SERVICE) I deposited the sealed envelope in a box or  
21 other facility regularly maintained by the express service carrier or delivered the sealed envelope to an  
22 authorized carrier or driver authorized by the express carrier to receive documents.

23   X   (BY ELECTRONIC SERVICE) The above-stated document was submitted for service by electronic transmission  
24 via email pursuant to an agreement between counsel on the counsel of record listed above.

25   X   (UPLOADED TO LWDA WEB PORTAL) I caused the above-described documents to be delivered to the Labor  
26 & Workforce Development Agency via online process at the PAGA Filing website ([www.dir.ca.gov](http://www.dir.ca.gov))  
27 in accordance with the procedure imposed by the LWDA.

28 I certify that the above document was printed on recycled paper.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 14, 2023, at Westlake Village, California.

22   
23 \_\_\_\_\_  
24 JEREMY REYES