

Mark L. Venardi (SBN 173140)
Martin Zurada (SBN 218235)
Mark Freeman (SBN 293721)
VENARDI ZURADA LLP
25 Orinda Way, Suite 250
Orinda, California 94563
Telephone: (925) 937-3900
Facsimile: (925) 937-3905

Attorneys for Plaintiffs
JEYAKANTH SELVARANJAN
K. MAYURAN

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA – UNLIMITED CIVIL CASE**

**JEYAKANTH SELVARANJAN, an
individual; K. MAYURAN, an
individual,

Plaintiffs,**

vs.

**DAKSHIN INDIAN RESTAURANT
LLC, a California Limited Liability
Company; HERITAGE FOODS LLC, a
California Limited Liability Company;
and DOES 1 through 100, inclusive,**

Defendants.

) **Case No. 16-CV-295349**

)

) **NOTICE OF UNOPPOSED MOTION AND
MOTION FOR APPROVAL OF PAGA
SETTLEMENT**

)

) Date: November 6, 2018

) Time: 9:00 a.m.

) Dept: 9

) Judge: Hon. Mary E. Arand

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1 TO DEFENDANTS and their attorneys of record:

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3 **NOTICE IS HEREBY GIVEN** that on November 6, 2018 at 9:00 a.m. or as soon
4 thereafter as the matter can be heard, in Department 9 of this court located at 191 N. First
5 Street, San Jose, California 95113, Plaintiffs JEYAKANTH SELVARANJAN and K.
6 MAYURAN will move for an Order approving settlement of claims pursuant to the Labor
7 Code Private Attorneys General Act of 2004 ("PAGA"). This motion is made pursuant to
8 *Labor Code* § 2699(1)(2). The grounds for this motion are that the parties arrived at a
9 negotiated settlement of PAGA claims after an arms-length negotiation and mediation with a
10 respected mediator, Hon. Kevin Murphy (ret.). The parties now seek approval of the settlement
11 of the PAGA claims. This motion is based on this notice of motion, the memorandum of points
12 and authorities, the declaration of attorney Zurada, and on the records and file herein and such
13 evidence as may be presented at the hearing of the motion. Defendants do not oppose this
14 motion and executed a stipulation in support of the Settlement.

15 Dated: September 7, 2018

VENARDI ZURADA LLP

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19 _____
20 Martin Zurada
21 Attorneys for Plaintiffs,
22 JEYAKANTH SELVARANJAN
23 K. MAYURAN
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1 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION**

2 Plaintiffs JEYAKANTH SELVARANJAN and K. MAYURAN ("Plaintiffs") seek
3 approval of the settlement of claims pursuant to the Labor Code Private Attorneys General Act
4 of 2004 ("PAGA"). PAGA permits an aggrieved employee to sue an employer for civil penalties
5 associated with the employer's alleged violation of various California Labor Code provisions.
6 *Labor Code* § 2699(a). Pursuant to the statute, of the amount paid to settle a claim for PAGA
7 penalties, twenty-five percent (25%) is payable to the employee prosecuting the action and
8 seventy-five percent (75%) is payable to the California Labor and Workforce Development
9 Agency (LWDA). *Labor Code* §2699(i). Under Labor Code § 2699(1)(2), "[t]he Superior Court
10 shall review and approve any settlement of any civil action filed pursuant to this part."

11 The parties previously submitted a Stipulation and Order to the Court, but the Court
12 rejected the prior Stipulation without prejudice on May 30, 2018 because the prior stipulation did
13 not include a copy of the Settlement Agreement. A revised Stipulation and Order was submitted
14 to the Court on June 29, 2018. Plaintiffs now bring this Motion to properly put the matter before
15 the Court. Notice to the LWDA was given on September 7, 2018 via the LWDA's website, and
16 the LWDA was served with the motion, supporting documents, and proposed order. Defendants
17 do not oppose this motion and executed a stipulation in support of the Settlement.

18 The Stipulation of the Parties including the full settlement agreement, and a detailed
19 explanation of the terms of the PAGA settlement, are attached hereto as **Exhibit A** to the
20 accompanying Declaration of Martin Zurada.

21 Plaintiffs respectfully request the Court **GRANT** Plaintiffs' Motion.

22 Dated: September 7, 2018

23 Respectfully submitted,
24 VENARDI ZURADA LLP

25 

26 _____
27 Martin Zurada
28 Attorneys for Plaintiffs,
 JEYAKANTH SELVARANJAN
 K. MAYURAN

VENARDI ZURADA LLP
700 Ygnacio Valley Road, Suite 300
Walnut Creek, CA 94596
Tel: (925) 937-3900
Fax: (925) 937-3905

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VENARDI ZURADA LLP
25 Orinda Way, Suite 250
Orinda, California 94563
Telephone: (925) 937-3900
Facsimile: (925) 937-3905

Attorneys for Plaintiffs
JEYAKANTH SELVARANJAN
K. MAYURAN

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA – UNLIMITED CIVIL CASE**

**JEYAKANTH SELVARANJAN, an
individual; K. MAYURAN, an
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Plaintiffs,

vs.

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LLC, a California Limited Liability
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California Limited Liability Company;
and DOES 1 through 100, inclusive,**

Defendants.

) **Case No. 16-CV-295349**

)

) **DECLARATION OF MARTIN ZURADA
IN SUPPORT OF MOTION FOR
APPROVAL OF PAGA SETTLEMENT**

)

) Date: November 6, 2018

) Time: 9:00 a.m.

) Dept: 9

) Judge: Hon. Mary E. Arand

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DECLARATION OF MARTIN ZURADA IN SUPPORT OF MOTION FOR APPROVAL OF PAGA
SETTLEMENT
Case No.: 16-CV-295349

1 I, MARTIN ZURADA, declare as follows:

2
3 1. I am a principal at Venardi Zurada LLP, and attorney of record for Plaintiffs
4 JEYAKANTH SELVARANJAN and K. MAYURAN in this case.

5 2. The matters stated in this declaration are true to my own personal knowledge and
6 if called upon to testify I would and could competently testify thereto.

7 3. The parties previously submitted a Stipulation and Order to the Court, but the
8 Court rejected the prior Stipulation without prejudice on May 30, 2018 because the prior
9 stipulation did not include a copy of the Settlement Agreement. A revised Stipulation and Order
10 was submitted to the Court on June 29, 2018. Plaintiffs now bring this Motion to properly put the
11 matter before the Court.

12 4. The revised Stipulation also explains the PAGA settlement in detail.

13 5. Plaintiffs now bring this Motion to properly put the matter before the Court.
14 Notice to the LWDA was given on September 7, 2018 via the LWDA's website, and the LWDA
15 was served with the motion, supporting documents, and proposed order.

16 6. A true and correct copy of the Stipulation of the Parties including the full
17 settlement agreement, is attached hereto as **Exhibit A**.

18
19 I declare under penalty of perjury under the laws of the State of California that the
20 foregoing is true and correct. Executed on September 7, 2018 at Orinda, California.

21
22 VENARDI ZURADA LLP

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24 

25 _____
26 Martin Zurada
27 Attorneys for Plaintiffs,
28 JEYAKANTH SELVARANJAN
K. MAYURAN

EXHIBIT A

VENARDI ZURADA LLP
700 Ygnacio Valley Road, Suite 300
Walnut Creek, CA 94596
Tel: (925) 937-3900
Fax: (925) 937-3905

Martin Zurada (SBN 218235)
Mark Freeman (SBN 293721)
VENARDI ZURADA LLP
700 Ygnacio Valley Road, Suite 300
Walnut Creek, California 94596
Telephone: (925) 937-3900
Facsimile: (925) 937-3905

Attorneys for Plaintiffs
JEYAKANTH SELVARANJAN and
K. MAYURAN

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

JEYAKANTH SELVARANJAN, an individual; K.
MAYURAN, an individual,

Plaintiff,

v.

DAKSHIN INDIAN RESTAURANT LLC, a
California Limited Liability Company; HERITAGE
FOODS LLC, a California Limited Liability
Company; and DOES 1 through 100, inclusive

Defendants.

Case No. 16CV295349

**REVISED STIPULATION AND
[PROPOSED] ORDER
APPROVING SETTLEMENT OF
PAGA CLAIMS**

Plaintiffs JEYAKANTH SELVARANJAN, K. MAYURAN and Defendants DAKSHIN
INDIAN RESTAURANT LLC and HERITAGE FOODS LLC, by and through their attorneys of
record, stipulate as follows:

1. On May 19, 2016, Plaintiffs filed an initial complaint alleging wage and hour
violations (non-payment of regular time, non-payment of overtime/doubletime, failure to provide
meal/rest breaks, inadequate records and paystubs, and unfair business practices, collectively
“Wage and Hour Claims”) and various causes of action based on habitability arising out of
employer provided housing (tortious breach of warranty of habitability, breach of the covenant of

1 quiet enjoyment, negligence, nuisance, intentional and negligent infliction of emotional distress,
2 collectively "Habitability Claims"). The original complaint was then amended on October 28,
3 2016 to include a cause of action for penalties pursuant to the Labor Code Private Attorneys
4 General Act of 2004.

5 2. On December 14, 2017 the parties participated in a full day mediation with well-
6 respected employment mediator – Hon. Kevin Murphy (Ret.) and arrived at a global, settlement at
7 mediation – Confidential Settlement and Mutual Release Agreement ("Settlement Agreement")
8 which encompassed a settlement of all of Plaintiffs' claims (individual and PAGA). The parties
9 now seek an Order approving the PAGA portion of the settlement.

10 3. The total payments under the Settlement Agreement are \$180,000 allocated as
11 follows (please see paragraphs 1(a) and (c)):

12 a. \$144,000 by Defendants' insurers on their coverage of Habitability Claims only.

13 There was *no* insurance coverage on any of the Wage and Hour Claims and
14 therefore these funds are solely attributable to the Habitability Claims. The
15 Habitability Claims are individual claims not subject to PAGA. The Habitability
16 Claim proceeds were allocated unequally among the two plaintiffs after
17 deduction of one-third attorneys' fees and prorated costs.

18 b. \$36,000 paid by Defendants all of which was allocated towards the Wage and
19 Hour Claims (both PAGA and individual). Of those funds \$20,000 (55.66%)
20 was allocated to the individual Wage and Hour Claims and \$16,000 (44.44%) to
21 the PAGA Wage and Hour Claims. The individual Wage and Hour Claim
22 recovery of \$20,000 was allocated unequally among the two plaintiffs after
23 deduction of one-third attorneys' fees and prorated costs – with some recovery
24 going to unpaid individual wages and other to individual non-PAGA penalties
25 (i.e. waiting time penalties and minimum wage non-payment). The breakdown
26 of the payments for the PAGA Wage and Hour claims is explained below.

27 4. PAGA permits an aggrieved employee to sue an employer for civil penalties
28 associated with the employer's alleged violation of various California Labor Code provisions.

1 *Labor Code* § 2699(a). Pursuant to the statute, of the amount paid to settle a claim for PAGA
2 penalties, twenty-five percent (25%) is payable to the employee prosecuting the action and seventy-
3 five percent (75%) is payable to the California Labor and Workforce Development Agency
4 (LWDA). *Labor Code* §2699(i). Under Labor Code § 2699(1)(2), "[t]he Superior Court shall
5 review and approve any settlement of any civil action filed pursuant to this part."

6 5. The \$16,000 allocated to the PAGA Wage and Hour Claims is to be disbursed as
7 follows:

- 8 a. Seven Thousand Five Hundred Dollars (\$7,701) payable to the California
9 LWDA.
10 b. One Thousand Two Hundred Eighty Three Dollars (\$1,283.00) to each Plaintiff
11 as part of the settlement of the PAGA penalties sought in this case; and
12 c. Five Thousand Seven Hundred and Thirty Three (\$5,733) to Venardi Zurada
13 LLP counsel for Plaintiff representing a 1/3 contingency (\$5,333) plus a pro-rata
14 allocation of costs to the PAGA claim (\$400 attributed to PAGA from a total of
15 \$5,733 in costs in the entire litigation).

16 This resulting allocation is consistent with PAGA because the net PAGA settlement proceeds are
17 \$10,266.67 (\$16,000 total less 1/3 attorneys fees of \$5,333 and \$400 in prorated costs) and the
18 LWDA will receive \$7,701 which equals 75% of the net PAGA settlement proceeds and the two
19 Plaintiffs will receive a total of \$2,566.67 which equals 25% of the net PAGA settlement proceeds.

20 6. Good cause exists to grant relief on this issue by approving the PAGA portion of the
21 settlement because: (a) the parties entered into an arms-length settlement resolving the PAGA
22 claims, (b) approval of the settlement of the PAGA claims will fully and entirely resolve this case;
23 (c) waiting for the process of a noticed motion will simply delay the resolution of the case; and
24 (d) the parties are operating under the expectation that the matter has been resolved and, thus, are
25 not taking any further action with respect to litigating their PAGA claims if the case is not resolved.

26 7. The amount allocated to PAGA is reasonable -- \$16,000 out of a total of \$36,000 for
27 the Wage and Hour Claims (about 44.44%). The \$144,000 payment made by Defendants'
28 insurance companies were attributable only to the Habitability Claims and there was no insurance

VENARDI ZURADA LLP
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Fax: (925) 937-3905

coverage for Wage and Hour Claims. Defendants were under financial duress and there was uncertainty as to whether Defendants would be able to pay more on the Wage and Hour Claims (individual and/or PAGA) even if Plaintiffs were able to obtain a greater recovery on such contested claims. The Court has the discretion, and often exercises the discretion, to reduce PAGA penalties to avoid hardship on the Defendants, and there is a risk that this would happen in this case. The LWDA took no action to enforce PAGA and took no part in the litigation which was prosecuted solely by Plaintiffs' counsel at their own risk and expense.

8. The Court rejected the prior Stipulation and Proposed Order Approving Settlement of PAGA Claims *without prejudice* on May 30, 2018 because the prior stipulation did not include a copy of the Settlement Agreement. The parties are correcting this by attaching a true and correct copy of the Settlement Agreement as **Exhibit 1**.

9. Plaintiffs are concurrently submitting a copy of this stipulation and the PAGA to the LWDA.

10. The parties respectfully request that the Court approve the settlement of the PAGA claims.

IT IS SO STIPULATED.

Dated: June 29, 2018

VENARDI ZURADA LLP



Martin Zurada
Attorneys for Plaintiffs
JEYAKANTH SELVARANJAN and
K. MAYURAN

Dated: June 27, 2018

ROPERS, MAJESKI, KOHN & BENTLEY



DANIEL P. MCKINNON
Attorneys for Defendant,
DAKSHIN INDIAN RESTAURANT LLC
and HERITAGE FOODS LLC

VENARDI ZURADA LLP
700 Ygnacio Valley Road, Suite 300
Walnut Creek, CA 94596
Tel: (925) 937-3900
Fax: (925) 937-3905

[PROPOSED] ORDER

The Court has reviewed the Stipulation of the Parties, including the terms of the proposed settlement of PAGA penalties. The Court hereby ORDERS as follows:

1. The Court approves the PAGA portion of the proposed settlement; and
2. Plaintiffs shall submit a copy of this Order to the LWDA within 10 days after entry of this Order.

Date: _____

JUDGE OF THE SUPERIOR COURT

EXHIBIT 1

(Fully executed)

CONFIDENTIAL SETTLEMENT AND MUTUAL RELEASE AGREEMENT

This Confidential Settlement and Mutual Release Agreement ("Agreement") is entered into by and between Jevakanth Selvaranjan ("Selvaranjan") and Kulaveerasingam Mayuran ("Mayuran") (collectively, "Plaintiffs") and Dakshin Indian Restaurant LLC ("Dakshin") and Heritage Foods LLC ("Heritage"), (each of the four parties will be referred to collectively, as the "parties") for the consideration and mutual promises hereinafter stated.

RECITALS

A. On May 19, 2016, Plaintiffs filed a Complaint against Dakshin and Heritage in a lawsuit entitled *Selvaranjan, et al. v. Dakshin, et. al.*, Superior Court of the State of California, County of Santa Clara, Case No. 16CV295349, alleging claims for: (1) non-payment of regular time, (2) non-payment of overtime, (3) failure to provide meal and rest breaks, (4) waiting time penalties, (5) inadequate record keeping, (6) paystub violations, (7) unfair business practices, (8) unlawful deductions, (9) tortious breach of warranty of habitability, (10) breach of the covenant of quiet enjoyment, (11) negligence, (12) nuisance, (13) intentional infliction of emotional distress, and (14) negligent infliction of emotional distress ("Complaint"). On November 3, 2016, Plaintiffs filed a First Amended Complaint ("FAC") to include a fifteenth (15) cause of action under the Private Attorneys General Act of 2004. The Complaint and FAC are collectively the "Action."

B. On December 14, 2017, the parties reached a settlement at the mediation conducted by the Hon. Kevin Murphy (Ret.) of ADR Services, Inc., and entered into a Short Form Settlement Agreement and Release ("Short Form Agreement"). By executing this Agreement, the parties intend that this Agreement supersedes and replaces the Short Form Agreement, and that this Agreement becomes the final agreement related to the settlement and release of the Action.

C. The parties to this Agreement desire to completely and finally resolve and settle any and all claims, rights and actions between the parties, whether arising in contract, tort or statute, that were asserted or could have been asserted, related to, or otherwise arising from the Action, and release the disputes and claims between them on the terms and conditions set forth herein.

AGREEMENT

For good and valuable consideration of the mutual promises and obligations set forth herein and for other good and valuable consideration, the parties to this Agreement agree as follows:

1. Payment

In full settlement and compromise of the Action and in release and discharge of any and all claims and causes of action made, or that could have been made, in the Action, and in release

and discharge of any and all claims and causes of action arising out of the events or incidents referred to in the pleadings in this Action, the parties to this Agreement agree as follows:

a. Within 30 days of final judicial approval of the PAGA fee allocation, and receipt by counsel for Defendants of a request for dismissal with prejudice of the Action in its entirety, with all parties to bear their own attorneys' fees and costs, signed and dated by counsel for the Plaintiffs, a collective payment of \$180,000 ("Settlement Payment") will be made to the Plaintiffs as follows:

- \$72,000 by the Hartford under the policy issued to Heritage;
- \$72,000 split equally between the three policies issued to Dakshin; and
- \$36,000 from the Defendants.

The insurers and Defendants shall not seek reimbursement of the amounts paid as specified above from each other.

b. The Plaintiffs agree to pay, resolve or otherwise fully satisfy all such claims or liens arising from or related to the Action, including, but not limited to any and all Medicare and Medi-Cal liens and/or rights to recovery. Plaintiffs agree to hold back sufficient funds from the Settlement Payment in Plaintiffs' attorneys' trust account or otherwise not disperse those funds, until all such claim or liens arising from or related to the Action have been fully paid and satisfied, including, but not limited to any lien by Medi-cal for the \$1,598 paid on behalf Selvaranjan for treatment received at O-Connor Hospital on October 28, 2014. Plaintiffs agree to indemnify and hold harmless the Parties released hereunder as well as their attorneys from all such claims or liens and all costs and fees related thereto, including but not limited to all stated above, with no responsibility or liability on the part of Defendants and/or insurers. Neither Plaintiff shall be liable to Defendants in any way for any Medicare or Medi-Cal liens, or any other liens, incurred by the other Plaintiff.

c. The Settlement Payment is allocated to the LWDA, each Plaintiff and their attorneys as follows:

- Selvaranjan: \$34,443 to Selvaranjan for personal injuries and emotional distress resulting from habitability claims (\$29,588), individual penalties (\$3,572), and net PAGA proceeds (\$1,283) to be reported on an IRS Form 1099; and \$3,572 to Selvaranjan for wages less all applicable withholdings, as wages, such payment to be reported on an IRS Form W2.
- Mayuran: \$61,751 to Mayuran for emotional distress resulting from habitability claims (\$54,040), individual penalties (\$6,428), and net PAGA proceeds (\$1,283) to be reported on an IRS Form 1099; and \$6,428 to Mayuran for wages less all applicable withholdings, as wages, such payment to be reported on an IRS Form W2.

- LWDA: \$7,701 to LWDA consisting of the net PAGA recovery after attorneys' fees and costs calculated as \$16,000 of total PAGA recovery less \$5,733 in Venardi Zurada LLP attorneys' fees and costs and multiplied by 75%.
- Venardi Zurada LLP: \$64,507 to Venardi Zurada LLP for attorneys' fees and costs to be reported on an IRS Form 1099 consisting of \$58,774 in attorneys' fees and costs from the individual recovery plus \$5,733 from attorneys' fees and costs from the PAGA recovery.

d. Plaintiffs shall allocate the portion of the Settlement Payment attributable to the Private Attorneys General Act of 2004, which will also include an attribution for attorneys' fees, and submit such claim for court and Labor and Workforce Development Agency approval. Once the Settlement Payment has been paid, and the amount allocated to the PAGA claim has been approved, the dismissal of Plaintiffs' claim with prejudice shall be filed with the Court. This Agreement including without limitation, the payment obligations and releases, is effective upon final judicial approval of the PAGA settlement contained in this Agreement. The parties agree that a \$16,000 allocation to the PAGA claim is reasonable, and will support this allocation; but, to the extent that the Court rejects the parties' allocation or objects to some other aspect of this Agreement, they will work in good faith to come up with an allocation and/or modification acceptable to the Court.

e. The Settlement Payment may not be suspended without a court order or offset without an offsetting judgment (and then only to the extent of the available offset).

2. Release

a. Upon Court approval of the PAGA claim settlement, the parties hereby release, acquit, relieve and forever discharge any and all known or unknown claims that could have been asserted against each other, and specifically, Plaintiffs release Defendants, and each of their past and present predecessors, successors, assigns, employees, officers, directors, owners, shareholders, members, partners, agents, representatives, consultants, attorneys, insurers, divisions, or affiliated corporations, organizations or entities, whether previously or hereinafter affiliated in any manner (collectively, "Plaintiff Released Parties"), from any and all claims, rights, actions, complaints, demands, causes of action, charges of discrimination, obligations, promises, contracts, agreements, controversies, suits, debts, expenses, damages, attorneys' fees, costs and liabilities of any nature whatsoever, whether or not now known, suspected or claimed, matured or unmatured, fixed or contingent, which Plaintiffs ever had, now has, or may claim to have had against the Plaintiff Released Parties (whether directly or indirectly), or any of them, by reason of any act, event or omission concerning any matter, cause or thing, including, without limiting the generality of the foregoing, any claims related to, or arising out of, or with regard to the Action, including claims related to or arising out of (i) Plaintiffs' employments with any of the Plaintiff Released Parties or the termination of that employment; (ii) any habitability or emotional distress claims arising from any residence that Plaintiffs lived at during their

employment with Defendants, including, but not limited to, any residence identified in the Complaint or FAC; (iii) any common law or statutory torts, including, without limitation, wrongful termination in violation of public policy; (iv) any federal, state or governmental constitution, statute, regulation or ordinance, including, without limitation, Title VII of the Civil Rights Act of 1964, the Private Attorney General Act of 2004, the California Fair Employment and Housing Act, the Americans With Disabilities Act, the Age Discrimination in Employment Act, the Family Medical Leave Act, the California Family Rights Act, the California Labor Code, the Fair Labor Standards Act, the Wage Orders promulgated by the California Industrial Welfare Commission, and the California Business and Professions Code; (v) any agreement, oral or written, express or implied, between Plaintiffs and any of the Plaintiff Released Parties, including any employment agreement; (vi) any claim for wages, pay, salary, bonuses, commissions, overtime, premium wages, meal or rest break wages or penalties, and/or any other compensation or benefit; (vii) any permanent or temporary disability or loss of future earnings as a result of injury or disability arising from or associated with employment or the termination of the employment relationship with Defendants; (viii) any impairment of Plaintiffs' abilities to obtain subsequent employment; and (ix) any personal injury claims, including, but not limited to, any claims related to or arising out of bedbugs, rats, bedbug bites and rat bites; provided, however, that this release does not apply to those claims that may not be released as a matter of law.

i. It is expressly understood by Plaintiffs that among the various rights and claims being waived by each of them in this release, included but are not limited to those arising under the California Labor Code and wage orders, the Private Attorney General Act of 2004 (Labor Code § 2698 et seq.), the Family and Medical Leave Act, the California Family Rights Act, the Employee Retirement Income Security Act (29 U.S.C. §1000, et seq.), Title VII of the Civil Rights Act of 1964 (42 U.S.C. §2000, et se.), and the California Fair Employment and Housing Act (Cal. Government Code §12900, et seq.). The released claims are intended by the parties to be all encompassing and to act as a full and total release of any claim that may be legally be waived or released, whether specifically enumerated herein or not, that Plaintiffs might have or have had, that exist or ever have existed on or to the date of this Agreement. Likewise, nothing herein shall preclude Plaintiffs from asserting any claims that cannot be waived by private agreement under applicable laws, including but not limited to claims for unemployment insurance or workers' compensation benefits, or to file an administrative charge with a governmental agency. With respect to any such non-waivable claims or charges, Plaintiffs agree to waive Plaintiffs' right (if any) to any monetary or other recovery should any governmental agency or other third party pursue any claims on Plaintiffs' behalf, either individually, or as part of any collective action.

b. The parties certify that they have read the provisions of California Civil Code Sec. 1542. The parties waive any and all rights under California Civil Code Sec. 1542, which states:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY

AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.”

c. The parties have made an investigation of the facts pertaining to settlement of the Action as they deem necessary.

d. The parties are aware that they may hereafter discover claims or facts in addition to or different from those they now know or believe to be true with respect to the matters underlying the Action. In furtherance of the parties' intent, the releases in this Paragraph of the Agreement shall remain in full and complete effect notwithstanding discovery or existence of any additional or different claims or facts arising out of or related to the facts and circumstances involved in the Action.

e. The parties hereto agree never to commence, prosecute, or cause to be commenced any action or proceeding based upon any of the matters released by this Agreement. The parties hereto further agree that any party who commences such an action or performs any act contrary to this paragraph shall be deemed to be in breach of this Agreement and a cause of action shall accrue thereon immediately in favor of the other party(ies). In the event that an action is brought, this Agreement may be pleaded as a defense or it may be asserted by way of cross-complaint, counterclaim, or cross-claim in any such action, or may be used, as necessary to establish its terms.

3. **Representations and Warranties**

a. Plaintiffs acknowledge that, apart from this action, they have not filed any other complaints, claims or actions against Dakshin and/or Heritage, either individually or collectively, including their employees, agents, attorneys, successors, assigns and insurers with any state, federal, or local agency. Plaintiffs represent and warrant that there are no pending claims, lawsuits, grievances or charges that have been filed against Dakshin and/or Heritage other than this current action.

b. Plaintiffs represent and warrant that as of the date of this signing, they have provided the Plaintiff Released Parties and their insurers all information known about any and all Medicare and Medi-Cal liens and/or rights to recovery as of this date. Plaintiffs agree to reimburse, indemnify and hold harmless each of the Plaintiff Released Parties and their insurers with respect to all known and unknown Medicare and Medi-Cal rights to recovery related to the Action for which the federal or state government may seek repayment as well as any fine or penalty the federal or state government may seek resulting from the sufficiency and or accuracy of the information Plaintiffs have represented and warranted regarding Medicare and Medi-Cal rights to recovery known as of this date. Neither Plaintiff shall be liable to Defendants in any way for any Medicare or Medi-Cal liens, or any other liens, incurred by the other Plaintiff.

c. Each party represents and warrants that it has the full right, power and authority to enter into this Agreement, to execute all instruments and take all other actions provided for in this Agreement and to fully bind such party to the terms and obligations of this Agreement. Each party represents and warrants that it has received, or had the opportunity to receive, independent legal advice from counsel regarding the meaning and legal effect of this

Agreement and regarding the advisability of making the agreements provided for herein and fully understands the same.

d. Each party represents and warrants that it is the sole and lawful owner of all right, title and interest in and to every claim or other matter which it purports to release herein, and it has not heretofore assigned, transferred or encumbered, or purported to assign, transfer or encumber, voluntarily or involuntarily, to any person or entity that is not a party to this Agreement, all or any portion of the claims, obligations or rights covered by this Agreement. Each party represents and warrants that it has not filed any legal action with any local, state, federal or international agency or court relating in any manner to any matter herein.

4. **No Admission of Liability**

Every party denies any liability or wrongdoing and nothing in this Agreement shall be interpreted as an admission of liability. This Agreement constitutes a settlement and compromise of various disputed claims and is made solely to avoid expensive and time-consuming litigation. Neither the offer nor acceptance of the terms and conditions of the Agreement represent an admission of liability or fault on the part of any party, but instead represents a resolution of the parties' claims as against each other in, or arising out of, the Action deemed by the parties to be mutually favorable and made by mutual agreement.

5. **Attorneys' Fees and Costs**

Each party shall bear his or its own attorney's fees and costs in the Action.

6. **Governing Law and Integration**

This is a fully integrated agreement, made and entered into in the State of California and shall in all respects be interpreted, enforced and governed under the laws of California. The language of all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against either of the parties. This Agreement sets forth the entire agreement between the parties with regard to the subject matter hereof. All agreements, covenants, representations and warranties, express or implied, oral or written, of the parties with regard to the subject matter hereof are contained in this Agreement. No other agreements, covenants, representations or warranties, express or implied, oral or written, have been made by either party to the other with respect to the subject matter of the Agreement. All prior and contemporaneous conversations, negotiations, possible and alleged agreements and representations, covenants, and warranties with respect to the subject matter hereof are waived, merged herein and superseded hereby.

7. **Severability**

Should any covenant, condition or other provision contained herein be held invalid, void or illegal by any court of competent jurisdiction, it shall be deemed severable from the remainder of the Agreement and shall in no way effect, impair or invalidate any other covenant, condition or other provision herein contained. If such condition, covenant or other provision shall be deemed invalid due to its scope or breadth, it shall be deemed valid to the extent of the scope or

breadth permitted by law.

8. **Confidentiality Agreement**

The terms of this Agreement and all settlement discussions and negotiations preceding this Agreement shall remain confidential and shall not be disclosed by any parties to this Agreement or their agents or representatives to any other person or entity without the written consent of the other party unless such disclosure is required by court or administrative order or otherwise required by law, including as necessary to obtain PAGA approval which may necessitate a general description of the case, the PAGA allocation, as well as the justification for the PAGA allocation, and an in camera review of this settlement by the Court. In the event that a third-party request that a party disclose the terms of this Agreement or the substance of any settlement discussion or negotiation and that party believes that such disclosure is required by law, said party shall notify the other party of the request and the intention to comply prior to making such disclosure. Each party may disclose the terms of this Agreement to its respective spouses, legal counsel, translators, accountants, lenders, consultants and insurers, and may disclose this Agreement in any proceeding regarding enforcement or interpretation of this Agreement. Except as set forth in this paragraph, should anyone inquire of any party about the nature or terms of this Agreement, the party shall say not more than "We have reached a settlement of all matters, and part of that settlement requires that all information regarding any part of it be strictly confidential", or words to that effect.

9. **Enforceability and Venue**

The parties agree this is a judicially enforceable settlement agreement and may be enforced by motion under Section 664.6 of the Code of Civil Procedure or by any other procedure permitted by law in the applicable state or federal court. Any action or enforcement arising out of this Agreement shall be brought in the state or federal court located in the County of Santa Clara. The prevailing party in any legal action brought by one party against the other party and arising out of this Agreement shall be entitled, in addition to any other rights and remedies it might have, to reimbursement of its expenses, including without limitation costs and attorneys' fees.

10. **Notices**

All notices, requests, demands and other communications under this Agreement shall be in writing and delivered by personal delivery, mail, overnight courier or facsimile. Such communications shall be deemed given, if by personal delivery, when received; if by mail, when received by United States Postal Service Certified Mail or Registered Mail (first-class postage prepaid and Return Receipt requested); or if by overnight courier or facsimile, when delivered to such courier or sent by facsimile (provided that the party giving such communication has confirmation of such courier delivery or telecopy delivery), and in each case, addressed to the existing counsel for each party as set forth below:

<u>FOR PLAINTIFFS</u>	<u>FOR DAKSHIN AND HERITAGE:</u>
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Martin Zurada Venardi Zurada LLP 700 Ygnacio Valley Road, Suite 300 Walnut Creek, California 94596 Telephone: (925) 937-3900	Daniel P. McKinnon Ropers, Majeski, Kohn & Bentley 50 West San Fernando Street, Suite 1500 San Jose, California 95113 Telephone: (408) 287-6262
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Any party may change its address or the individual(s) to whom notice is to be given for purposes of this section by giving the other party notice of the new address or individual in the manner set forth above, provided that any such notice of change of address or individual shall not be in effect until received.

11. **Miscellaneous.**

a. Each party represents that he or she has relied on the advice of his or her attorney, who is the attorney of his or her own choice, concerning the legal and income tax consequences of this Agreement, that the terms of this Agreement have been read and explained to him or her by that attorney, and that he or she fully understands and accepts the terms of the Agreement.

b. This Agreement has been negotiated at arm's length by the parties' counsel. If a dispute should arise regarding any of its terms, no party shall be deemed to be the drafter of any provision of this Agreement.

c. This Agreement cannot be amended, altered, modified, waived or superseded, in the whole or in part, except by a written agreement so stating which is signed by all parties to this Agreement. No delay or omissions on the part of any party to this Agreement shall operate as a waiver of any such right or any other right. Waiver of any one breach of any provision hereof shall not be deemed to be a waiver of any other breach of the same or any other provision hereof.

d. This Agreement shall inure to the benefit of and be binding on each party, as well as that party's respective successors or assigns.

e. The parties acknowledge, represent and warrant that no person or entity, nor any agent or attorney of any person or entity, has made any promise, representation or warranty whatever, express or implied, other than those expressly contained herein, so as to tend to induce them to execute this Agreement. The parties expressly acknowledge, represent and warrant that they have not executed this Agreement in reliance on any promise, representation, warranty or fact not set forth herein.

f. This Agreement is executed voluntarily and without any duress or undue influence on any party, or on behalf of any party hereto, or their officers, employees, agents, affiliates or attorneys. The parties hereto acknowledge that they have been represented by counsel of their own choice in the negotiations for and preparation of this Agreement, or in the alternative, they have knowingly and voluntarily waived their right to have counsel review same.

g. Section headings are for convenience only and are not part of the Agreement.

h. This Agreement may be executed in any number of counterparts and via facsimile or other electronic means, each of which shall be an original, but all of which together shall constitute one instrument.

i. Each person who executes this Agreement on behalf of any party to the Agreement represents and warrants that he or she has been duly authorized by such party to execute the Agreement.

CAUTION - THIS IS A RELEASE - READ BEFORE SIGNING

Dated: 03/09/2018, 2018

J. Jayanth.
Jeyakanth Selvaranjan

Dated: 03/09/2018, 2018

K. Mayur.
Kulaveerasingam Mayuran

Dakshin Indian Restaurant LLC

Dated: _____, 2018

By: _____

Print Name: _____

Title: _____

Heritage Foods LLC

Dated: _____, 2018

By: _____

Print Name: _____

Title: _____

g. Section headings are for convenience only and are not part of the Agreement.

h. This Agreement may be executed in any number of counterparts and via facsimile or other electronic means, each of which shall be an original, but all of which together shall constitute one instrument.

i. Each person who executes this Agreement on behalf of any party to the Agreement represents and warrants that he or she has been duly authorized by such party to execute the Agreement.

CAUTION - THIS IS A RELEASE - READ BEFORE SIGNING

Dated: _____, 2018

Jeyakanth Selvaranjan

Dated: _____, 2018

Kulaveerasingam Mayuran

Dated: _____, 2018

Dakshin Indian Restaurant LLC

By: _____

Print Name: _____

Title: _____

Heritage Foods LLC

By: _____

Print Name: _____

Title: _____

Dated: _____, 2018

Martin Zurada (SBN 218235)
Mark Freeman (SBN 293721)

VENARDI ZURADA LLP
25 Orinda Way, Suite 250
Orinda, California 94563
Telephone: (925) 937-3900
Facsimile: (925) 937-3905

Attorneys for Plaintiffs
JEYAKANTH SELVARANJAN and
K. MAYURAN

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SANTA CLARA

JEYAKANTH SELVARANJAN, an individual; K.
MAYURAN, an individual,

Plaintiff,

v.

DAKSHIN INDIAN RESTAURANT LLC, a
California Limited Liability Company; HERITAGE
FOODS LLC, a California Limited Liability
Company; and DOES 1 through 100, inclusive

Defendants.

Case No. 16CV295349

**[PROPOSED] ORDER APPROVING
SETTLEMENT OF PAGA CLAIMS**

Date: November 6, 2018

Time: 9:00 a.m.

Dept: 9

Judge: Hon. Mary E. Arand

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[PROPOSED] ORDER

The Court has reviewed the Stipulation of the Parties, including the terms of the proposed settlement of PAGA penalties. The Court hereby ORDERS as follows:

- 1. The Court approves the PAGA portion of the proposed settlement; and
- 2. Plaintiffs shall submit a copy of this Order to the LWDA within 10 days after entry of this Order.

Date: _____

JUDGE OF THE SUPERIOR COURT

Martin Zurada (SBN 218235)
Mark Freeman (SBN 293721)
VENARDI ZURADA LLP
25 Orinda Way, Suite 250
Orinda, California 94563
Telephone: (925) 937-3900
Facsimile: (925) 937-3905

Attorneys for Plaintiffs
JEYAKANTH SELVARANJAN and
K. MAYURAN

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

JEYAKANTH SELVARANJAN, an individual; K.
MAYURAN, an individual,

Plaintiff,

v.

DAKSHIN INDIAN RESTAURANT LLC, a
California Limited Liability Company; HERITAGE
FOODS LLC, a California Limited Liability
Company; and DOES 1 through 100, inclusive

Defendants.

Case No. 16CV295349

**PROOF OF SERVICE OF NOTICE
OF UNOPPOSED MOTION AND
MOTION FOR APPROVAL OF PAGA
SETTLEMENT; MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF MOTION;
DECLARATION OF MARTIN
ZURADA IN SUPPORT OF MOTION
FOR APPROVAL OF PAGA
SETTLEMENT; and [PROPOSED]
ORDER APPROVING
SETTLEMENT OF PAGA CLAIMS**

Date: November 6, 2018
Time: 9:00 a.m.
Dept: 9
Judge: Hon. Mary E. Arand

1 I, the undersigned, hereby declare that I am over the age of 18 years and not a party to the
2 above-captioned action; that my business address is Venardi Zurada LLP, 25 Orinda Way, Suite
3 250, Orinda, CA 94563.

4 On the date below I served the following document(s):

- 5 • **NOTICE OF UNOPPOSED MOTION AND MOTION FOR APPROVAL OF PAGA**
- 6 **SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT**
- 7 **OF MOTION;**
- 8 • **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION;**
- 9 • **DECLARATION OF MARTIN ZURADA IN SUPPORT OF MOTION FOR**
- 10 **APPROVAL OF PAGA SETTLEMENT; and**
- 11 • **[PROPOSED] ORDER APPROVING SETTLEMENT OF PAGA CLAIMS;**

12 on the parties to this action at the following address(es):

13 Daniel P. McKinnon, Esq.
14 Ropers, Majeski, Kohn & Bentley
15 50 West San Fernando Street, Suite
16 1400
17 San Jose, CA 95113-2429

18 (X) (BY MAIL) I caused a true copy of each document(s) to be placed in a sealed envelope with
19 first-class postage affixed and placed the envelope for collection. Mail is collected daily at my
20 office and placed in a United States Postal Service collection box for pickup and delivery that same
21 day.

22 I declare under penalty of perjury under the laws of the State of California that the foregoing
23 is true and correct. Executed on September 7, 2018 at Walnut Creek, California.



24 _____
25 Julie Goodfield
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